



USAID
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SAFE
Supporting Access to Justice,
Fostering Equity and Peace

LAND RIGHTS HANDBOOK

Draft



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Disclaimer

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We strongly believe that this Handbook will be a great resource to Civil Society Organizations and Community Based Organizations to provide legal and paralegal services to individuals and communities seeking to enforce their land rights Uganda.

Preface

USAID-Supporting Access to Justice, Fostering Equity and Peace (USAID-SAFE) commissioned the development of this Handbook as part of its objective to strengthen Government of Uganda's (GoU) capacity with respect to peace building and conflict mitigation. This initiative is part of efforts to provide assistance, training and capacity building for Local Government structures, District Land Boards, Area Land Committees, Civil Society Organizations (CSOs) and established traditional/community based dispute resolution mechanisms to mitigate conflict relating to land while taking into account the Program's cross cutting themes of youth, gender, population, anti-corruption and oil production. This handbook is intended for use mainly by CSOs and Community Based Organizations (CBOs) to provide legal assistance related to land issues in the SAFE Program's target districts, but other aforementioned institutions can also use it.

It is written in plain terms to the greatest extent possible given the nature of the subject matter, for ease of use by its target users in CSOs and CBOs. The Handbook contains a historical background to the land tenure systems, the characteristics and modes of acquisition of the different land tenure systems; including issues of compulsory acquisition and compensation, land rights protection for different categories of persons ranging from women to ethnic minorities in Uganda and the different forms of land transactions. The Handbook also looks at the land administration system in Uganda and it provides a number of sample forms that can be easily utilized by CSOs and CBOs to assist the communities in which they work. It is hoped that CSOs and CBOs will use it to resolve and mitigate conflicts relating to land in a manner that shows sensitivity to the cross-cutting themes of gender, youth, population, anti-corruption and oil production.

This Handbook was developed in a participatory manner by consulting with Ministry of Lands Housing and Urban Development Officials, and District Land Officials across the twenty districts where SAFE'S programs target. Oil companies operating in Uganda and a cross section of CSOs that work on land issues in Uganda were also consulted. Existing Land Rights Handbooks and other related materials that were readily available were reviewed, adapted and acknowledged. Accordingly, this Handbook builds on, and attempts to harmonize existing efforts that have been made in this area.

This Handbook can be adapted and modified to suit a number of aims:

- It may be used by CSOs and CBOs as a resource book to provide legal services to individuals and communities seeking to enforce their land rights.
- It may be used to train Community Legal Volunteers and others on Land Rights in Uganda.
- It may be used as a day-to-day reference guide by CSOs and CBOs working on land rights in Uganda.

SAFE intends that this Handbook should be used hand-in-hand with the Program's Community Legal Volunteers Manual, which contains detailed information on Alternative Dispute Resolution mechanisms, and land justice including formal and

informal mechanisms. It is therefore suggested that users familiarize themselves with both the Manual and the Handbook.

Jennifer Ober

USAID-SAFE Chief of Party

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Structure of the Handbook

The Handbook is divided into seven chapters: the Historical Background of Land Tenure Systems in Uganda, Dimensions of Land Rights, Land Rights Transactions, Protection and Restrictions, Land Rights Succession and Inheritance, Compulsory Land Acquisition, Land Administration and Land Justice. Each Chapter is divided into sub topics and contains procedures and reference to sample forms in the annex.

Note Chapter 6 and 7 of this Handbook on Land Administration in Uganda and Land Justice respectively read in reference with the USAID SAFE Community Legal Volunteers Manual.

Various forms and templates are contained in the appendix to aid CSOs and CBOs in their work.

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Abbreviations

| | |
|--------|--|
| ADR | Alternative Dispute Resolution |
| AG | Attorney General |
| ALC | Area Land Committee |
| CA | Constituent Assembly |
| CCO | Certificate of Customary Ownership |
| CLA | Communal Land Associations |
| DLB | District Land Board |
| EHS | Environmental, Health and Safety Guidelines |
| ICU | <i>Iteso</i> Cultural Union |
| IDP | Internally Displaced Persons |
| IFC | International Finance Corporation |
| KCCA | Kampala Capital City Authority |
| KKA | <i>Ker Kwaro Acholi</i> |
| LIS | Land Information System |
| LC I | Local Council I |
| LC II | Local Council II |
| LC III | Local Council III |
| LCV | Local Council V |
| LCF | Lango Cultural Foundation |
| MLHUD | Ministry of Lands, Housing and Urban Development |
| NEMA | National Environmental Management Authority |
| NFA | National Forestry Authority |
| NGO | Non-Government Organization |
| PLHAs | Persons Living with HIV/AIDS |
| PPRR | Principles, Practices, Rights and Responsibilities |
| PWDs | Persons With Disabilities |
| ULC | Uganda Land Commission |
| UIA | Uganda Investment Authority |
| UWA | Uganda Wildlife Authority |

