AFRICAN PERSPECTIVES ON SOCIAL JUSTICE



LAND, FOOD SECURITY AND AGRICULTURE IN UGANDA

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Foreword

Uganda's population currently stands at almost 35 million people and is still growing at an alarming level. 80% of this population is predominantly reliant on agriculture for livelihood and most of them practice subsistence farming as the means by which they feed themselves. In Uganda, land is the most invaluable asset for citizens. It is acquired to provide livelihood, facilitate production and economic transformation of the country.

A large and increasing population and the dependence by most on agriculture and subsistence farming creates land problems like limited access to land, land fragmentation and thereby low levels of production, destruction of the ecosystem and even food insecurity. The discussion on land, land rights, access to land, the connection between land, agriculture and food security is therefore very important. The issue of investors in agriculture, gender perspective to land, land tenure security are fundamental issues and must be addressed.

The government has embarked on the agenda of transforming and commercialising agriculture and promoting exports of agricultural outputs. Though export and value-adding promotion has allowed for increased export revenue, the changes in the agricultural system have forced small farmers to participate in the (export) market, which has had the effect of diminishing their capacity to produce sufficient food. Although many parts of Uganda enjoy food security throughout the year, some parts of the country experience food insecurity situations and malnutrition. What happens when Ugandans do not have food sovereignty and become net buyers of food in the country?

Against this backdrop, Friedrich-Ebert-Stiftung (FES) in partnership with Makerere University Business School (MUBS) Economic Forum organised a public dialogue on *Rethinking the Land Question, Food Security and Agricultural Transformation in Uganda*, in which civil society organisations, academics, policy-makers, and civil servants discussed these various issues surrounding land. The objectives of the public dialogue were: to debate Uganda's legal and policy framework concerning land, to analyse the different land tenure systems, access to land, the impact on food security in Uganda and to suggest policy recommendations to government on the land question as well as agricultural transformation. This publication includes selected papers from the public dialogue.

Norah Owaraga introduces the concept of the first nations and the land tenure system of Uganda prior to colonisation. She discusses how this tenure system evolved during colonial times and turned into the creation of the tenure systems that we have today. She also illustrates how land was used by the first nations, and the role of women in agriculture and food security then and now.

The paper by John Kigula tackles the legal and policy framework on land, its challenges, emerging issues and areas for reform such as among other things, the overlapping rights on *mailo* land protected by the Land Act and its amendments that are affecting the land and credit markets, the meaningless rent accruing to land owners from tenants, and his thoughts on land legal reform.

The nature of the different tenure systems of land and their different tenets, the current foreign investor situation in agriculture and the potential risk to food security when farming is commercialised are issues handled by Robert Kirunda. He also highlights that the failure to strengthen property rights of land owners and land users under the different land tenure systems discourages long-term investments in medium and large scale farming.

Dr. Zahara Nampewo explores the linkage between women's secure land rights and the food security situation. She identifies that the gender aspect to land is important and women's land rights need to be secured by the legal framework. Dr Nampewo notes that women's equal property rights and land rights for that matter are important because they are fundamental to women's economic security and empowerment, social and legal status and sometimes their survival. Land rights increase women's power in socio-economic and political relationships. This also comes with improvement in self-esteem, confidence, security and dignity.

Lawrence Bategeka's paper identifies the different government efforts to transform agriculture and how each worked out. There has been a debate on whether food security is best attained when farmers are able to have enough cash to purchase food or whether they have enough food in their gardens or cribs to cater for their food requirements. Whichever the argument, the balance between food crops and cash crops remains a challenge considering that some of the crops considered for commercialisation may not be edible. Bategeka then makes several recommendations for reform to enable agricultural transformation.

Lastly, the issue of land governance and inclusive development is explored by Ramathan Ggoobi. His paper explores how good land governance can translate into inclusive economic development of the country. Ggoobi makes recommendations to the government and proposes interventions that may be undertaken to address the land question, agricultural transformation, improve food security and measures to attain inclusive economic development.

Friedrich-Ebert-Stiftung hopes that the collection of thoughts and proposals contained in these papers will support and inform the much needed reform process in the land sector.

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November 2016

Land Tenure, Access to Land and Food Security in Uganda

Norah Owaraga

Historical Context

"Oh Uganda, the land that feeds us by sun and fertile soil grown; for our own dear land we'll always stand the pearl of Africa's crown." These are the lyrics of the third stanza of the National Anthem of the Republic of Uganda.

The Republic of Uganda (RoU) is defined by land (Google Maps, 2016), for without the land that forms the RoU, there would be no RoU. Prior to the RoU coming into being, in fact, there were other nations – the first nations – which occupied and claimed as their own, the land now claimed for, and which forms, the RoU. The people of the first nations that occupied what is now the RoU include the Iteso, my people, who according to Uganda's most recent population census of 2014 (Mugerwa, 2016) are the fifth largest sub-nation within the RoU. In the past, they were, however, the second largest sub-nation. The first nations also include the Baganda, the largest sub-nation within the RoU and over 50 other sub-nations, as recognised by the Constitution of the RoU. At its formation, therefore, the RoU had no land; the land belonged to the first nations, who occupied the geography that now forms the RoU.

The coming into being of the RoU was a contentious process, during which the first nations were partially – and in some cases fully – dispossessed of their land. The dispossession of their land was not necessarily overt – i.e. they were not always forcefully and physically removed from their land. It was mostly covert, in that they continued to physically occupy the land, but their authority over the utilisation of their land was usurped from them.

The formation of the RoU was not negotiated amongst the first nations. Instead, it was done in line with the colonialist principal of effective occupation (Original People, 2016). The formation of what is now the RoU was first negotiated at the Berlin Conference of 1884-85 – a conference at which none of the first nations were represented. At the Berlin Conference the English, who colonised our forefathers, claimed territorial authority – along with political control – over the geography that is now known as the RoU. In order to achieve territorial control, they hoodwinked leaders of the first nations into entering into treaties. In essence, this is how the RoU came into being.

At its independence from colonial rule, on 9th October 1962, the RoU was not handed back to the authorities of the first nations, but to the Government of Uganda (GoU). While receiving the instruments of power, the first Prime

Minister of the GoU, Apollo Milton Obote, in his speech acknowledged the fact that the RoU was composed of multiple sub-nations. He noted: "The technical progress of the last half-century has transformed our country in countless ways. But, fortunately, we have continued to keep our own customs and culture. It is up to us now, more than ever, in shaping our new country to achieve a consolidation in which neither the rapid progress of recent years nor the age-old customs of our forefathers are lost or diminished, but rather fused into a new national characteristic in which the best is preserved, while the worst may be thrown away."(Daily Monitor, 2013)

Land Tenure Systems

Prior to being carved out and colonised, all land within the geography that is now the RoU, was owned and managed by the first nations under their own laws, rules, regulations and authorities. All land within the geography that is now the RoU, was previously managed primarily under communal land tenure systems that followed the laws of the first nations. Within kingdoms, such as Buganda, the ownership and authority over land was held in trust by the institution of the Kabaka and not the individual Kabaka. The current Buganda Land Board (BLB) is making every effort to reinstate the authority of the Kabaka over the lands of Buganda. The BLB, for example, has requested all who occupy Kabaka's land to register their titles with the BLB in order to regularise their tenancy.

Within the first nations, such as the Iteso, which were without kingdoms and were governed under the clan system, the ownership and authority over their land was held in trust by collectives of clan leaders, such as my father, who is among the leaders of the clan of the Ikaribwok Isekelio of Pallisa in Eastern Uganda. Historians (Fountain Publishers, 2011), have documented that among the Iteso, the clan was the basic social and political unit, and was administrative and judicial in character. With regard to land tenure, the clans administered and solved conflicts over land which was held in three types of tenure – (1) land accessed to entire communities - the commons– for grazing, relaxation, firewood, foraging, etc.; (2) family land, and this was the majority of the land; and (3) individual land holdings, mostly only among the significant male elders.

The Iteso, like most communities in Uganda, are patriarchal – the head of the family is a man. Traditionally, even when the husband dies, a male relative – son, brother, uncle, etc., is assigned the responsibility of 'heading' the homestead of the deceased. Ploygamy is widely practiced in Teso (the geography occupied by Iteso), as is the case among most communities in Uganda. A typical family among the Iteso, therefore, does not always conform with the 'one-man-one-woman-and-their-children' character of the western family. In Teso, a family will likely comprise of one man and multiple wives, often living within a single homestead. However, each wife typically has her own houses/rooms; and among the more wealthy, such as was the case of my paternal grandfather (RIP), the husband has his own house as well.

Through the Iteso oral tradition of transmission of knowledge from one generation to the next, I learned,especially from my paternal grandmothers (RIP) and aunts that among the Iteso there are clear gender-roles. These roles also determined how land was allocated among family members and for what usage. This means that there was the provision for individual family members to be given access to family-owned land. Among the Iteso, the role of food production is primarily the role of women, who are further tasked with the responsibility of food preservation in order to ensure that there is food in the home all year round.

The man of the homestead is obligated by Iteso culture to ensure that the women folk in his homestead have an allocation of land on which to produce food for home consumption. The Iteso men are typically obliged to help the women on the 'tougher' farming tasks, such as opening virgin land and ox-ploughing. 'Simpler' farming tasks – planting, weeding, harvesting and post harvest handling– are then left to the women. In cases where there is surpluses of the harvest from the 'women's land', Iteso men take on the significant decision-making role in determining whether to put this surplus up for sale and/or to give it away for free. If the harvest from the 'women's land' is utilised only for food consumption, the decision-making of how it is distributed throughout the year is left to the women of the home - each for her harvest - in order to ensure the family members' nutrition.

The English colonisers who established the RoU appreciated that they could not ignore the laws of the first nations, nor could they allow the laws of the first nations to operate in parallel with the law of the RoU – the State Law. State Law at the formation of the RoU and subsequently of the GoU, in reality, is the law of the English colonisers. In order to acquire land for the RoU, the English colonialists deliberately suppressed the laws of the first nations. They did so, Prof. Mahmood Mamdani (2012) surmises, by coining the terms 'customs' and 'customary' in order to categorise and relegate the laws of the first nations as inferior to state law.

To further undermine the first nations, asserts Mamdani, the English colonialists created their own versions of 'customary law'. They did this by taking from existing laws of the first nations those provisions which the English colonialists could 'civilise' and integrating them within State Law; and outlawing those which the English colonialists considered 'barbaric' – essentially, laws that would interfere with the colonialists' interests.

If Mamdani's thesis holds true, as I believe it does, then 'customary' land tenure systems that are provided for in State Law are a bastardised version of the laws of the first nations. They are an artefact of political power – first by the English colonialists and subsequently by the successive GoU. It would appear, in fact, that Obote's wish did not come true that the laws of the 'new' independent

Uganda be a respectful and meaningful consolidation of the age-old customs of our forefathers with State Law. In matters related to land tenure, in particular, it would appear that the laws of the 'new' Uganda threw away the best in the laws of the first nations. Take for instance the complex land tenure system of the Iteso which evolved from when they practiced shifting cultivation and rotational cropping, and which defined land ownership in terms of use rights – i.e. access to land as opposed to one having absolute individual rights over the land, including viewing land as a commodity for trade. Within the Iteso land tenure system, the wellbeing of all in the community – men, women and children – was catered for. The system was multi-layered: a family had access to family land, and adult family members were also allocated use rights on land. So women had use rights to land for food production, and men had use rights to land for cash crops, for example. Deducing from popular interpretations of state law, defining land ownership by use rights has been abandoned, and the dominant definition of land ownership is that which confers absolute individual rights over land and which treats land as a commodity. The requirement within Iteso culture to give women use rights to clearly defined land for food production seems to have been thrown out completely. The dominant discourse on land ownership and women's empowerment seems to originate from the premise that men have absolute rights over family land, which in the Iteso culture would not be the case. Adopting the definition of land ownership that treats land as a commodity, such as State Law seemingly promotes, is the root cause of the increasing incidence of land dispossession. Consequently, the land tenure systems in State Law likely serve the interests of the English colonialists and those of the GoU, and not necessarily the interests of the peoples of the first nations, now citizens of Uganda.

In order to legitimise State Law, after all, the English colonialists coerced our forefathers to sign treaties, which became part of State Law, and which effectively disempowered the authorities of the first nations, particularly in matters to do with land tenure. At a stroke of a pen, using State Law, the first nations were dispossessed of their lands, which were then taken over by the RoU and which are administrated by the GoU under a colonialist imposed land tenure system which, among others, introduced individual land ownership – freehold, mailo and leasehold. Scholars, for example, have documented that Mailo is a system that started in 1900, in which land in central Uganda – then known as Buganda – was divided between the King of Buganda, chiefs, notables and the protectorate (the English colonial GoU (Owaraga, 2012)). Under the mailo tenure system, land ownership is held in perpetuity. The Mailo system it would appear could have been among the incentives that were utilised to coerce/hoodwink the leaders of the first nations, at the time, to sign treaties with the English colonialists that allowed the English and subsequently GoU, to gain control over the land.

Data from the year 2010 reveals that only 40 percent of the first nation's land

was still under first nations' tenure by that time. An analysis based on this data stated that the GoU had grabbed 60 percent of the land of the first nations (Owaraga, 2012). Currently, in 2016 it is likely that the percentage of the land that has been grabbed away from under the authorities of the first nations is even greater. The data further shows that the widest land grabbing by the GoU has occurred in Central Uganda, where 99 percent of the land is no longer owned and administrated by the first nations. In this area, land is now predominantly individually owned under unregistered freehold mailo, registered freehold mailo and leasehold. Using the same data of 2010, in comparison, 76 percent of land in the north, 54 percent of land in the east and 47 percent of land in the west of Uganda is still owned under some type of the authority of the first nations.

This status quo – land grabbing sanctioned by State Law–is the root cause of raging land conflicts in Uganda, amongst families, clans and first nations. Sadly, the Uganda National Land Policy (UNLP) of 2013 (Ministry of Lands, Housing and Urban Development, 2013) embodies the hallmarks of State Law – i.e. continued undermining of the laws of the first nations. It does so, for example, by promoting factoids which present the laws of the first nations as the problem by equating them with the concocted customary tenure system which is in State Law. The UNLP correctly observes that the concocted customary tenure within State Law does not provide security, that it impedes advancement of land markets, and that it discriminates against women.

By creating a smoke screen of falsehoods, such as those included in the UNLP, the GoU effectively facilitates land grabbing. The smokescreen provides justification for provisions in the UNLP, such as titling of the lands still under the authorities of the first nations, which in turn sanction accelerated land grabbing of the remaining 40 percent of the first nations' land. It is easier to make land a commodity and to commercialise it when it is titled land, as those whose names appear on the title can sell the land with ease. This is being done without consideration of the other users–especially women, who would otherwise benefit from the provisions of traditional tenure systems of the first nations, such as of the Iteso.