Glossary

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| Acquisition | Gaining possession or ownership of an asset or item through buying, exchange, gift, etc. |
| Adjudicated freehold | Adjudicated freeholds were converted from customary tenure pilot schemes in the districts of Kigezi, Bugisu and the Kingdom of Ankole. Under these programs, some existing customary holdings were surveyed and registered and some areas of fragmented plots were consolidated. |
| Administrator | A person appointed by the court to manage and take charge of the assets and liabilities of an intestate person. |
| Administrator General | The Administrator General sits in the Ministry of Justice and Constitutional Affairs with corporate status and the authority to approve individuals capable of administering the estate of an intestate. |
| Alienated | To transfer ownership of (property rights) to another person or group. |
| Arbitration | A technique for the resolution of disputes outside the courts where parties to the dispute refer it to one or more persons by whose decision they agree to be bound. The person who conducts the arbitration is referred to as an arbitrator. |
| Arson | The act of wilfully and unlawfully burning the property of another person. |
| Assign | To transfer to another. |
| Bailiff | The guardian of property or someone who is appointed in order to take charge of another's property or affairs. |
| Binding | An agreement or promise involving obligations on parties to the agreement. |
| Bona fide occupant | A person who before the 1995 Constitution had come into force occupied and utilised or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on land by the Government or an agent of the Government which may include a local authority. |
| Busuulu | Annual ground rent paid by a tenant (<i>kibanja</i> holder) to a land lord on mailo land. |
| Envujjo | Envujjo was a form of royalty for using the landlord's land e.g. a percentage of crop from cultivation or a calabash of local brew (<i>mwenge musogole</i>) to appease the landlord. |

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| Consent | Permission for something to happen or agreement to do something. |
| Communal | Shared by all members of a community for common use. |
| Community | A group of people living in the same place or having a particular characteristic in common. |
| Court order | An order issued by a court that requires a person to do or refrain from a particular action for example an eviction order, injunction, vesting order and restitution order among others. |
| Currency Point | Each currency point represents 20,000 Ugandan Shillings. |
| Customary | These are the norms, customs and practices associated with a specific group of people in a particular society, place or set of circumstances. |
| Easement | The right enjoyed by the third party to access or otherwise use someone else's land for a specified purpose. |
| Equity | The quality of being fair and just. |
| Ethnic | Of or relating to a population subgroup (within a larger or dominant national or cultural group) with a common national or cultural tradition. |
| Eviction | The act of forcefully expelling someone, especially a tenant, from occupation of property or land. |
| Injunction | A court order that prohibits or requires a party to perform or cease doing a specific act. It can be temporary or permanent. |
| Interim order | An order passed by a court pending the final conclusion of litigation. |
| Intestate | To die without a valid Will. |
| Kibanja | An equitable interest of a tenant on <i>mailo</i> land created as a result of the 1900 Buganda Agreement. |
| Kibanja Holder | A tenant who settled on the land with the consent of the <i>mailo</i> landowner. |
| Landlord | The owner of a house, apartment, land or real estate which is rented or leased to an individual or company. |
| Lessee | A person/organisation to whom a lease is granted. |
| Lessor | A person/ organization who grants a lease. |

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| Matrimonial Home | A building or part of a building in which a husband and wife/ves ordinarily reside together with their children, if any. |
| Minor | A person below 18 years of age. |
| Nominal | Price or amount of money very small; far below the real value or cost. |
| Security of tenure | Security of tenure is the legal protection accorded to vulnerable persons on land. |
| Squatter | A person who unlawfully occupies an uninhabited building or unused land. |
| Sublet | To rent (property one holds by lease) to another. |
| Sub Surface Rights | Rights to the minerals, oil, water and other substances below the surface of land. These rights may be sold or transferred to another party like other land rights. |
| Succession | The action or process of inheriting property. |
| Surface Rights | Rights that an individual has on the surface features of an area of land. |
| Tenant | One who pays rent to use or occupy land, a building or other property owned by another. |
| Tenure | This is the nature or system of land ownership. |
| Testator | A person who has written the last valid will and testament that is in effect at the time of his/her death. |

Chapter I: Historical Background of Land Tenure Systems in Uganda

Land legislation and administration in Uganda today is a multi-layered mixture of different statutory and customary tenure systems comprising colonial legacies, reforms and new initiatives often overlapping on the same piece of land implemented over the past 120 years. This situation has resulted in conflicting tenure rights and interests. This chapter therefore provides an overview of the historical background of land tenure systems in Uganda right from 1900 to date and is divided into four phases. The period from the pre-colonial time, colonial period (1900 -1962), Post-Colonial Period (1962-1975), Land Reform Decree 1975-1995, 1995 to-date.

a) Pre-colonial Period

In pre-colonial Uganda, the land tenure system was predominantly customary. It comprised of various systems ranging from communal or tribal tenure, clan tenure and nomadic tenure.