Land and Food Insecurity

When unpacked, the premise of the UNLP – with its vision of a "transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialised economy with a developed service sector" – clearly espouses the continuation of the undermining of the authority of the first nations over the land that they occupy. One can deduce from this vision the perception that the first nations are necessarily backward and need transforming. What does the UNLP mean by optimal use of land? Does it mean

that the first nations are not using their land optimally? Optimum for what purpose – is it for food or for generating resources for the GoU's gross domestic product (GDP)?

The goal of the UNLP is further elucidated as follows: "to ensure efficient, equitable and optimal utilisation and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development." In order to achieve its goal, according to the UNLP, the GoU plans to "shift an estimated 65 percent of 'peasants' who currently contribute 22 percent of the GDP from subsistence to commercial agriculture to move out of poverty and attain food security using land as the major resource."

The GoU is surely Machiavellian in the manner in which it promotes the single narrative that there is a need to modernise Uganda's agriculture from subsistence farming to commercial farming. It suggests that the commercialisation of agriculture will usher in better utilisation of Uganda's land, which, it claims is currently underutilised by the majority, the first nations, who are falsely categorised simply as 'subsistence' farmers. One of the modernisation views promoted by the GoU, for example, is that 'subsistence' farmers should be grouped in zones (zoned/zoning) so that farmers within a particular zone should mono-crop, thereby producing a single crop in bulk, to supply it to industrialists for value addition. Another modernisation view that is promoted by the GoU is that 'subsistence farmers' should be replaced on the land with large-scale farmers. Large scale farmers in this context are often viewed as those who have the capacity to produce large quantities, usually through mono-cropping and through the use of technology – including machinery, tractors, artificial fertilisers, pesticides and perhaps even genetically modified crops.

The premise of the GoU's single story – modernising Uganda's agriculture – erroneously suggests that it is better for Uganda's farmers to grow to sell and then buy to eat. Furthermore, the rationale for the GoU's single story seems to hinge on the reasoning that if Uganda's farmers move away from 'subsistence' farming into commercial farming, then Uganda will become primarily an exporter of value added products as opposed to being mainly an exporter of primary products; thus earning more through international trade. Inbuilt within the GoU's 'modernise agriculture paradigm', most importantly, is the acceptance, consciously or sub-consciously, of covert agrarian reform – changes in the way Uganda's agricultural land is used and by whom.

It is the changes in agricultural land use and their knock on effect – the change of status from being a 'subsistence' farmer to something else – that is of interest in the context of this paper. This includes, for example, the change to being an urban-dweller-service-provider, a net buyer of food, a food trader, a roadside meat roaster, an eyebrow cutter, a roving pedicurist, etc. That is the

Achilles Heel of the thinking that drives GoU's policy. It is so because the long-term impact of the change in status for 'subsistence' farmers is rarely and/or scantily accommodated within the dominant discourse of the GoU's single story. What is the long-term impact on Uganda's current 'subsistence' farmers of 'modernisation' interventions that change the way in which Uganda's agricultural land is used? Are all Ugandans equally impacted – positively or negatively? If negatively impacted, what legal recourse is provided for within State Law and international law for those so impacted? How may those who are negatively impacted be assisted to seek redress and justice?

Take for instance, the thousands of women who are losing their 'women lands' for food production to GoU interventions that are promoting the growing of cash crops for sale for value addition. Using the example of Teso, to which authority should the thousands of women of Teso go? A case in point is, for example, those whose 'women's land' for food production was covertly grabbed in order that their husbands grow epuripur, the improved variety of sorghum (Ebiyau, Serunjogi, & Arach, 2005), that was specifically modified by National Agriculture Research Organisation (NARO) – Serere Agricultural and Animal Research Institute (SAARI) for brewing of bottled beer.

Modernisation interventions such as the epuripur for beer are often touted as a success on the proclamation that they supposedly improve household incomes. However, a closer investigation will undoubtedly reveal that such interventions that commercialise food, more often than not, cause or facilitate food insecurity at household level. It is doubtful that it is not a mere coincidence that over the past 30 or so years, there have been significant changes in the composition of the food that the Iteso prefer, i.e. Atap ugali. The composition of atap ugali has changed from consisting of pure millet, then millet-cassava, then millet-cassava-sorghum, then cassava-sorghum; and now mostly only cassava. Millet is now a high value commercial crop for brewing ajon (local brew) that is sold in bars, mostly in slum areas in urban centres. Sorghum for eating has been replaced by epuripur for bottled beer brewing. The changes in the composition of atap ugali have clearly consistently and progressively downgraded the nutritional value of atap ugali. It is logical that this trend is contributing to the higher malnutrition levels among Iteso children and Iteso in general. I am convinced that similar examples such as the epuripur with Teso can be easily identified in other parts of Uganda.

Conclusion

As Uganda rethinks the land question, it is important that we ask ourselves the following questions: Where should the rethinking of the land question begin, in the context of our history? Who is currently putting food on our table? How has the food on our plate changed over the years? Who are the GoU's policies

subconsciously planning to kick off the land? Are we safe? As for me, I am convinced that we need to start the rethink of the land question by recognising the existence of the first nations, and by revisiting Prime Minister Obote's words of wisdom on the occasion of Uganda's 'independence'.

We must appreciate that most of the food that is consumed in Uganda, by Ugandans and beyond, is currently produced by those farmers that are often falsely referred to as 'subsistence' farmers, as mere peasants, as backward and as needing modernisation. It is illogical that the GoU policies plan to kick off the land these producers who are already productively producing food that sustains the nation, along with surpluses for sale (note that Uganda is a net exporter of food), so that others - presumably more competent and 'modern' - take over the lands and practice modern farming methods. This begs the question: why is it the case that those Ugandan citizens who are the most productive are the ones least recognised and appreciated?

Land tenure systems that are planning to kick off the land the peoples of the first nations are not only criminal, but they are also both morally and economically flawed. Let us keep Uganda the land that feeds us all by its fertile soils. Let us not hand it back to those who had originally grabbed it from us in the first place.

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Rationale, Successes and Challenges of Uganda's Legal and Policy Framework on Land

John Kigula

1.0 Introduction

Land has the combined attributes of basic settlement and livelihood endowment, wealth, productive wealth, universal subject of human labour, and instrument of power. In developing agrarian economies like Uganda's, land is central in promoting rural livelihoods because access to land and security of tenure are the main means through which food security and sustainable development can be realised. In this respect, land is seen as the foremost means of social and economic reproduction.

It is for this reason that land rights have increasingly become perceived as being placed within the broad spectrum of human rights, and are related to the notion of rights to food and to existence. Access to land and land tenure relations are critical where communities depend on the control of land to ensure their food security. (Moyo and Matondi, 2004).

The state, as "Welfare Maximizer", and as the overarching source of policy, legal, political and economic resources, is tasked with using policy, law and other means to set, operationalize and mediate land relations in ways that remove hindrances to access to land. Such state processes should guarantee security of land tenure for the greater majority – and often vulnerable – rural poor, women and youth.

1.1 The Uganda Land Legal Framework

Uganda's land legal framework consists of these pieces of legislation: The Constitution of Uganda, 1995; the Land Act, Cap.227 (1998); the Mortgage Act, 2009; the Registration of Titles Act, Cap.230; the Land Acquisition Act, Cap.226; the Land Regulations, 2004, the Land (Amendment Regulations), 2012; the Land (Amendment) Act, 2004; and the Land (Amendment) Act, 2010. These are the main laws that concern the definition of land rights, ownership, procedures for the acquisition of land by the state or public body for public projects, land administration and land justice delivery.

There are related laws which concern the control and use of natural resources found on/in land. These are the National Environmental Act, Cap.153 (1995); the Wildlife Act, Cap.200 (1996); and the Water Act, Cap.152 (1997).

1.1.1 Policies

The Uganda National Land Policy of 2013 – preceded by the National Land Use Policy, 2007 – guides the citizenry and government agencies on the ideal

procedures and goals in the course of land administration, land rights delivery and land justice delivery as well as land use and management.

2.0 Rationale of Uganda's Legal and Policy Framework on Land

The 1995 Constitution and the Land Act of 1998 are considered as the central land legal dispensations touching on the crucial aspects of defining and guaranteeing land rights, as well as on land administration and land justice delivery. The rationale behind the Land Act (1998) is therefore of paramount importance in the assessments that follow, regarding the setting, operationalization and mediation of land relations for development.

2.1 Rationale for the Land Act

In Uganda, the land reform process leading to the enactment of the Land Act, 1998 was based on four principles, meant to steer the country to development (Report of Technical Committee: June, 1993):

1. A good land tenure system should support agricultural development through the functioning of a land market that permits those who have rights in land to voluntarily sell their land and for progressive farmers to gain access to land.
2. 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;
3. A good land tenure system should be uniform throughout the country. This should be evaluated over time.
4. A good land tenure system should ensure the sustainable utilisation of land as a resource and the protection of the environment.

2.2 Objectives of the Land Act

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

i. To provide security of tenure to all land users (in the case of Uganda, they are mainly customary land holders – referred to as customary tenants on former public land) and the lawful or bona fide occupants of registered land.
ii. To resolve the land use deadlock between registered owners (Mailo, freehold and lease hold) and lawful and bona fide occupants of this land.
iii. To recognize customary tenure as a legal tenure equal to other tenures.
iv. To provide an institutional framework for the control and management of land under a decentralized system. This is for the purpose of effecting the devolution of authority over land management/administration as provided

for in the 1995 Constitution.

v. To ensure proper planning and well-coordinated development of urban areas.
vi. To ensure sustainable land use and development throughout the country to conserve the environment.
vii. To redress historical imbalances and injustices in the ownership and control of land.
viii. To provide for national and local government to acquire land compulsorily in the public interest and for public use, in the interest of defence, public safety, public order, public morality or public health in terms of Article 26, Clause 2, paragraph(a) and Article 237, Clause 2, paragraph (a) of the Constitution.

3.0 Successes of Uganda's Legal and Policy Framework on Land

The considered positive elements and achievements of the legal and policy framework on land include the following:

i. In correspondence to the Constitution 1995, the Land Act 1998 vests all land in Uganda in the citizenry, as was the case under the Public Lands Act of 1969, prior to the Land Reform Decree of 1975. Despite the supremacy of the Doctrine of Eminent Domain, this was a welcome legislation that reassured the citizens of the ownership of land rights in general. The National Land Policy clarifies the issue of vesting of title appropriately. [s.2]
ii. The Land Act introduces four land tenure systems as opposed to the two tenure systems introduced by the Land Reform Decree: customary, freehold, mailo and leasehold, as opposed to only leasehold and customary tenure [s.2].
iii. Certificate of Customary Ownership under the Act confers rights on the holder to make transactions respecting the land, including leasing the land, mortgaging or pledging the land or a part of it, as well as disposing of the land by will. These are progressive provisions enabling the emergence and flourishing of the land market.
iv. The Constitution's recognition and protection of lawful or bona fide occupants on registered land (mailo, freehold and leasehold); it's regulation of the relationship between the lawful or bona fide occupants and the registered owners of the land; and provision for acquisition of registrable interests by the occupants, guarantees and gives security of tenure as statutory tenants [Ss.29-38].
v. The amendments to the Land Act of 1998 – that is, the Land (Amendment) Act of 2004 and the Land (Amendment) Act of 2010 – do enhance the security of tenure of tenants by occupancy on registered land. The most prominent provision in the Land (Amendment) Act of 2010, which gives security of tenure to tenants by occupancy, states that such land occupants

can be evicted only for non-payment of ground rent. It is provided in the amendment that, "*a lawful or bona fide occupant shall not be evicted from registered land except upon an order of eviction issued by a court and only for non-payment of the annual nominal ground rent*".

vi. The 2004 law provides for security of occupancy for every spouse. It states that the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights. The transactions referred to in section 39 include: sale, exchange, transfer, pledge, mortgage, give away any land inter vivos or lease of any land without the prior consent of one's spouse.

vii. The Mortgage Act of 2009 (s.5) also provides for the Mortgage of Customary land. S.39 of the Land Act was amended by s.20 of Land (Amendment) Act of 2004 to exclude children. However, children have to give consent only in respect of the mortgaging of customary land under the Mortgage Act [s.7 (6)].

viii. A tenant by occupancy who wishes to assign the tenancy must give the first option of taking the assignment of the tenancy to the owner of the land.

ix. In case of compulsory acquisition of land by Government or Local Government, the requirement to pay compensation upfront before taking possession of one's land as provided for in Article 26, cl.2 and Article 237, cl.2 of the Constitution [s.42].

x. The Land Act established a decentralized system of land administration in correspondence to the decentralization of general governance to the districts under the Local Governments Act, 1997. [Ss.56; 64; 68; 74; and 80, amendments therein implied].

xi. A new Land Information System (LIS) was established and Zonal Land Registration Offices were also put in place. These have served to take land delivery services nearer to the people.

xii. The LIS strengthens the central land administration system, while the computerization of the land registration process also provides the benefit of preventing or eliminating backdoor transactions, forgeries and graft.

xiii. The ministry officials have stated that the system of computerized land registration will in the near future provide special online access to Courts, Banks and mortgage finance institutions.

xiv. The Land Act of 1998 established the following land institutions for the delivery of land services: the Uganda Land Commission, District Land Boards, District Land Office, the Sub-County/Division Land Committees and the Recorder.

xv. The land dispute resolution institutions include Parish and the Sub-County Executive Committee Courts (L.C.11 and L.C.111 courts, respectively) and Mediator. This includes the Magistrate Courts and the High Court.

xvi. A non-citizen includes corporate entities (s.40 (7)). A non-citizen can

only acquire a registrable interest of a lease, but not a mailo or a freehold. A leasehold held by a non-citizen may not exceed 99 years.

xvii. The Land Act established a Land Fund, which is managed by the Uganda Land Commission (s.41). The Land Fund can be utilized to give loans to tenants by occupancy to enable them to acquire registrable interests pursuant to Article 237(9)(b) of the Constitution (s.41(4)(a)); so also by the Government to purchase or acquire registered land to enable tenants by occupancy to acquire registrable interests pursuant to the Constitution (s.41(4)(b)).

xviii. At the centre, land management services are a mandate of the Ministry of Lands, Housing and Urban Development through its technical departments of Land Management, Surveys and Mapping, Physical Planning, Valuation and Land Registration. These departments give overall relevant technical services and supervision to the land sector sub-departments, offices and agencies.

4.0 Challenges of Uganda's Land Legal and Policy Framework on Land

A range of challenges has arisen in the course of applying the main land tenure and administration law, i.e. the Land Act, 1998. There are related challenges arising from the implementation of related Acts: the Land (Amendment) Acts of 2004 and 2010; Land Acquisition Act, Cap.226; the Survey Act, Cap.232; the Registration of Titles Act, Cap.230; and the Mortgage Act, 2009.