- *Communal or tribal tenure system* - referred to ownership of the land vested in the ruler as owner or trustee of the land for members of the tribe. This tenure was prevalent in Buganda, Bunyoro, Toro and Ankole sub-regions.
- *Clan tenure system* - this was common in Acholi and Kigezi sub-regions, within this system, specific individual or family rights were recognized to fields, agricultural products and homesteads.
- *Nomadic tenure system* - this was prevalent in Karamoja. In this system grazing rights were invested in the entire members of the tribe with no specific rights vested in individuals.

b) Colonial Period (1900 -1962)

1900 Buganda Agreement

The 1900 Buganda Agreement between the colonial authorities and the chiefs of Buganda allocated a significant portion of land in the kingdom of Buganda measured in square miles (hence the term *mailo*) to the royal family and prominent representatives of the Buganda Kingdom as private property in perpetuity. The key prominent characteristics of this system of land holding included;

- It was regarded as an absolute grant in perpetuity.
- Land was made subject to the traditional and customary rights of the *kibanja* (plot) holders.
- The Busuulu and Envujjo law of 1928 regulated the rights and obligation of the *kibanja* owner and *mailo* holder.
- According to this law a *kibanja* holder was deemed to enjoy an inheritable permanent right of occupancy subject to payment of annual rent.
- The *mailo* owner could not evict a *kibanja* holder except where the land was required for a public purpose or for other good and sufficient cause (clause I I,

Busuulu and Envujjo Act, 1928) or if the holder left the land unattended for more than six months.

- The owner of *mailo* land was entitled to a certificate of title issued under the *Registration of Titles Act cap 230*.
- The rest of the land in the country was declared “*crown land*” vested in the Queen of England (Crown Lands Ordinance of 1903).

1900 Toro and 1901 Ankole Agreements

Subsequently by the 1900 Toro and 1901 Ankole Agreements, approximately 255 square miles in each kingdom was allocated to the king and a few of the most notable senior chiefs in private ownership and 122 square miles were allocated to them as official estates. These were referred to as *native freeholds* and peculiar to the districts in kingdoms of Toro and Ankole. **Note:** Unlike *mailo* land, these were granted out of *crown land* and were held subject to Crown Lands Ordinance 1903. Like *mailo*, this was subject to the rights of customary tenants.

The 1937 Landlord and Tenant Law

This Law ensured tenants enjoyed inheritable permanent rights of occupancy subject to payment of a fixed nominal rent.

In 1955, a pilot scheme to issue adjudicated freehold titles was implemented in Kigezi, Bugisu and Ankole to encourage individual ownership. After being adjudicated under customary law, the land owners were provided with registered freehold titles under the Registration of Title's Act.

Throughout the rest of Uganda, customary tenure was left to continue. Indigenous Ugandans had the right to occupy any un-alienated *crown land* outside Buganda and urban areas without prior consent of the government in accordance with their customary law (section 20 and 24 of the Crown Lands Ordinance). Legally the land occupied under customary tenure was regarded as *unalienated crown land*.

The key characteristics of customary tenure were;

- The customary tenants were tenants at the will of the government with no legal protection against eviction.
- The governor had the power to sell or lease such land to any other person.
- The right the customary occupants had was to remain on the land until arrangements were made to relocate them to some other land.
- They would only be compensated for improvements made on land such as crops, and buildings

Under the British Protectorate Administration all land in Uganda except *Mailo* was *crown land* either by virtue of the protectorate or by treaty with local rulers.

c) Post-Colonial Period (1962 -1975)

- At independence in 1962, “*crown land*” was renamed “*public land*.”
- Private Citizens and companies were required to apply for leases.