4.1 Challenges of the Land Act and Policies

i. The Land Act and policies have been ineffectual in appropriately responding to the dynamism and effects of socio-economic development in Uganda. Similar to Moyo's observations respecting other parts of Africa (Moyo, 2007), there are widely observable incidences of emerging trends of rural land concentration alongside expanded 'illegal' land occupations, and a tendency for various rural populations to be marginalised from land by a growing number of agrarian capitalists, elites and state agents. This distributional trend, together with the emergence of specific conflicts over land rights, inheritance and selective exclusion, arises from significant changes in Uganda's predominantly customary land tenure systems and gradual land 'marketization', built upon unequal gender relations and class-differentiated access to land and related means of production.

ii. There have been well-documented illegal appropriations of public land by the elite since the 1960s, to the present day. Land grabbing and land speculation are on the rise in some parts of the country, including the oil regions in Western Uganda (Albertine region), in the mining areas in Karamoja and in Northern Uganda (UNHABITAT, JLFAD, GLTN, 2014). The National Land Policy, 2013, and National Land Use Policy, 2007, are

in practice not resorted to give guidance to the District Land Board in the allocation of land. The provisions of the Land Act, 1998, assuring security of tenure to customary tenants and tenants by occupancy, are hardly resorted to by the often powerless, poor, uninfluential peasants, who mostly occupy such land as customary owners.

iii. In the water-stressed and water-scarce districts in a part of what is referred to as the cattle corridor in South-Western Uganda, traditional common access pastoral land is being drastically reduced in size, and common access water points such as natural valley dams, swamps, parts of the streams, rivers and small lakes are being fenced off by the mostly wealthy. The transforming patterns of pastoral resource ownership, use and management are mainly a function of: the government's general policy of privatization of property and market economy impacts; an incoherent land use policy; and the lack of government response to traditional pastoral land tenure needs through legal, institutional, and policy frameworks that would enable a balanced co-existence of 'progressive ranchers' with the traditional pastoralists.

iv. The provisions of the Land Act, 1998, have not been effective in resolving the land-use deadlock on mailo land, resulting in mass evictions of occupants by registered owners and land purchasers who buy the land behind the backs of sitting statutory tenants, who are the lawful occupants under the Land Act, 1998. The 2010 Amendment to the Act strengthened the position of tenants, but sparked off new controversies as mailo landlords feared that the tenants would ultimately take over the land. Threats and sales of mailo land in total flouting of the Land Act, 1998, and the Land (Amendment) Act, 2010, have taken place. The media is awash with the ever escalating incidences of mailo tenants teaming up and taking the law into their hands to harm or kill mailo owners, buyers, brokers and lawyers involved in transactions seeking to evict them en masse from their mailo *kibanja*.

v. The overlapping rights on mailo land protected by the Land Act and its Amendments have adversely affected the land and credit market, as owners refuse to rent out land, and financial institutions are not keen on accepting tenanted land as collateral.

vi. Land conflicts are widespread all over the country. There are boundary disputes, conflicts between pastoralists and agriculturalists, and conflicts within families (intra-familial conflicts). The land dispute situation is on the rise partly because of land fragmentation and sub-division, land use practices not guided by policy, and agricultural extension services. The lack of follow up on the National Land Policy of 2013 and the National Land Use Policy of 2007 and the absence of agricultural extension services to educate farmers on agronomy have led farmers to experience soil mining in their gardens and, hence, to encroach on protected virgin natural resource areas, such as Forest Reserves and National Parks. Such

a push factor leading to encroachment undermines the Public Trust Doctrine enshrined in the Land Act, 1998 (Ss.43 and 44).

vii. The land administration system is performing below expected standards, with incidences of fraud, corruption and political interference hindering progress in service delivery. Decentralized services have, as yet, lacked presence and capacity (GOU, 2011).

viii. There are numerous competing agencies involved in land administration, including line ministries and central government departments, large parastatals, urban and local authorities and traditional leaders. The responsibilities of these different agencies in different aspects of land administration within the different land tenure areas overlap and create confusion and conflict among the various players, thus posing difficulties for the creation of integrated and comprehensive land administration processes.

ix. The Land Fund objectives have had measurable realization particularly in respect of compensating lawful occupants in Kibale and Western Uganda. However, a large amount of financial resources need to be raised from both local and international donor agencies to make it more viable and effective for the acquisition of full land ownership rights by a greater majority of the tenants by occupancy.

x. While there are limitations of estate in land to 99 year leases accruable to non-citizens, there have been reports of a good number of situations where non-citizens of Uganda – from neighbouring countries and beyond – have acquired perpetual registered interests in mailo, contrary to s.40 of the Land Act. This is normally done by citizens registering the land in their names on behalf of non-citizens, as well as through other yet-to-be-known tricks.

xi. The Land Act, 1998, did not provide for a discriminatory and exclusive tenure system to urban areas. In my view, the leasehold system would provide a leverage of power to plan, control and effect urban administration more efficiently. However, there is the 'ruralisation of urban areas' – practice of tenures having a private character and a rural character – particularly in Kampala. There are practical difficulties in enforcing physical planning in a city of multiple tenure systems, where the land is (and has been) predominantly privately owned (75% mailo land), and where there is an overlay of the formal and informal means of ownership and access to urban land.

4.2 Limitations of the Land Regulations, 2004

xii. The Land Regulations, 2004, detailed as they are, and with a voluminous and complex set of model forms for land transactions, have virtually not been applied.

xiii. The rules are too elaborate and cumbersome to appeal to the ordinary peasants.

xiv. Poor peasants do not have the money or the time to engage in winding

formalities prescribed in the regulations, in order to vindicate their land rights and 'feel land secure'.

4.3 The Land Acquisition Act, Cap. 226

xv. The Land Acquisition Act, Cap. 226 is a 1965 law, providing for the compulsory acquisition of land for public purposes. The Land Acquisition Act is the implementable law for Article 26 (2) of the Constitution, 1995, which provides for compulsory land acquisition in general.

xvi. This Act, as it stands today, is in conflict with Articles 26 and 237(2) of the Constitution. Article 26 provides for the prompt payment of fair and adequate compensation prior to taking possession or acquisition of the land, whereas the Act allows possession of the land to be taken before compensation.

xvii. The Land Acquisition Act also needs to be amended to take into account the newly recognized interests of the holders of Certificates of Occupancy and Certificates of Customary Ownership, which are not recognized under the current Land Acquisition Act.

xviii. It is noted that the issues observed above are presently being addressed in the ***Land Acquisition Bill, 2013.***

4.4 The Survey Act, Cap. 232

xix. The Survey Act, Cap. 232, commenced in May 1939. It has had several amendments, particularly in 1968 and 1970, which have not substantially changed its provisions. The Survey Act (SA) provides for the regulation of land surveying, and covers quite general matters concerning the survey of land, which center on administrative bodies tasked with land surveying activities.

xx. The Act is a law that does not take into account contemporary aspirations of transforming the land sector through bringing a greater part of land under the formal system of survey and registration. It does not, for example, robustly lay out rules of survey to accord with both voluntary/sporadic land registration, and the compulsory/systematic land registration that can be piloted. It has been suggested that the 'Survey Act' needs to not just be amended, but re-drafted, to bring it up to date with the provisions of the Land Act.

4.5 Registration of Titles Act, Cap. 230

It has been noted that a Registration of Titles Bill, 2013, is underway, and is meant to amend the existing Registration of Titles Act, Cap.230. However, the pertinent issues it ought to address include:

xxi. What is the value that should be attached to Certificates of Customary Ownership of land and Certificates of Occupancy, which lie outside the Registration of Titles Act, vis-à-vis a Certificate of Title issued under the Registration of Titles Act?

xxii. The Registration of Titles Act does not specifically incorporate, or adapt to the decentralized system of land administration, which the Land Act, 1998, introduced. Thus, the Registration of Titles Act needs to be reworked in such a way that makes this conveyancing law responsive to new trends in the land sector.

xxiii. Cadastral surveys and index maps are held separately from the registers, either in Entebbe or in survey branch offices. There appears to be no system to update and synchronize the records held in these different locations.

5.0 Areas for Land Legal Reform and Emerging Issues

i. Co-existing overlapping rights in the same piece of land: aren't the legal provisions of 'lawful occupant' and '*bona fide* occupant' on registered land obstructive to the development goals that the NLP and Government otherwise aspire for?

ii. Nature of deadlock between registered land owner and statutory tenants (s.88. 29 & 31 of the Land Act);

iii. No meaningful rent accruing to land owners from tenants.

iv. For rural mailo land, over 80% of it is tenanted, hence it is of no actual value to the mailo owner—he/she cannot sell the land (*it falls out of the open land market*); cannot easily mortgage the land (*it falls out of the credit system*); can hardly evict the many *bibanja* holders (*cannot compensate all of them*); and cannot utilize the land.

v. How should policy and law resolve the above impasse once and for all?

5.1 Urban tenure and land administration:

vi. What are the problems posed for urban planning and administration by the non-differentiation between rural and urban tenure?

vii. Are tenure types with a rural/agricultural character limiting the 'best path and practice' for urban development (i.e. customary; tenancy by occupancy; and mailo)?

viii. How should policy and revised law address the above matter?

5.2 Public land policy and law:

ix. What further safeguards are needed to strengthen the Public Trust Doctrine enshrined in Article. 237 (2) (b) and 245; and Section. 42 of the Land Act cap 227? Are the legal provisions for Government stewardship of public land and resources adequate?

x. Are the legal and institutional frameworks for the administration of the respective categories of public land adequately and clearly spelt out?

xi. What are the interrelationships of the institutions and the hierarchies of functions and powers in the administration of the different categories of public land (e.g. District Land Board vs. National Forest Authority vs.

Uganda Land Commission)?

xii. Which body should be charged with survey and keeping an inventory of Government land, as a new policy, and constitutional and legal requirement?

xiii. Should a **Uganda Land Development Authority (ULDA)** be established to kickstart and implement policies, coordinate land sub-sector activities now being handled by uncoordinated departments, effect land access and development innovations, and propose necessary reforms – all of which are being inadequately and improperly handled by bureaucratic government departments?

5.3 The Traditional Rulers (Restitution of Assets and Properties) Act, (1993):

xiv. How best should policy, legal and institutional frameworks address land service delivery and administration by the traditional rulers whose lands are "heavily" tenanted?

xv. What powers and functions should be accorded institutions such as the Buganda Land Board, which presently have no legal status, but have such crucial roles in land administration?

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Reflections on Land Tenure, Access to Land and Food Security in Uganda

Robert Kirunda

This chapter addresses the following key issues and questions:

- The Land Tenure System: Present and future challenges and intended or projected changes
  (a) The legal framework

- Five Tensions on Access to land and food security
  (a) Breakdown in security of tenure: from historical and cultural threats to modern threats (politics v. the judiciary and other interventionist systems – the squatter phenomenon). One must revisit the troubling question of security of tenure.
  (b) The perplexing question of investors: policy shifts or political betrayal? (i) What informs Land give aways – Mabira, Amuru, are these give aways necessarily a bad thing? Namulonge? (ii) Should investors be required to take measures that guarantee food security? The Sugar growing phenomenon in Busoga.
  (c) Cost and capital questions relating to access to land and food security:
    (i) Access to capital and land as a form of collateral;
    (ii) The much needed agricultural revolution that will guarantee food security in Uganda
    (iii) Regional dimensions of access to capital and agricultural investment
  (d) A burgeoning population and unchecked (and perhaps less productive?) rural – urban migration?
  (e) Regional integration and what it means for food security in Uganda: Will Kenya continue to starve while Ugandans rush to dwell in cities? Or will Kenya continue to exert pressure on the land markets?

- The ultimate question that all of these points raise is this: are land tenure and food security ultimately a political question? And if so, what are the relevant answers?

The Land Tenure system: Present and future Challenges and intended or projected changes

(a) The legal framework

- The legal framework on land tenure systems in Uganda today is contained in the Constitution of the Republic of Uganda of 1995, as amended, and subsequently in the Land Act, Cap 227 of the Laws of Uganda, with the subsequent amendments of 2004 and 2010.

The Constitution of the Republic of Uganda and the Land Act (Cap 227) provide that land in Uganda may be held in four tenure categories only, namely (a) customary, (b) freehold, (c) mailo and (d) leasehold tenure. The incidents of these tenure regimes in the Constitution (other than leasehold) are defined in terms of generalities, which establish no particular frontiers. The apparent finality with which the incidents of each tenure is defined in the Land Act (Cap 227) leaves little room for transitional or progressive adaptation in response, including, among other things, changing demands exerted by population growth, technological development and rapid urbanization. The result is likely to be the growth and expansion of informal or secondary land rights regimes in both urban and rural areas. The Land (Amendment) Act of 2010, whose intention was, in part, to address the question of squatter evictions, is a good example of such interventions. The fact that disputes of this nature still abound depicts the mismatch between the finality of tenure systems and the need for progressive adaptability in the face of changing demands.

In contemporary Uganda, diverse changes have occurred, distressing tenure regimes in ways that create tenure insecurity and uncertainty. The structure of tenure and attributes of the bundle of rights under the mailo, freehold, leasehold and customary regimes, shall be guided by the principles of a good tenure system. A good tenure system must:

(i) guarantee access and security of tenure;
(ii) ensure equity in the distribution of land resources and eliminate discrimination in ownership and transmission of land resources;
(iii) develop and evolve in response to competing social, economic and political demands, rather than policies keen on simple replacement;
(iv) protect, preserve and conserve land–based and other natural resources for future generations;
(v) Facilitate planning, provision of basic services and infrastructure, and management and enforcement of land use regulation throughout the country.[1]

To this extent, the 2013 Uganda National Land Policy identifies the right indicators and requirements for a good tenure system. The Policy even identifies the correct impediments and challenges to the development of an effective land tenure system in Uganda. However, the reality on the ground discloses that the tensions that need to be addressed are far from dependent on the interventions set out in the legal or policy framework. Such tensions include historical societal boundary disputes, of which the Amuru–Adjumani boundary dispute is a vivid illustration[2]; and the disconnect between attribution

1 Ministry of Lands, Housing and Urban Development. (2013). Uganda National Land Policy, 2013 at p. 15-16

2 For a snapshot of this troubling and convoluted dispute see, for instance: Monitor Team (2015), Who Owns 40 SqKM Land in Amuru Published April 28, 2015 accessed at Amuru http://www.monitor.co.ug/SpecialReports/Who--owns---40sqkm--land-Amuru//688342/2699232/-/hjwygnz/-/index.html See also: Moses Odokonyero (2015), Why Amuru-Adjumani Border Dispute Raises Suspicion Published September 21 2015 accessed at: http://www.monitor.co.ug/OpEd/Commentary/Why-Amuru-Adjumani-border-demarcation-raises-suspicion/-/689364/2878074/-/8itsrlz/-/index.html

of value and needs for land use, a good example of which is the tension in the cattle corridor that stretches through central Uganda to South Western Uganda. The Baganda communities in the cattle corridor cherish land as a measure of wealth and accord it value as such. They secure their interests by registration under the recognized system of tenure. The nomadic communities such as the Balaalo and the Baliisa only cherish land so far as they can be able to graze. This results in tensions between those in pursuit of land use and those defending land ownership. A possible solution that has been offered is the utilization of Common Resource Pools as a mechanism to diffuse such tensions.[3] But the Common Resource Pool based approach has no foundation in our present land tenure system.

Classification Of Land Tenure Regimes

There are three ways of classifying land tenure regimes. The first is in terms of the legal regime governing tenure, for example, whether the regime is statutory (formal) or customary (informal). The second is in terms of the manner in which such land is used, for example, whether as private, public, or government land. The third is in terms of the quantum of rights held i.e. whether absolute (timeless bound) or time-bound. The Constitution and the Land Act have classified land tenure only in terms of the first and last classifications. Both provide that land in Uganda may be held in terms of four tenure categories, namely customary, freehold, mailo, and leasehold. Despite the limitations in classification identified in the legal framework, the real challenges are beyond the present scope of the framework. The breakdown in the administration of land related disputes, the complaints about corruption,[4] the mismanagement and lack of proper interventionist mechanisms on settlement disruptions due to large scale infrastructure, and the lack of clear resettlement strategies[5] all fuel the breakdown of cultural and societal fabrics that informed traditional views on land ownership, management and use at the local and regional levels. These

3 For a discussion on the Balaalo/Bagungu Buliisa conflict and the common resource pool phenomenon, as well as the tensions in the cattle corridor, see: Dr. Nkote Nabeta: Common Pool Resource Conflicts: Conventional Perspectives to the Bagungu/Balalo- Basongola Conflict in Uganda Accessed on July 1 2016 at: Pershttp://iasc2008.glos.ac.uk/conference%20papers/papers/N/Nabeta_232001.pdf

4 There have been complaints from lawyers in the past about Court Orders being subjected to verification by the Uganda Police and the meddling of Resident District Commissioners. This has caused concern as to whether the Police and political machinery at the District level is in effect, undermining the court system. On the other hand, these offices and institutions claim that due to rampant corruption in the judiciary, court orders are either forged or obtained in disregard to legitimate interests on the land.

5 Most infrastructure (roads and dams) government projects that have involved compensation of land dwellers have not been scandal free. The latest being the Karuma Dam project in which it now emerges some families have never been compensated. It was the case until recently that once these families were resettled, they were never accorded a transition plan that looks beyond their accommodation needs to addressing their farming household, let alone commercial, agricultural needs.

are not challenges that will be addressed independent of politics or within the scope of one legislative amendment.

Customary Land Tenure

The majority of Ugandans hold their land in this complex system of land relations. It is alleged that customary tenure is associated with three problems:

(a) It does not provide security of tenure for land owners;
(b) It impedes development because it does not allow the advancement of land markets, through which those who need land for development can acquire it; and
(c) It discriminates against women and does not accord them land rights.

The Land Act (Cap. 227) and the Constitution have been criticized for their attempts to formalize customary tenure, thus destabilizing and undermining its progressive evolution. Despite these attempts, it continues to be:

(i) regarded and treated as inferior, in practice, to other forms of registered property rights, thereby denying it the opportunity for greater and deeper transformation;
(ii) assessed as lesser to other tenures that have titles for proof of ownership in courts of law in the administration of justice;
(iii) converted to freehold before it attains the totality of the bundle of rights inherent in all other registered tenures that are held in perpetuity;
(iv) disparaged and sabotaged in preference for other forms of registered tenures, denying it the opportunity to progressively evolve.

Because of the foregoing limitations, fraud cases have been known to happen, where strangers work with some members of the community to obtain improper title and then attempt to either take possession or vend such title.[6]

The practice, especially in the far eastern part of Uganda, has grown to the extent that families that previously held land under customary tenure have sought and obtained certificates of title. In some of these cases, the title will have as many as 50 proprietors. These processes are often drawn out and costly for these families. In the end, some of them have ended up with 49-year leases, with the reversionary interest vesting in the District Land Board. This is problematic in the sense that in the end, these families go from owning this land in perpetuity under customary tenure, to only having interests that last one to two generations. Those families that have benefitted from proper counsel have gone on to obtain freehold title. These, in my experience, have been the minority.

6 One ongoing case at the High Court of Uganda at Mbale is the case of Amore Investments Limited v. Kundu J. Nabibya & 51 Others Civil Suit 004 of 2016

This development has had the major benefit of making this land commercially attractive. With certificates of title, it is easier to deal with land rights. But there are two major downsides. Firstly, in most cases, the proprietors of these lands do not have the resources to develop these lands for commercial agriculture. In some cases, they will seek to obtain capital by borrowing, but with no real practical experience in managing their financial resources, or the requisite management skills for large-scale projects with many stakeholders, these families are bound to default. As a result, such proprietors will more often than not resort to the easier route. This creates the second problem. Once they obtain certificates of title to the land, the families will be quick to consider whether to sell the land to third parties. Even if they obtained fair market value, the problem of whether they will responsibly utilize the proceeds of such a sale remains. It must be remembered that these are lands that have been sustaining families for decades, if not centuries. Beyond sustenance, some of these lands have been the source of some of the food that is sold at the commercial market. So in revisiting the symbiotic relationship between land tenure systems and food security, one must look at considerations beyond the statutory legal framework on land.

Mailo Tenure And Native Freehold Tenure

The Mailo system of tenure is peculiar to Buganda. Historically, Buganda happens to have been the most alert region in Uganda on land matters. This has had the positive effect of ensuring that there was, initially, an admirable mechanism of determining rights and interest in land. Various factors, least of which are immigration and intermarriage, have accounted for a total distortion of this fabric that previously provided both predictability and confidence in dealing with lands titled under this system of tenure.

Mailo tenure and "native" freeholds separate the ownership of land from occupancy or ownership of developments by "lawful or "bonafide" occupants. This creates conflicting interests and overlaps in rights in the same piece of land. The definition of rights accorded to bonafide occupants in the Land Act (Cap 227) and all the subsequent amendments, lack legitimacy on the part of the landowners. The Land (Amendment) Act 2010 grants statutory protection to the bonafide and lawful holder and his or her successors against any arbitrary eviction as long as the prescribed nominal ground rent is paid. However, the nominal ground rent provided for, as opposed to economic rent, is largely ignored, thereby creating a land use deadlock between the tenants and the registered landowner and leading to conflicts and, many times, to evictions. The landlord-tenant relationship as legally regulated is not amicable or harmonious and is non-operational.[7]

7 Uganda National Land Policy, p.18

The dispute resolutions mechanisms provided for in the Land Act and the rest of the judicial system seem to have completely broken down. This has a direct effect on the land markets and accessibility and use of land for commercial agriculture, and could in turn pose serious threats to food security in Uganda.

Freehold Tenure

The incidents of freehold tenure, which are basically standard, include the conferment of full power of disposition and the compulsory registration of title in perpetuity. It is clear that public policy regards freehold as the property regime of the future, to the extent that current law provides for conversion from leasehold tenure or customary tenure to freehold. This stipulation is contentious in some areas of the country. Where it has been tested, it has been expensive, as it requires substantial resources for adjudication, consolidation, and registration. In some instances, freehold poses challenges to public regulation since its covenants are not conditional.[8]

Leasehold Tenure

Leaseholds promote sophisticated forms of concurrent ownership such as condominiums and time-share arrangements, and thus open land to a much larger range of users and use functions. The 1995 Constitution (under Article 237 (5)) provides that any lease, which was granted to a Ugandan citizen out of former public land, may be converted into freehold. Since customary tenure is now legally recognized with rights in perpetuity, the conversion needs to be reviewed so that (i) leaseholds issued to individuals who held land under customary tenure before the 1995 Constitution and (ii) those accidentally granted to customary owners in respect of their holdings after the 1995 Constitution, automatically convert to freehold. However, leaseholds granted out of former public land without any customary rights should not be converted to freehold, since the land was not customarily owned at the time of granting the lease and should continue to run as leaseholds, with the citizens of Uganda keeping the reversionary interest.

The policy interventions proposed in the National Land Policy solve only one problem: that of security of tenure. It is important to address the questions related to dispute resolution, access to capital, proper and sustainable business practices, as well as the stimulation of both land and produce markets in order to more comprehensively obtain or harness food security in Uganda today.

8 Uganda National Land Policy, p.20

Other Vital Reflections On Land Use In Guaranteeing Food Security

The Uganda National Land Policy identifies other major considerations that may have a bearing on either guaranteeing or frustrating food security in Uganda. Four of these are:

(a) The use of the Common Property Resources mechanisms;
(b) Developing, properly regulating and harnessing the land market;
(c) Properly addressing the question of making available land for investment; and
(d) Securing the land rights of ethnic minorities.

The legal framework on these areas remains weak or non-existent. It is not hard to see the parallels between these four considerations and migration, for instance. The Common Property Resource mechanism could provide a much-needed solution to some of the challenges in the cattle corridor. The mechanism diffuses the tension between owners and land users, by taking into account social dimensions of common pool resources as a mechanism on the one hand, and ensuring that communities that need this land for such purposes are not clashing with those who attribute value to their land as a measure of wealth, on the other hand.

The effect of the unregulated, unpredictable and largely undocumented nature of our land market makes it even harder to craft strategies that could help resolve the question of access to credit, let alone proper collateralization of debt obligations. Capital as one of the factors of production is indispensable in the quest for food security. But without the requisite confidence in the bare minimum tenets of a sound market, capital will remain elusive or prohibitively expensive at best.

The effect of ethnic minorities on Uganda's forest cover, the consequences of their displacement and the cost that they ultimately impose on society – both when they are productively engaged in subsistence and commercial agriculture and when they are deprived from so engaging – cannot be ignored. On the one hand, ethnic minorities may be a benefit or on the other hand, they may pose a major challenge to the economy as it stands today. Moreover, as is noted in Uganda's National Land Policy, the land rights of ethnic minorities as ancestral and traditional owners, users and custodians of the various natural habitats are not acknowledged even though their survival is dependent upon access to natural resources. The establishment of national parks and conservation areas managed by government, as well as large scale commercial enterprises such as mining, logging, commercial plantations, oil exploration, dam construction, etc., often takes place at the expense of the rights of such ethnic minorities. Since

minorities occupy land on the basis of precarious and unprotected land rights systems, they are exposed to constant evictions, removals and displacements. The compensation given to these occupants is not prompt, adequate and fair as provided for by the Constitution. It is important that these minorities are not forgotten, but that strategies to harness their potential as vital human resources both in preserving critical farming practices and as a labor force, as well as resolving the underlying concerns that could easily result in their being a challenge to the food basket of this country in the long term, are addressed.

Five Tensions On Access To Land And Food Security

(a) Breakdown in security of tenure:
Historically, the ownership and use of land in Uganda carried the attribution of the values and norms that related to the land. In Buganda for instance, land was considered a sign of individual wealth and the relationship between the landlord and tenant had a well-defined, although not fully documented set of rules. Every other region in Uganda had its set of rules that guaranteed a minimum level of integrity and honesty in land dealings. These rules received the respect that was accorded to them from an inherent respect for culture and tradition. In return, these rules guaranteed a stable system within which land was gainfully occupied and cultivated for both the subsistence and commercial gain of all stakeholders.

A number of forces have destroyed this fabric. Two forces come to the fore: immigration and intermarriage; and the politics relating to the displacement of people who illegally occupy land. The fusion of various cultures in Buganda – and indeed elsewhere in Uganda through intermarriage and migration – has consistently eroded the traditional values and aspirations attached to the land. This has been worsened by the fusion of the politics that surrounds the squatter phenomenon. Squatters, having no rights within the recognized systems of tenure, resort to blackmailing politicians who need their votes into safeguarding their illegal occupation of land. This in the end completely undermines the legal framework, as it exists today.

Ugandan land law is modeled alongside English law that contains two critical principles on the acquisition of rights and ownership where one was previously a stranger to land: the principle of tenancies and licenses and the principle of eminent domain. The framers of both the Constitution and the Land Act were alive to these principles and to the realities of the Ugandan context, and in order to resolve the question of how to safeguard land owners from squatters claiming any rights outside the scope of the acceptable common law principles, the concepts of lawful and bona fide occupants were included in our law. On a strict construction of these principles, one ought to acquire rights either upon

furnishing valuable consideration, or on the occupation of land for such a long uninterrupted duration as to render the registered proprietor as having acquiesced to their presence on the land. These concepts were intended to safeguard land occupants who had rights, but no interests, in the land. Any person out of these broad considerations is a squatter and ought to be evicted. Instead, the concepts have been abused to buttress the squatter phenomenon as highlighted above and to distort the proper construction of land rights and interests.

On account of no other consideration but the politics that surrounds land as an emotionally charged subject, government has unwittingly created a more precarious situation in which squatters now have the effect of frustrating land ownership. This has been the result of a systematic breakdown in dispute resolution mechanisms, allowing the festering of a culture of lawlessness under the guise of keeping the peace or defending the vulnerable, as well as, in some cases, leaving populist views of government officials unchecked. In this context, the conduct of Hon. Eriose Nantaba in Kayunga and Mukono is a good example. It is sobering to realize that a State Minister for Land could go around conducting herself as judge, jury and executioner, and not draw a single response from the rest of government. In many of these cases, the land remains unutilized, and may even suffer price depreciation, as no one wants to acquire land that is riddled with problems. Financial institutions are also hesitant to lend against such land as collateral. In these circumstances, what has become hindered is domestic and commercial use, as well as disposal on the secondary land market.

There have been three results of this troubling squatter phenomenon:
(i) a squatter will in some cases frustrate a legitimate owner from claiming their interest, or in the least utilizing their land for commercial purposes;
(ii) on a large scale, a lot of land that would be usable for commercial agriculture remains fettered by protracted and sometimes emotive disputes;
(iii) the long term effect of undermining investor confidence in agriculture on a long term and more sustainable scale. In the long run, these are not challenges that will be resolved in a short time.

(b) The perplexing question of investors: policy shifts or political betrayal?
In examining investors and land use in Uganda, one quickly realizes that there does not seem to be a clear policy on who an investor is and what policy considerations relate to investors' access to land. A good place to start the discussion is at section 10 of the Investment Code Act, Chapter 92 of the Laws of Uganda. The relevant part provides:

10. Regulation of foreign investment.

(1) A foreign investor shall not operate a business enterprise in Uganda otherwise than in accordance with an investment license issued under this Code.

(2) 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; but a foreign investor may:

(a) Provide material or other assistance to Ugandan farmers in crop production and animal production; or

(b) Lease land for purposes of manufacturing or carrying out the activities set out in the Second and Third Schedules to this Act.

(3) This section shall not be construed so as to deprive a foreign investor of any land acquired by or granted to him or her or of any interest in land accrued to him or her before the commencement of this Code.

(4) The Minister may, on the advice of the authority and with the approval of Cabinet, by statutory instrument, exempt any business enterprise or class of business activities from the provisions of this section where, in the opinion of the Minister, it is necessary that for the purpose of ensuring a regular supply of raw materials the enterprise should lease land.

Section 10 (2), as set out above, was clearly intended to restrict foreign investors from investing heavily in commercial agriculture. It is believed that the policy consideration behind this restriction was to avoid situations of shortage resulting from excessive export or economic sabotage that could bring the entire economy to its knees. The merits of these arguments – or indeed the merits of the section – may be the subject of a much longer debate. But for a proper construction of this section, it is important to look at the definition of an "Investor" under this statute:

9. Definition of foreign investor.

(1) In this Code, "foreign investor" means:
(a) A person who is not a citizen of Uganda;
(b) a company, other than a company referred to in subsection (2), in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda;
(c) A partnership in which the majority of partners are not citizens of Uganda.

(2) The following shall be deemed not to be foreign investors:
(a) A company registered under the Companies Act in which the Government holds a majority of the shares, whether directly or indirectly;
(b) A body corporate established in Uganda by law;
(c) An international development agency approved by the authority for

the purposes of this section;
(d) A cooperative society registered under the Cooperative Societies Act;
(e) A trade union registered under the Trade Unions Act.

(3) In any other case not expressly provided for in this section, the authority shall determine whether or not a person is a foreign investor.

A cursory look at this definition discloses a simple contradiction: if a foreigner sets up a company under Ugandan law and controls more than 50% of the shares of the company, that company does not suffer the restrictions on ownership and land use for commercial agriculture that are contained in section 10 (2). Section 10 (2) may have had good intentions but it is, for all intents and purposes, redundant. As it turns out, government practice in land allocation to investors does not seem to even bear these two sections in mind. Instead, what is apparent is that there seems to be a direct abuse of the intention of section 10 (4) by ministers who take it upon themselves to grab land and allocate it to foreigners and other groups of people in the guise of allocating land to "foreigners."

A number of attempted land giveaways have been contentions. Some examples include: the attempted give away of Mabira Forest, the botched allocation of land previously belonging to Namulonge Research Centre, and the Amuru land give away for sugar cane growing. In this vein, a few important questions come to mind:

(i) What government policy (if any) informs land giveaways?
(ii) Are these giveaways necessarily a bad thing?
(iii) Should investors benefiting from such large scale land giveaways be required to put in place measures that guarantee food security? This is especially important when one considers that these giveaways may result in landlessness, which in itself results in food insecurity;
(iv) This fourth question arises especially from the experiences of Busoga families stopping food production to grow sugar cane for sugar manufactures in a desperate attempt to seek higher returns.

(c) Access to Capital

Almost all the land tenure systems discussed above suffer similar or related challenges when one considers the nexus between access to capital and food security. One requires substantial amounts of capital to be able to produce food at a large scale. Financiers also consider agriculture as a high-risk business because of uncertainties such as weather, on which even the most prudent farmer has no control. This, among other factors, affects the rates at which farmers can borrow. The impact of cost and access to capital questions relating to access to land and

food security is best considered when one addresses a few more factors:

(i) Access to capital and land as a form of collateral: Uganda has very high costs of capital and yet land remains the most common means of collateralization of debt obligations. Banks lend at interest rates of over 24% per annum - some of the highest in the region and in the world. Market forces and political situations like elections sometimes affect these rates. Yet, some large chunks of land that could be utilized for food production are not titled and as such are not attractive to banks as collateral. Also, banks have in the recent past been reducing the levels of comfort that they have in using land as collateral. This is because in recent years, the land market has remained one driven by buyers' considerations.

When all of these factors are considered, it is apparent that the cost and risks attributed to land as collateral for access to capital have made it difficult for farmers to access the kind of capital required to produce the amounts of food that can guarantee food security.

Government interventions - such as making funds available in commercial banks or through other programs like NAADS, the Agricultural Credit Facility, and Operation Wealth Creation - have suffered fates of their own, which are beyond the scope of this paper. However, at the center of all these interventions, is the centrality of access to land and security of tenure.

(ii) The much-needed agricultural revolution that will guarantee food security in Uganda. For very many years now, government has sung the rhetoric of mechanizing agriculture or increasing investment in agriculture. Not much has been done, at least not productively. It is argued here that regardless of the well intentioned interventions in this regard, the cost of capital remains high both in the public and private spaces, if the tenure-related questions highlighted above remain unaddressed.

(d) A burgeoning population and unchecked (and perhaps less productive?) rural – urban migration?

A discussion on food security and land tenure systems or land use is incomplete without considering the effect of Uganda's burgeoning population and rural-urban migration patterns. Uganda has been recognized as having both the youngest and one of the fastest growing populations in the world. But there does not seem to be in place a policy framework that links the effect of this growing population group on food production or on ownership, access to and use of land. The closest intervention seems to have been the government proposal in the 1996 Manifesto that the President referred to in his State of the Nation Address

in 2014.[9] The proposals were never implemented, and did not have any provision for access to capital or even how to make provision for those households that did not have any land.

This is especially critical when one notes the weaknesses and breakdown in the legal and social fabric that guarantees security of tenure in Uganda as noted above. Perhaps it is time to consider more seriously how Uganda will be able to sustainably feed this population in light of the various questions and concerns raised in this paper.

(e) Regional integration and what it means for food security in Uganda:

It is now clear that a significant part of Kenya is dry or being affected by desertification. This has created real demand for food and food production. While this is a huge opportunity for Uganda to regain her place as a major food supplier, it is important to note a number of things: firstly, Kenya seems to have resolved a significant part of the access to capital problem; and secondly, Kenyan businesses are now acquiring land in Uganda for farming purposes. However, this farming is not intended for the Ugandan market. Much of the produce is being exported back to Kenya or through Kenya to further markets. In the long run, these factors will exert pressure on the Ugandan food security situation. The central question that Uganda will have to address on a continuous basis is: Will Kenya continue to starve while Ugandans rush to dwell in cities? Or will Kenya continue to exert pressure on the Ugandan land markets both for its food security needs and for commercial gain?

Conclusion: The Ultimate Consideration

The foregoing discussion has attempted to discuss access to land and land tenure in the context of food security in Uganda. The discussion has attempted to argue two main points. Firstly, all questions around access to land and land tenure in Uganda reflect a long-standing clash between historical and present challenges. A thorough consideration of the present and future challenges

9 In the State of the Nation Address 2014, given to the House on June 5th 2014, the President stated: "As I keep telling you, the agriculture of Uganda is still handicapped by the 68% of the households that were still in subsistence farming according to the census of 2002. If all these homesteads were converted to commercial farming, the size of agriculture would be much bigger. In the Manifesto of 1996, the NRM put forward a four acres plan for these homesteads that have got that size of land. Using the yardstick of the financial returns per acre per annum and of sufficiently large global demand mentioned above, we recommended the following enterprises: clonal coffee - one acre; fruits (oranges, mangoes and pineapples) - one acre; bananas or any other food crop (cassava, Irish potatoes or upland rice) - one acre; and elephant grass for zero-grazing Friesian cattle - one acre. On these, you should add poultry for layers of eggs and pigs as backyard activities. These do not require much land. Those near the swamps should engage in fish farming. Many can participate in apiary for honey. In some areas, they grow tea. With 3 acres of tea, one can get about Ug. Shs 13.5million per annum. In the case of those with less land than the four acres, there is the option of mushroom growing as well as vegetable growing in addition to poultry and piggeries…."

reveals that the legal framework falls short of providing much needed solutions to the questions on access and security of tenure. Secondly, this discussion has attempted to underscore the centrality of streamlining land use, ownership and access if one is to meaningfully resolve the question of food security in Uganda. Through a discussion of the systematic breakdown of legal and social fabrics in Ugandan society today on the one hand, and five intervening factors on the other, it becomes apparent that the troubling questions around this symbiotic relationship between land and food security are beyond the purview of the law. It is proposed here that the ultimate question is whether land tenure and food security are ultimately political questions. And if so, what are the relevant answers? The attempt to answer this question is itself broader than the scope of this work. It will suffice to say that this is an area that will require more consideration.

Recommendations

From the foregoing discussion, the paper makes the following recommendations:

- There is a need for a more rigorous study into policy changes that will address the mismatch between the finality of tenure systems as they are today and the need for progressive adaptability in the face of changing demands.
- The Uganda Land Policy needs to be revisited to provide mechanisms to address challenges that arise outside the legal and policy framework, such as historical community boundary disputes. Such disputes discourage large-scale investment into agriculture and, in turn, make it even more difficult to achieve food security.
- Government needs to urgently embark on strengthening the legal framework on interventions that may guarantee or have a direct effect on food security. These aspects of the legal framework remain weak or non-existent. Some of these interventions are: the use of common property resource mechanisms; developing, properly regulating and harnessing the land market; properly addressing the question of making land available for investment; and securing land rights of ethnic minorities.
- Government needs to strengthen land conflict dispute resolution mechanisms. A huge part of this task is to let the legal framework function independent of the politics that now surrounds the squatter phenomenon and the abuse of the concepts of lawful and bonafide occupants.
- Government needs to revisit the Investment Code Act with a view to realizing the sound policy objective behind restricting foreign intervention in Agriculture.
- Government needs to investigate and invest in creating a link between interventions aimed at harnessing access to capital for agriculture and sustainable and secure land use and ownership. The two issues are

presently disjointed.

- Government needs to investigate and put in place a comprehensive policy framework that addresses the linkage between food security and Uganda's population growth.
- Government needs to investigate more thoroughly the impact of regional integration on land use, ownership, security of tenure and food security in East Africa, including considering what is driving the other countries in their intervention on food security.
- Ultimately, it is important to consider taking the long arduous journey to revisiting the legal and policy framework to address the legal, historical, societal and political challenges highlighted in this paper.

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The Linkage between Secure Land Rights for Women and Improved Food Security

Zahara Nampewo

1. Introduction

Land is typically the most important asset for people in the developing world, the majority of whom depend on agriculture for their livelihoods. For most, it is the basis for subsistence and the means by which they feed themselves. In Uganda, land is the biggest economic resource on which the majority of people, over 70% of Ugandans, both rural and urban depend. The agricultural sector employs 66% of Uganda's labour force and accounts for a quarter of the GDP; and agricultural products supply nearly all of Uganda's foreign exchange earnings.[1] Agriculture requires access to and ownership of land, and security of tenure is, therefore, critical in ensuring stable agricultural production. The right to own property - including land - is guaranteed in Article 17 of the African Charter on Human and People's Rights, ratified by Uganda on 10 May 1986, and entrenched within Uganda's constitutional Bill of Rights in Article 26. Additionally, Article 237 of the constitution vests land in Uganda in its citizens – owned in freehold, Mailo, leasehold and customary tenure. Thus, the right to own land is legally well-protected under Uganda's legal framework.

2. Women and Land Ownership in Uganda

Women's property rights refer to the right of women to own, acquire (through purchase, gift or inheritance) manage, administer, enjoy and dispose of tangible and intangible property including land, housing, money, livestock and crops.[2] Secure land rights refer to rights that are clearly defined, long term, enforceable, appropriately transferable, and socially and legally legitimate.[3] A woman's land rights are secure when she can use or manage land in a predictable fashion for a defined length of time.

In Africa, women are responsible for 85% of agricultural production and processing.[4] In the East African sub-region, as in many other parts of Africa, women are the primary cultivators.[5] Nationally, women play a vital role in

1 Budget Speech by Hon. Matia Kasaijja, Minister of Finance, June 2014.
2 Human Rights Watch, Women's Property Rights in Sub Saharan Africa, at https://www.hrw.org/legacy/campaigns/women/property/qna.htm, accessed 2 May 2016.
3 Landesa, Center for Women's Land Rights. Women's Secure Rights to Land. Benefits, Barriers and Best Practices. Issue Brief.
4 Asiimwe, Jacqueline (2001) "Making Women's Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses," Yale Human Rights and Development Journal: Vol. 4: Iss. 1, Article 8, at http://digitalcommons.law.yale.edu/yhrdlj/vol4/iss1/8, accessed 14 April 2016.
5 Aslihan Kes et al, Gender Differences in Asset Rights in Central Uganda, International Center for Research on Women 2011.

Uganda's agricultural sector and contribute a higher than average share to crop labor in the region. They also make up more than half of Uganda's agricultural workforce, and a higher proportion of women than men work in farming – 76% versus 62%.[6]

However, engagement in agriculture by itself is not commensurate with income earned through agriculture, or even ownership of arable land. In fact, only 16% of Ugandan women own land in their own right. Their ownership of registered land is even lower at 7%[7], leaving 93% with access to land only through a male relation, usually a father, husband or son.[8] In most cases, there is a difficulty in distinguishing the rights of women to land from their male relatives. And when women do own land, it is usually smaller and of poorer quality than that owned by men.[9]

That said, equal property and land rights for women are important because they are fundamental to their economic security, social and legal status, and sometimes their survival. Land rights increase women's power in socio-economic and political relationships. This also comes with improvement in self-esteem, confidence, security and dignity. By diminishing the threat of evictions, rights to land for women can increase their bargaining power in their families as well as participation in the public arena. In fact, achieving women's equality with respect to property is a critical aspect of development and social stability. Women's equal property rights are also important in the fight against HIV/AIDS, as violations of these rights make women more vulnerable to HIV/AIDS and accelerate their deaths when their homes and assets are taken away unjustifiably.

3. Challenges to Women's Land Security in Uganda

Historically, in subsistence production systems, land was not formally owned. Instead, user rights were vested in men and women who then produced food for their families. In this case, women and men had equal rights to land. This position has since changed, with formal land ownership resulting in a reduction in women's security on land. This is due to a number of factors, including customary laws and practices, Uganda's pluralistic legal framework, land-grabbing and public land giveaways, urbanisation and poverty.

Customary Law

Most land in Uganda is held under customary tenure and is regulated by customary rules.[10] In Uganda, such rules include customary practices such as

6 Aslihan Kes et al, Gender Differences in Asset Rights in Central Uganda, International Center for Research on Women 2011.
7 Margaret Rugadya, in ICRW. Gender Land and Asset Survey 2011.
8 Asiimwe, supra note 5
9 FAO, The State of Food and Agriculture: Women in Agriculture – Closing the gender Gap for Development (2010-2011, 43 (2012).
10 Jennifer Okumu Wengi, Weeding the Millet Field: Women's Law and Grassroots Justice in Uganda 42 (1997).

the giving of bride wealth and polygamy. Bride wealth is increasingly viewed as making a woman the property of her husband, nullifying any claims she might have to land and transferring her property rights to her husband.[11] Furthermore, in polygamy, which is a common occurrence especially in rural areas, several wives utilize the land jointly, thus making it difficult to claim individual contribution or ownership.[12]

According to custom, the matrimonial home is usually built on customary land and is regarded as the husband's property until he dies, at which time ownership reverts to the clan. Because customary rules systematically exclude females from the clan or communal entity, they also exclude females from land ownership. Moreover, since women are seen as belonging to neither their families nor marital clans, they are denied the opportunity to own land by both sources.[13]

Related to the above is the nature of land holding over customary land. With the exception of Buganda and urban areas, most land in Uganda – about 80% - is held under customary tenure. However, the enjoyment of land under this form of tenure is confronted by the challenge of the lack of official ownership certification. Without this legal guarantee, security over land is difficult to enforce, especially by women.

Another challenging factor is the patrilineal system of inheritance, which remains especially dominant in the rural areas. Land in Uganda is normally passed on through inheritance, traditionally through the male line, from father to son. As such, it is almost always men who inherit the land,[14] with the effect that they leave land in private control in the hands of men and not women.

Legal Pluralism

Uganda follows a pluralistic legal framework that recognizes both statutory and customary laws.[15] However, legal pluralism poses constraints over women's land security because of the conflict between statutory and customary law. Although statutory law trumps customary law in theory and does not bar women from owning property,[16] it operates within a socio-economic reality that effectively denies women this right. There are many socio-cultural practices that discriminate against women, discouraging them from owning land. During

11 Asiimwe, supra note 5
12 According to the 2000-2001 Uganda Demographic and Health Survey (UDHS), 32 percent of married women in Uganda are in a polygamous relationship.
13 Asiimwe, supra note 5
14 World Bank, Gender in Agriculture Source Book 127 (2009).
15 Ampaire et al, The role of rural producer organisations in enhancing market participation of smallholder farmers in Uganda: enabling and disabling factors. African Journal of Agricultural Research, Vol 8 (11) pp. 963-970, 2013, at pp. 966.
16 Both the constitution and the Land Act 1998 as amended, protect women's land rights.

family disputes or in cases of family violence against women, for instance, the threat of eviction or of breaking their claim to family property upon the death of the spouse is often used against women.

Additionally, statutory law is less utilized in practice than customary law. This is especially true in rural communities, where high illiteracy rates and inaccessible courts compound ignorance of statutory law. For example, whereas the Succession Act allows widows the statutory right to administer the property of their deceased spouses, access to and control of customary land is severely limited as a result of deeply rooted traditional practices that suggest that women should not be equal participants in ownership and control of land. Moreover, the relationship between traditional or customary law and statutory or de jure law may allow for gaps in the implementation, monitoring and enforcement of laws that do recognize women's equal rights to tenure. These gaps may be exacerbated by women's lack of awareness of their rights.

Land Grabbing and Public Land Giveaways

In Uganda, "grabbing" entails the arbitrary use of force or terror, or poorly justified development initiatives in order to grab land, especially in the face of the collapse or inability of institutions to arbitrate conflicts arising therefrom. It comes with failed dialogue and communication between the affected parties and sometimes includes the influence of the military or private guns. Related to the above is the growing incidence of public land acquisitions, where formerly public land is allocated by the state to private investors in the name of "public purpose." As a result, small-scale farmers are facing massive waves of land grabbing and forcible displacement for large, corporate-run agricultural plantations for crop export, huge infrastructure projects and the unfettered exploitation of natural resources. Women have been severely affected by these occurrences. In 2015, in a clash between authorities and women in a village in Amuru, several women showed their protest to this encroachment on their land by undressing themselves before government representatives as a means of self-protection and to defend their land.[17]

Urbanisation

Urban areas in all parts of Uganda are witnessing an influx of low-income earners from rural areas – some of who have sold their land to purchase riding motor cycles or 'boda bodas' – in search of greener pastures in the cities. With the influx of these urban migrants, infrastructure in the cities has become highly inadequate and essential services are lacking. Additionally, in urban areas, access to land or housing is mainly regulated by the market, which often establishes a price for property that is far beyond the reach of people of modest economic means, leaving them in substandard and poor living conditions.

17 See story 'The Ugandan women who strip to defend their land – BBC, www.bbc.co.uk/news/world-africa-32938779 accessed 2 May 2016.

Indigenous Peoples

Another example through which women's land rights have been disenfranchised is through relations of ethnic minorities in the Rwenzori region and elsewhere, such as the Mount Elgon area, where indigenous peoples' (IP's) ancestral lands are being increasingly encroached on. The survival of indigenous communities in the rainforests is being threatened and their human rights violated by massive land take-overs, especially for national park gazetting and oil exploration. These projects contribute to an ever-growing concentration of land and income in the hands of the state, while dispossessing people of their cultural land.

Poverty and Related Processes

As many as 41 percent of female-headed households live below local poverty levels. Poverty and lack of access to credit or housing finance severely limit women's ability to acquire land. In Uganda, where agriculture dominates, ownership of land is politically significant and directly associated with power, and command over property (land) is the most severe form of inequality between men and women. Poverty is inversely correlated with household land ownership. In fact, landlessness is widely recognised as one of the best predictors of poverty and hunger in the world.

Relatedly, institutional factors such as cumbersome regulatory frameworks, costly procedures, lack of information, and corruption undermine women's' ability to claim their land rights, particularly where women are underrepresented in structures of local and national governance, and their needs and perspectives are inadequately incorporated into policies and programs.

Lastly, women are often treated as a homogenous group, without sufficient recognition of their diverse situations. It is important to recognize that women's needs vary according to their situations – married, widowed, separated, divorced, single, affected by HIV, indigenous, women in conflict, etc – and their rights, regardless of their situation, must be protected.

4. Secure Land Rights, Women and Improved Food Security

Access to and ownership of land has many socio-economic benefits for women. For many, this form of access provides real protection against poverty, exploitation, violence and other forms of abuse. It is also a basis for increased social standing and opportunities in public life, it improves women's confidence and self-esteem within their communities, and it increases bargaining power in their families.[18]

Likewise, land rights are also critical for food security by increasing household agricultural productivity. When women have security over land, they can use

18 UN Women/UN Office of the High Commissioner for Human Rights.

this to:

- Provide incentives to invest in improvements to land;
- Increase opportunities to access financial services and government programmes;
- Create the space needed for more optimal land use, without the constant risk of losing land.[19]

Land rights can enhance food security in two ways: (1) directly, through increased food production for consumption, and (2) indirectly, through increased incomes permitting the purchase of more and better quality food. The link between secure land rights and household food security is more pronounced when women in the household have secure land rights. When women have secure property rights, including rights in the land they cultivate, they gain improved status, which leads to greater influence over household decisions. Such influence is significant because women are more likely than men to make decisions that improve the household's welfare, including decisions regarding food and nutrition needs.[20]

There is a compelling link between secure land rights for women and household welfare:

- Women with land rights contribute to a greater proportion of income to the household;
- Women who own land are more likely to have the final say in household decisions;
- The odds that a child is severely underweight are reduced by half if the mother owns land.[21]

According to a UBOS study[22], male-managed plots were found to be 60% larger and more likely to be planted with cash crops such as bananas and coffee.[23] Interestingly, data analysed by the OECD Development Centre shows that countries where women lack rights or opportunities to own land have, on average, 60% more malnourished children than countries where women have some or equal access to land.[24] Closing the gap in access to land would improve the income of female farmers and greatly benefit food security of families and communities. In fact, the FAO estimates that if women worldwide had the

19 World Bank, From Agriculture to Nutrition: Pathways, Synergies and Outcomes (2007).
20 FAO, The State of Food and Agriculture: Women in Agriculture – Closing the Gender Gap for Development (2010-2011, 43 (2012).
21 L. Smith et al, The Importance of Women's Status for Child Nutrition in Developing Countries, International Food Policy Research Institute Report 131, 65 (2003).
22 World Bank Living Standards measurement Study.
23 R. Mitchell et al, Micro Plots for the Rural Poor, in R. Prosterman et al eds, Leiden University Press 2009.
24 OECD Development Centre, At Issue: Do Discriminatory Social Institutions Matter for Food Security4 (2012), OECD Development Centre, Coding of the Social Institutions Variables, http://genderindex.org/sites/default/files/GID_Variables.pdf

same access to productive resources as men, they could increase yields on their farms by 20-30% and raise total agricultural output by 2.5-4%. These gains in agricultural production alone could lift 12-17% of the world's poor – some 100-150 million people – out of hunger.[25]

With the above in mind, it is clear that women play a pivotal role in improving household food security and nutrition. With increasing world and regional efforts to build women's capacity to ensure security over themselves, their family and property, there is immense value in boosting women's land rights.[26]

Conclusions and Critical Next Steps

Secure rights to land for women have a number of benefits. They can increase agricultural productivity and income, address food insecurity and alleviate poverty. Women are at the centre as key players in ensuring that homesteads have adequate food for domestic consumption. Therefore, in order to improve food security, steps must be taken to guarantee women's secure tenure rights.

Legislative Reform

There is need to promote a legislative framework that protects land and property rights of women, and to review and repeal all discriminatory laws – both statutory and customary – that currently exist.

Advancing Public Awareness and Understanding

Any new laws and policies that improve women's property rights should be disseminated and explained to the public through a high level of public awareness. Awareness campaigns are vital to creating and sustaining a positive environment supporting women's secure tenure rights, and help to transform public perceptions and institutional norms regarding women's property entitlements.

Litigation, Judicial Capacity and Legal Services

Measures should be taken to boost the judicial sector's capacity to effectively interpret and apply national law, with reference to international human rights treaties that protect and promote women's property and inheritance rights. As courts and other legal structures are sensitized to the rights of women in property matters, it is also important to ensure women's access to the means of legal redress - mainly through paralegal and legal aid services.

25 R. Mitchell and T. Hanstad, Small Home garden Plots and Sustainable Livelihoods for the Poor (FAO 2004).

26 2015 was declared the African Union's year of Women's Empowerment.

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Reforms Needed to Address the Problem of Food Insecurity and Agricultural Development in Uganda

Lawrence N. Bategeka

1. Introduction

This chapter proposes reforms that are needed to address the problem of food security and agricultural transformation in Uganda. It provides a short review of Uganda's economic policies, especially as they relate to agriculture; and examines the extent to which these policies have led to increases in agricultural production for export and the agricultural supply challenges that are yet to be addressed. The last section highlights the experiences of some Asian countries on agrarian reforms and outcomes.

2. Current Policies in Uganda: locating agriculture

Starting from around 1990, Uganda implemented market-based polices – including liberalization and privatization – which were intended to allocate resources most efficiently and thereby maximize investment, employment and economic growth. The thinking was that private sector-led economic growth would enable Uganda to maximize the rate of economic growth, which was seen as a prerequisite for addressing Uganda's development challenges, particularly poverty. Partly because of liberalization and privatization in agriculture, Uganda witnessed significant diversification and growth of exports, the majority of which are agricultural exports. However, the growth of some agriculture exports that came on board, such as fish and flowers, has since decreased and may not be sustainable unless the state makes appropriate interventions. Furthermore, despite the policies of liberalization and privatization, growth of agriculture has been dismal, falling below 2 per cent per annum, compared to the national average growth rate of 7 per cent per annum. Yet, about 70 per cent of the population lives in rural areas, eking out a living from agriculture. This suggests failure of markets – weak supply response to increased prices of agricultural commodities brought about by liberalization. Markets often fail in rural areas and call for state action to correct them.

Uganda applied the policies not only at the macro level, but also at the level of sectors and firms. At the macro level, Uganda prioritized the control of inflation, which was seen as the anchor for investment, job creation, and economic growth. Poverty reduction remained high on the agenda, with strong focus on the achievement of the Millennium Development Goals (MDGs). Uganda's strategy of reaching the MDG targets was increased spending on social sectors, with substantial support from her development partners who invariably based their assistance to Uganda on the MDGs.

Accordingly, the Poverty Eradication Action Plan (PEAP) was Uganda's overarching development policy framework from 1997 to 2008, when it was replaced by the National Development Plan (NDP). Uganda prepared the NDP with a view of increasing focus on the economic growth sectors while maintaining prioritization of public spending on social sectors. At the level of sectors, private sector participation in social services was seen as complementary to publicly provided services, especially in education.

The same policies were applied in the agriculture sector. The Plan for Modernization of Agriculture (PMA) and its successor, the Agriculture Development Investment Strategy (DSIP), were couched within the framework of liberalization. The PMA had the following seven pillars:

1. Research and technology development
2. Agricultural Advisory Services (NAADS)
3. Agricultural Education
4. Rural Financial Services
5. Marketing and agro processing
6. Sustainable use and management of natural resources
7. Physical infrastructure

Regarding implementation of the PMA, only NAADS was implemented, albeit with many problems. The NAADS programme did not explicitly prioritize production for exports, which led to enterprise choices within agriculture that were weakly linked to promoting agricultural- exports.

The "Agriculture Sector Development Strategy and Investment Plan" (DSIP), which succeeded the PMA, carried forward the spirit of liberalization and the notion that agriculture is a business. The overarching objective for agriculture under the DSIP remained the same – i.e. improvement of household incomes as an instrument for poverty reduction. However, the DSIP made reference to food security, which would be ensured through increased household incomes. The premise was that once households become income secure, they would also become food secure.

The DSIP had the following four programmes:

1. Enhancing Production and Productivity
2. Market Access and Values Addition
3. Improving the Enabling Environment
4. Institutional Strengthening in the Sector

Another key feature of the DSIP is an attempt to implement agro-ecological zoning. Agro-ecological zoning formed the basis of ranking agricultural

commodities in the order given in the table below:

Table 1: Order of priority of agriculture commodities for government support

1. Maize	4. Dairy	7. Tea	10. Bananas	13. Goats
2. Coffee	5. Pulses	8. Cassava	11. Cotton	14. Irish Potatoes
3. Fisheries	6. Beef Cattle	9. Poultry	12. Fruits	15. Rice

Source, DSIP (2010)

The DSIP provides that sub-programmes 1 to 8 will receive government support, with clearly spelt-out interventions – the details of which are obtainable in the DSIP. The author argues that the DSIP did not explicitly prioritize production for exports. Key proposals in the DSIP, like zoning and support to the commodities enumerated above, have hardly been implemented beyond the situation obtained prior to the DSIP coming on board.

3. Did the policies lead to significant increases in agriculture exports?

The post liberalization era witnessed significant export diversification, thanks to liberalization. Several new exports came on board including fish, cutflowers, maize, and beans. However, fish and cutflowers exports have since declined. A quick look at the destination of the new exports raises questions about sustainability. Fish and cutflower exports were destined for the European markets. Here, the problem was not narrowness of the export markets, but rather inadequate support to the producers of the commodities to enable them to sustainably export to these markets.

The regional market also offered opportunities to Uganda's agricultural exports. Indeed, exports of food to South Sudan, Kenya and other neighboring countries increased, again thanks to liberalization. However, the extent to which price incentives passed through to producers was limited because of market failure, which liberalization could not address. The author argues that addressing market failure to ensure that the price incentive passes through to the producer must be addressed, for liberalization to enlist the expected supply response.

4. Agriculture supply response constraints and limits of the market mechanism

Middlemen produce buyers invariably captured the anticipated benefits to farmers arising from liberalization. Thus, the market mechanism could not allocate resources most efficiently and cause the expected high growth rate of agriculture, which has remained dismal with an average of about 2 per cent per annum compared to the national average of 7.5 per cent per annum

during the past two decades. The author argues that in addition to focusing on production for exports, addressing the causes of market failure is very important to enlist the expected supply response for the identified agricultural export commodities. The causes of market failure include the following: i) the substance nature of the peasant economy; ii) Poor attitudes to agriculture; iii) lack of access to land; iv) a dysfunctional agricultural inputs market; v) risks and uncertainties in agriculture; vi) lack of credit; and viii) poor infrastructure. These causes will be further elaborated upon in subsequent sections.

4.1 Subsistence nature of peasant agriculture

As already noted, following liberalization, Uganda's export base became more diversified. However, while liberalization was necessary in this regard, it was insufficient because government's support was to be thinly spread, and all agricultural commodities became tradable for cash. However, liberalization, per se, did not explain the increased agriculture exports, nor has it increased food security. Increased exports were mainly on account of improved trade opportunities within the region, especially with South Sudan. Liberalization's impact on food security is also debatable, with one view suggesting that food insecurity has worsened due to distress sale of food, and the other suggesting that increased household incomes have ensured improvements in food security. However, rural areas lack food markets that function daily (some operate either once or twice a week), and there are hardly any refrigeration services to keep purchased food fresh in these areas. The likelihood that food insecurity has increased looks more probable.

As pointed out already, the main beneficiaries of liberalization in agriculture are middlemen produce buyers, and not producers themselves. The peasant small-scale producers are not getting the full benefits of the price incentive, which is invariably captured by middlemen produce buyers, thanks to the collapse of the cooperative movement. Liberalization should have been implemented with the view to preserving the cooperative movement so as to limit the extent to which middlemen take advantage of small-scale farmers. Government has started to encourage farmers to form farmer groups and reactivate the cooperatives. However, this is a daunting task, given the might of the middlemen. The middlemen will continue to dominate the marketing of agriculture products for a long time, thereby capturing the price incentive that should have accrued to producers.

The long list of commodities in the DSIP suggests a lack of strategic direction with regards to ensuring that farming households increase their incomes sustainably, assuming all other things are addressed. Some of the commodities are only tradable within Uganda (e.g. bananas, maize, pulses, cassava, and poultry), raising the possibility that overproduction of such commodities would lead to decline in their prices in the long run, thereby adversely affecting

the incomes of producers. Although an estimated 68 percent of Uganda's households are net buyers of food, the Ugandan market is narrow and cannot guarantee sustainable income to farming households. The proposed strategic direction to address this problem is for Uganda to focus agriculture production on export commodities – especially traditional export commodities.

The EPRC, in a paper on revealed comparative advantage, identifies the major agricultural export commodities. Coffee, which has relatively higher profit margins at the production level (Mbowa, 2013), is one of the proposed commodities. Currently, Uganda produces about 3 million 60kg bags of coffee per year, instead of the potential of 10 million bags it could be producing. The country's annual earnings from coffee exports stands at about US$400 million, which could increase to US$1.2 billion in four years' time if the right interventions are put in place. In other words, coffee has the potential of producing 60 percent of the anticipated annual oil revenues, which are still some years away. Furthermore, research has shown that profit margins for coffee are high at the production stage, but peasant farmers fail to take advantage of the high profit margins, thanks to market failures. For example, foreign farms are now engaging in coffee production in Uganda (especially Arabica coffee) to take advantage of high profit margins. The state should help small-scale Ugandan peasant coffee producers by directing and assisting them in coffee production. Market forces seem to have failed in terms of opening up the eyes of farmers and would be farmers to enable them see the hefty profit margins from which they could benefit. Action required from government in this regard is to help the process farmer group formation, which should be linked to access to agricultural inputs, among other things.

Other commodities mentioned under the DSIP– such as maize, pulses, cassava, bananas and poultry – could receive some assistance, but should not be mainstreamed, as rural farming households would still produce such commodities for food security anyway – with or without government's intervention.

4.2 Poor attitudes towards agriculture

Pillar 3 of the PMA focused on agriculture education, which has remained largely a preserve of education institutions. Uganda's agriculture extension system under NAADS is not only spread too thinly, but also leaves out the majority of farming households. As a consequence, farming is practiced for survival and hardly for serious household earnings, which is contrary to the stated objectives of the PMA and DSIP. Instead, rural households sell their land to finance education for their children, with the hope that upon completion of education, their children will get employed in the formal sector. All too often, the results are very disappointing because of the lack of availability of jobs outside agriculture.

The National Development Plan (NDP) takes cognizance of poor attitudes –

especially to agriculture – as one limiting factor to investment in the sector. As a consequence, the youth hardly gain interest in agriculture, favorable price incentives notwithstanding. Disinterest in agriculture is of course linked to other challenges, such as the risks and uncertainties facing agriculture, lack of access to land, and lack of credit for production. These challenges are further elaborated below.

State action required to address these poor attitudes to agriculture, is farmer education. This should cover both formal agriculture education as well as extension service system.

4.3 Lack of access to land

Travelling across Uganda, one gets the impression that the country is land rich. The truth is that would be farmers lack land partly because the owners of the land are not interested in practicing agriculture. Furthermore, the owners of the land are not willing to sell land to would-be land users. Current and previous Uganda governments have avoided serious land reforms that would effectively put land in the hands of the users, as was the case in some South East Asian countries such as Malaysia. The land laws enacted so far fall short of putting land in the hands of farming households, which would not only give them security of tenure but also enable them to make meaningful investments in land improvements.

At the household level, there are additional land access challenges. Women, who practice agriculture relatively more compared to men, hardly own any land. Youth, in most cases, also hardly have any access to land. The situation is becoming more severe as the price of land increases. So, no matter the extent of the price incentive arising from liberalization, the agriculture supply response could be close to zero because of lack of access to land. In such circumstances, land reform that puts land ownership in the hands of the tillers would be a necessary step to help markets to work and thereby enlist the expected agriculture supply response. The state action required in this regard is to ensure access to land by the tillers. Land reform in this respect is priority.

4.4 Liberalization of the inputs market and supply of fake agriculture inputs

Whether liberalization improves welfare of farming households or not is largely an empirical question, which is not addressed in this short paper. What we know is that liberalization has had both positive and adverse effects. The most notable positive effect was the increase of farm-gate prices of agriculture commodities, which was expected to enlist a positive supply response. On the other hand, liberalization of the input markets meant that farmers lost the support they enjoyed prior to liberalization, in terms of ensuring access to subsidized inputs of good quality.

Agriculture inputs on the Ugandan market – including seeds, seedlings, pesticides, fertilizer, and stocking materials (goats, heifers, piggery, poultry, etc.)–are largely fake or of poor quality, because of the lack of an effective regulatory system, which is a result of liberalization. Seed companies that are licensed to produce good seed have found it difficult to operate. There are hardly any laws to protect farmers from fake agriculture inputs; and because of fake agriculture inputs, some farmers loose the entire harvest. Proposed state action in this regard is to establish institutions (including a legal and regulatory framework) that would protect farmers from fake agriculture inputs. Only credible firms should be licensed to produce agriculture inputs – especially planting and stocking materials. Such firms must be compelled to work closely with agricultural research institutions. Any other firm trading in planting and/or stocking materials but not licensed to trade in agriculture inputs should be punished under appropriate laws enacted for this purpose. The government action required in this regard is regulation of the agriculture inputs markets.

4.5 Risks and uncertainties in agriculture

The risks and uncertainties that face agriculture limit the impact of price incentives on agriculture supply for obvious reasons. These risks include uncertain weather conditions, pests and diseases, to name but a few. Such risks drive away would-be investors from agriculture, price increases of agriculture commodities notwithstanding. For example, agriculture supply could remain poor because of adverse weather despite efforts by farmers to increase production because of price incentives. Uganda's agriculture development frameworks have, overtime, promised to address this matter by making agriculture production more predictable through provision of water for production, for example. However, implementation of such programmes is neither well studied nor implemented.

With regard to combating pests and disease, farmers are expected to foot the bill, with government officials arguing "agriculture is a business". Yet, government signed onto the Millennium Development Goals (MDGs), the first of which is about addressing poverty by focusing on extreme hunger and malnutrition. This suggests that the state is obliged to play an active role in agriculture, rather than shy away under the pretext that agriculture is a business. It is very disheartening to hear Uganda government officials in the Ministry of Agriculture, Animal Industries (MAAIF) and fisheries echoing the song that "agriculture is a business", without due consideration of the production constraints that face smaller holder farmers that happen to be the majority.

State actions required in this regard are measures that mitigate risks and uncertainties in agriculture. Mention can be made of promoting use of irrigation, support to the establishment of agricultural production cooperatives, and promoting use f fertilizer.

4.6 Poor rural infrastructure

Poor infrastructure limits the pass-through effect of the price incentive. For example, poor rural feeder roads limit access of rural farming households to urban markets. The lack of storage facilities compels farmers to sell their produce at the time of harvest, when prices are low. Unfortunately, there is a lack of prioritization of infrastructure development in this regard. For example, without adequate consultation, the Local Government Development Programme (LGDP) prioritized construction of rural market structures, which have remained un/underutilized, suggesting that such infrastructure, though important, was not top priority compared to storage infrastructure (owned by farmer groups) or rural feeder roads. Government should, therefore, focus on transport and storage infrastructure in order to improve the impact of agricultural price incentives on production. State action required in this regard is prioritization of development of rural infrastructure, especially roads and power infrastructure.

4.7 Lack of credit for agriculture production

During the heyday of the cooperative movement in Uganda, agriculture production credit was extended to farmers in kind, in the form of "tractor hire services" and supply of inputs such as pesticides and equipment. Recovery was done at the time of sale. Under current farmer groups organizations, this would still be possible. However, formation of farmer groups is too slow, partly because they are left to the vagaries of the market with hardly any support from the state. Consequently they are being out-competed by middlemen produce buyers.

That aside, there is a lack of clarity on the strategy of extending agriculture production credit to farmers, with one dominant view pushing for microfinance services. Yet, microfinance services are not suitable for agriculture production credit. Because money is fungible, there is no mechanism to ensure that the money that farmers borrow from microfinance institutions would go to financing agriculture production. The way forward, therefore, is to strengthen the formation of farmer groups (with the state playing a leading role) and use them to channel credit in kind to interested farmers. Left on their own, farmers may not organize themselves well enough to build strong and sustainable farmer groups for this purpose.

The creation of an agriculture bank that would support farmer groups is not a far-fetched idea. The state would have to capitalize such a bank and ensure that it operates on principals that reflect the realities facing Uganda's agriculture sector. Such a bank would neither be a development bank nor a commercial bank: a kind of hybrid at best. Microfinance services, as they have unfolded in today's Uganda, are unlikely to meet agriculture production needs, especially of small-scale farmers. State action required in this regard is supporting the development of relevant financial institutions for delivery of financial services to farming households.

In light of this discussion, a review of the DSIP with a view to ensure that the successor agriculture development plan addresses the market limitations discussed in this paper, is necessary. The PMA and DSIP failed to do so, beyond championing liberalization, which the country had already embraced during the early 1990s. In other words, both the PMA and DSIP were not very effective in terms of transforming Uganda's agriculture sector.

5. Lessons from elsewhere

There are strong lessons Uganda could draw from Asian countries regarding agrarian reforms. The reforms in the Asian developing countries are broadly categorized into three parts, namely: i) Structural reforms, ii) Developmental reforms, and iii) Social reforms (Pyakuryal, date).

These reforms are reported to have impacted the overall economic and social lives of people living in rural areas, who are dependent largely on agriculture for their employment and income. There were two underlying goals of agrarian reforms, namely: i) Increase productivity of the agriculture and allied resources; and ii) Promote equitable access and reward to all deserving people in rural areas.

5.1 Structural Reforms:

The structural reforms had the following three main elements:

i. Land distribution, particularly to the landless rural poor who were primarily dependent on wage labour for their livelihood;
ii. Setting ceilings on the maximum agricultural landholding that an individual and/or family could hold; and
iii. Land tenure reforms, by protecting the rights of tenants.

The structural reforms of agricultural land were based on considerations of equitability and productivity.

5.2 Developmental Reforms:

This segment of agrarian reforms was deemed critical in Asian countries that carried out agrarian reforms. These countries included Malaysia, Thailand, Vietnam, Indonesia, and Laos to name but a few. Developmental reforms provided key support to the land reforms process and enabled farmers to gain benefits from the change. Broadly, development reforms could be categorized as follows:

i. Marketing reforms;
ii. Development of rural infrastructure; and
iii. Microfinance services in rural areas.

5.3 Social Reforms

Agrarian reforms in Asian countries went beyond land distribution and infrastructure development to make their impact equitably shared by all people in rural area. Social reforms were basically aimed at preparing rural people to manage their economic transactions together, and to be self-reliant. The three elements of social reforms were:

i. Group mobilization;
ii. Farmers training of farmers;
iii. Community consciousness

In many countries, initiatives to bring farmers together grew independently of the initial agrarian reform process. The strategy of farmers training farmers, for example, was especially successful in rural areas. As the agrarian reforms were implemented, dissemination of knowledge from government agencies and even from NGOs became difficult. The community consciousness was an educative process to enable farmers to fully benefit from agrarian reforms.

Key lessons learned from agrarian reforms in some of the Asian countries included:

i. The growing reliance on markets for distribution had considerably slowed down the pursuit of land reforms;
ii. Globalization and market liberalization had slowed down the momentum of agrarian reforms;
iii. As the economic foundation of agrarian reforms based on subsidies and market interventions was not sustainable, the policies were gradually shifted to open market policies;
iv. The shift in emphasis to market policies may be beneficial in the long run, but it created competition among unequal people;

Accordingly, agrarian reform in China passed through three distinct phases:

i. A radical land reforms programme in which land belonging to landlords was expropriated and redistributed among landless peasants;
ii. Collectivization of production and marketing agricultural products (1950 Communes); and
iii. The 1978 introduction of a household responsibility system (redistribution of land from collectives to individual private households), accompanied by market reforms and crop diversification.

Conclusion

The experiences of Asian countries with regard to agrarian reform policies suggest that a combination of structural, development and social reforms is necessary to make agrarian reforms successful, in terms of addressing the twin challenges of food insecurity and agriculture transformation. With regard to

structural reforms, Uganda should put in place measures to increase access to land by the tillers; hitherto this has proved a daunting challenge. Albeit with some challenges, Uganda seems to have embarked on the right path with regard to development reforms that focus on the provision of infrastructure, marketing reforms, enhancement of agricultural productivity, and access to financial services. On the social development front, the country needs to do more to assist farmers to organize themselves in agricultural producer cooperatives, knowledge sharing, and community consciousness.

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How Good Land Governance May Translate into All-Inclusive Economic Transformation in Uganda.

Ramathan Ggoobi

1.0 Introduction

This chapter focuses on the role of the land governance in economic transformation agenda. The first section highlights the principles of good land governance as well as its baseline features. This is followed by a brief review of some best practices, and empirical evidence on how good land governance may spark economic transformation. An analysis of land governance in Uganda is then presented, highlighting the integral challenges it faces and showing what needs to be done to improve the situation. Finally the features of an all-inclusive economic transformation framework are presented, indicating the nexus between land, food security, and inclusiveness.

1.1 Land Governance: Definitions and Principles

It is Margaret Mitchell who in her 1936 award-winning book, Gone With The Wind, states thus: "Land is the only thing in the world worth working for, worth fighting for, worth dying for, because it's the only thing that lasts."[1]

If I were to work as an advisor for a Consular Affairs Department of a foreign country in Africa, this would be top on my travel advice for any visitor to Africa: "If you do not want to die in Africa, keep away from the two treasures of man: land and woman."

In Africa, a region that is still predominantly agrarian, depriving a rural household or community of land is synonymous with depriving them of their livelihoods and food security. In short, in Africa "land is life" to use ActionAid's (2012) catchphrase.

The phrase "land governance" carries different meanings for different groups. There is no universally accepted definition of land governance. However, the Food and Agriculture Organisation (FAO) provides the following simplified working definition: "Land governance concerns the rules, 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, the way that competing interests in land are managed" (Palmer et al, 2009).

Land governance defines the property rights over the landholders. These rights are nothing but the means of reducing uncertainty by establishing a stable structure for human interaction with respect to property. In the case of land,

1 See Mitchell M. (1936). Gone With The Wind, Macmillan Publishers, United States (Chap 2. Para 115

these rights may include the right to sell, use, or bequeath land.

1.2 Principles of Good Land Governance

Palmer et al (2009) provide the following key principles of good land governance:

a) Equal access to land and natural resources: Given the importance of land for a wide range of economic, social and environmental objectives, no group within society should be legally or politically excluded from being able to access land or related natural resources.

b) Security of tenure for all members of society: Good governance ensures the legal recognition and protection of a range of land rights, including customary and traditional rights as well as intermediate forms of tenure. Evictions should be avoided wherever possible; and where absolutely necessary, they should be carried out according to national law and international standards related to due process and fair and just compensation.

c) Protection of women: Specific measures should be taken to ensure access to land for, and the security of land and property rights of women. A gender perspective on land and property rights should be incorporated at all stages of reform design, implementation and analysis.

d) Transparency: Decision-making regarding land and natural resources should be transparent, with processes open to all members of society. Good governance places all decisions on land upon respect for fundamental human rights and ensures that all relevant stakeholders are enabled to effectively participate, particularly women and vulnerable groups.

e) The rule of law: Good governance requires that no one stands above the law, and that politicians, officials, land professionals and other actors are accountable for their actions. It ensures that rules and procedures are clear, consistent, well understood and applied in a transparent manner.

f) The principle of subsidiarity: Land administration should be decentralised such that decisions are taken at the lowest appropriate level and based on accountability. Where appropriate, it should be built on traditional and informal practices consistent with other governance principles.

g) Effective and efficient land administration: Systems should be responsive to the needs of citizens. Costs of acquiring services should be affordable, and procedures should be clear and simple. Technical solutions should be based on available capacity and appropriate technology.

2.0 Why land governance is important

When people lose confidence in the institutions mandated to provide justice, they resort to taking their own action. "We use violence because it brings quicker solutions than following the law and other structures," said an interviewee from Northern Uganda (in Kobusingye, 2014). Hence, good land governance is important for the following reasons:

a) Tenure security often depends on the quality of land governance.

b) Failure to resolve land issues is a barrier to achieving other development objectives.
c) It is now widely realised that exclusive focus on formal title is inappropriate. Greater attention to the legality and legitimacy of existing institutional arrangements is also required.
d) When farmers are not secure, there is no incentive to adopt modern technology in farming.
e) Environmental sustainability (planting trees, protecting soil fertility, etc.) depends on emotional attachment to the land. As Aristotle once said, "No man can practice virtue who is living the life of a mechanic or labourer."
f) With undocumented land, farmers cannot use land as collateral to access finance.
g) Existing approaches have not been widely successful. This is mainly because technical focus may not be pro-poor or gender-sensitive, ignoring capacity issues, sustainability issues, and others.

2.1 What does the evidence show?

Researchers have established a strong relationship between good land governance and agricultural development, food security and overall inclusive economic transformation. In Asia, a region that has achieved miraculous transformation in the last half century, at least 22 countries implemented land reform programmes in the period between 1945 and the 1980s (Quizon, 2013). The reforms implemented included recognition of the tillers of land as owners, imposition of land ceilings and redistribution of surplus land to landless peasants.

The most successful reforms were implemented in West Bengal and Kerala in India. The successful story of land reform in West Bengal is well summarised by Banerjee et al (2002). Prior to tenancy reforms, there was insecure tenure in West Bengal and leases were informal. In 1977, the left-wing administration in India launched what they named "Operation Barga", whereby tenants were given a choice of registration. A registered tenant could not be evicted, provided they paid a legally stipulated share of 25 percent of the output to the landlord.

This simple and effectively implemented reform had far reaching impact. Operation Barga raised West Bengal's overall agricultural productivity by 69 percent; and food grain grew from a meager 0.43 percent between 1968 and 1980 to 5 percent after 1980. Some analysts have often attributed the impressive agricultural performance in India and other Asian countries after the 1980s to the Green revolution that was implemented across Asia beginning in the 1930s. However, Banerjee et al (2002) dispute this by making comparisons among the Asian countries that did and did not accompany the Green Revolution with land reforms.

Bangladesh, for example, a country that prior to independence was part of West Bengal state in the undivided India, did not introduce tenancy reform. The two regions have similar agro-climatic conditions and agricultural technology. So with the Green Revolution implemented in both regions, we would expect the agricultural

yields to be similar between these two regions. In the period before Operation Barga, agricultural productivity was growing at almost identical rates in the two states. Between 1969 and 1978, a period covering the decade before Operation Barga, rice yields increased by 9.3 percent in West Bengal and by 11 percent in Bangladesh. In the period after Operation Barga was introduced (1979–93), rice yields in West Bengal increased by 69 percent compared to 44 percent in Bangladesh (ibid).

Indeed even though the rate of adoption of the Green Revolution (the high yield variety of rice) was faster in Bangladesh than in West Bengal, the rate of growth in rice productivity was higher in West Bengal. This difference is what researchers attribute to the land reform. More generally, evidence shows that agricultural productivity—measured by cereal yield per hectare—has increased much faster in countries that implemented successful land reforms, particularly in East Asia. See Figures 1 and 2.

Figure 1: Cereal Yield (kilogram per hectare)

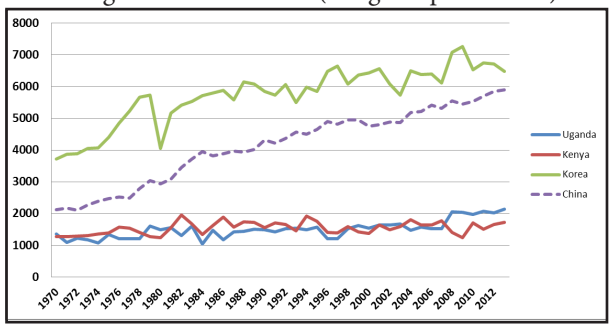
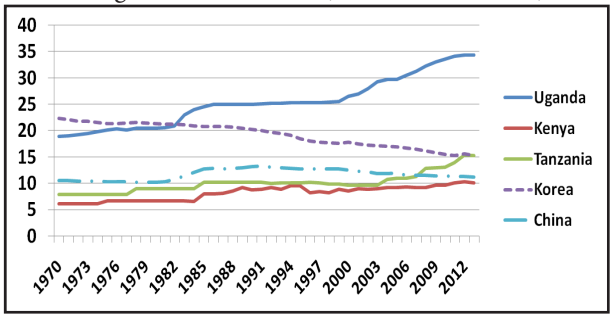


Figure 2: Arable land (% of total land area)



Source: World Bank (2016)

Figure 1 clearly shows that as yields increased exponentially in East Asia (South Korea and China), East African countries such as Uganda and Kenya experienced minimal change in productivity. Yet as Figure 2 indicates, arable land has been rising in Africa (particularly in Uganda) and declining in East Asia (particularly in South Korea).

Joe Studwell (2013) gives a concise explanation of the Asian miracle in his book "How Asia Works." He attributes the unprecedented success in Asia to three key reforms: (1) reform of agricultural land ownership to encourage small-plot, high-yield farming; (2) industrial policies to nurture infant industries and export discipline requiring companies to export to foreign countries; and (3) financial reform to steer capital to exporters. Research shows that in almost all successful agrarian economies across the world, reforms to improve land governance played a key prerequisite role.

3.0 Land Governance in Uganda

Uganda's current economic system is centred on struggles between peasants, landlords, 'investors' and the State for the acquisition of land rights. This private sector-led economic strategy has bred an alliance between government and the "investors", which will only serves to further undermine the position of smallholder farmers in land marketisation processes.

The liberal model has already created a generation of landless people in an agrarian society. Recent studies in Uganda indicate that only 18 percent of Ugandans own land (World Bank, 2011). Most of the tenants are squatters with limited legal mandate to use the land. This insecure land tenure or lack of land ownership affects farmers' incentive to increase productivity.

Uganda needs radical agrarian reforms, instead of the pro-market willing-seller, willing-buyer reforms introduced by the NRM government. These reforms are premised on the assumption that the "invisible hand"[2] of the market will automatically result in land redistribution and deliver desirable developmental outcomes (such as increased agricultural production). This may be a wrong assumption for one simple reason: the invisible hand is not only invisible; it does not actually exist.[3]

It is likely that the prevailing land governance regime will undermine Uganda's food security and agricultural transformation. Since private investors pursue profit, and grain farming is not profitable (Bold et al, 2015; Okoboi et al, 2012), the "investors" will more likely switch land to activities that undermine food security – i.e. forestry, ranching, and cash crops.

The net effect of poor land governance in Uganda will be increasing land conflicts, social inequality, food insecurity, land degradation, low agricultural productivity, and thus, slow economic transformation.

2 The idea that free markets lead to efficiency as if guided by unseen forces, advanced by Adam Smith in his 1776 seminal work, "The Wealth of Nations".

3 Stiglitz, Joseph (2002), "There is no invisible hand," The Guardian, Friday 20th December 2002

3.1 What needs to be done to improve land governance in Uganda?

Uganda needs to roll out radical, but participatory, reforms to improve land governance. Practical reforms will require well-targeted evidence-based research to identify who represents the various interest groups, and how to work with them towards better design and implementation of the reforms. In short Uganda needs to:

a) Strengthen farmers' individual land rights, not only as a useful measure in tackling the current problems of poor land governance, but also as a conducive effort to genuinely establish a land market.
b) Implement "land to the tiller" type of reforms that preceded the East Asian miracle. These will secure land rights for smallholder farmers.
c) Streamline land governance institutions. Researchers have found that institutional proliferation (multiplication of land institutions) – Land Tribunals, District Land Boards, District Land Offices, Area Land Committees and Recorders at the sub-county levels – has resulted in confusion in land conflict resolution (Kobusingye, 2014).
d) Tame the "entrepreneurs of land conflicts" – i.e. politicians and cultural chiefs who use land conflicts to legitimise their power and authority.
e) Adopt more "empowerment strategies" such as tenancy regulations that reduce the ability of landowners to extract rents. These have been found to raise efficiency (Banerjee et al, 2002).

Other interventions may include:

h) Erecting a ceiling on landholdings with a view to redistributing the surplus land to the landless.
i) Abolition of intermediaries – the rent collectors.
j) Consolidate disparate landholdings.

4.0 Land and Inclusive Economic Transformation

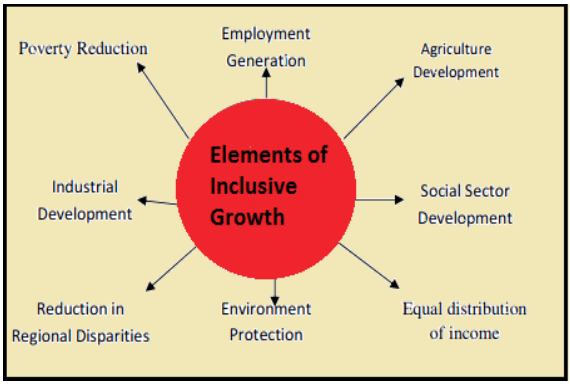
Although there is little clarity as to what inclusive growth actually is, Arjan (2014) provides a concise working definition: "growth that improves the access of the poor to expanding economic opportunities and reduces inequality." Literature bases inclusive growth on two conditions, namely:

1. Growth does not leave behind large numbers: This condition may extend to the "Maximin" principle (advanced by Philosopher John Rawls) – "The system should be designed to maximise the position of those who will be worst off in it."[4]
2. Growth is characterised by evenness across the economy, such that the widest range of people's material needs are satisfied. To achieve this there must be development of what Karl Marx referred to as the 'productive forces'. The productive forces consist of labour power and the means of

4 See Rawls, J. (1972). A Theory of Justice, Harvard University Press, Cambridge.

production that originate from nature or land in particular. Inclusive growth has eight major elements, summarised in Figure 3 below.

Figure 3: Elements of Inclusive Growth



Source: Adopted from Civil Service India website

Figure 3 clearly illustrates that land – as a resource – and good land governance are critical in achieving inclusive growth. Without good land governance, aspects such as agricultural development, employment generation, poverty reduction as well as industrial development may not be effectively achieved.

5.0 Conclusion

Based on the two conditions defined above, it is clear that Uganda's recent "impressive" growth has not been inclusive. The emerging opportunities have not been equally distributed, the growth has not sufficiently generated employment, and there has been a slow shift in labour from the slow growing (agriculture) to the fast growing (services and industry) sectors.

It is the author's strong but considered view that for Uganda to embark on an all-inclusive economic transformation, it will have to first build inclusive institutions,[5] beginning with good land governance. This will provide the incentive for farmers to adopt modern technology to increase productivity. They will also protect the environment, use land as collateral to access finance, and spend less time protecting land. This will provide a pebble for rapid and sustained economic transformation. Currently, Uganda is under "extractive" institutions—institutions that place power in the hands of a small elite that (mis)use it to exploit the masses.[6]

5 Institutions that protect individual rights, secure private property, and encourage entrepreneurship [See Acemoglu D. & J. Robinson (2013) Why Nations Fail]

6 Ibid.

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