- *Mailo* and freehold land tenure acquired during colonial time remained legitimate.
- Land occupied by customary tenants could no longer be alienated without consent of the occupants as per section 24 of the Public Lands Act of 1969. From 1962 to 1969, customary tenants remained tenants at will of government with no form of legal protection against eviction.)
- Customary tenants also had a right to apply for leases over the land they occupied (section 25 Public Lands Act).

d) The Land Reform Decree (1975-1995)

The 1975 Land Reform Decree under the military government of then President Idi Amin Dada attempted to overhaul the country's tenure system. The Decree declared all land in Uganda *public land* administered by the Uganda Land Commission with sole powers to administer and allocate land on behalf of the state (section 1(1) Land Reform Decree, 1975). As a result of the Decree;

- Freehold and *mailo* holdings were abolished and automatically converted into leases of 99 years for an individual and up to 199 years for a religious institution or government para-statal (section 2 Land Reform Decree, 1975).
- *Bibanja* holders or customary tenants on former *mailo* and native freehold became tenants at sufferance on public land. The lessee on conversion was given the right to evict such tenants if the lessee required the land for development, subject to paying the tenants compensation for improvements.
- Legal protection they previously enjoyed was abolished, accordingly consent of the customary tenant before the grant of freehold (or lease) on public land was abolished. He or she was only entitled to compensation for improvements.
- The right to occupy unalienated public land by customary tenants without written permission of the prescribed authority was made an offence.

Note: Most of the Decree's provisions were never implemented.

e) 1995 to date

In 1995, the newly enacted constitution declared all land in Uganda as vested in the citizens of Uganda as opposed to the government; to be owned in customary, freehold, *Mailo* and leasehold tenure systems. *Mailo* and freehold tenures, which were abolished by the Land Reform Decree, were reinstated. All persons owning former public land under customary tenure were given the right to acquire a certificate of ownership and convert their title to a freehold as prescribed in the Land Act 1998.

The Land Act 1998 was subsequently enacted – it provides an institutional framework for reform of land tenure in Uganda. Details ways land can be owned, occupied, used and disposed of.

Uganda adopted a National Land Policy in February 2013, which aims to, “ensure efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development.” It builds upon Uganda's 1995 Constitution, which grants “every person ...a right to own

property either individually or in association with others.” The Land Policy also builds on the 1998 Land Act. The discussions in the following chapters will therefore focus on the Constitutional provisions, the Land Act 1998 and subsequent amendments. Reference will also be made to other laws that regulate property rights in Uganda.

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Chapter 2: Land Tenure Systems and Procedures for Acquisition of Certificates of Land Ownership

This chapter discusses the different forms of land tenures, their characteristics, and how land ownership can be acquired and proved. The procedures of acquisition of a certificate of customary ownership and the different forms of land ownership are also discussed.

2.1 Land Tenure Systems in Uganda

Land tenure refers to the manner in which land is owned, occupied, used and disposed of within a community. The table below discusses in detail, the different types of land tenure, their characteristics, acquisition and proof of ownership.

Table 1: Freehold Tenure System

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| <p>Definition and Characteristics</p> | <ul style="list-style-type: none"> • A freehold is an estate in land held in fee simple or for term of life and derives its legality from the Constitution of the Republic of Uganda and section 3 (2) Land Act. • Types of freeholds in Uganda include alienated freeholds granted under the Crown Lands Ordinance 1903, the Public Lands Ordinance 1962, and the Public Lands Act 1969. Adjudicated freeholds were created in Ankole and Bugisu areas in 1958. Native freeholds were created in Ankole and Toro by virtue of the Ankole and Toro Agreements of 1900 and 1901 respectively. • The landowner owns the land in perpetuity i.e. for an unlimited time depending on a condition or happening of a certain event and may be passed on to future generations. • The landowner has full powers over land and can do anything lawful with the land, including power to sell, lease or transfer the land. • Freehold is subject to laws governing physical planning (through use conditions) and the environment through restrictive conditions for environmentally sensitive areas (Physical Planning Act of 2010, and National Environment Act, Cap. 153). • Freehold tenure cannot be acquired or held by a non-citizen (section 40 (4) Land Act). A non-citizen can only acquire a lease on freehold. • The Registration of Titles Act governs transactions, this means that the land is surveyed and a freehold certificate of title is issued. |
| <p>Method of Acquisition</p> | <ul style="list-style-type: none"> • Freehold grants are only given to non-customary owners of land. • Through an application to the District Land Board (DLB) for a grant of land in freehold, by a non-customary owner of land (section 10 Land Act) who acquire the land by either purchase or otherwise. Therefore a grant of freehold is subjected to assessment at the fair market value by the Chief Government Valuer (section 13(5) Land Act). • Through an application to the DLB for Conversion of Customary Tenure to Freehold Tenure by a customary owner of land (section 9 Land Act). • Through an application to the DLB to convert a lease acquired out of former public land into freehold. A number of conditions set in the Land Act have to be met by the lessee before the lease can be converted (section 28 Land Act). • Thereafter, subsequent rights under freehold tenure can be acquired through sale, gift and succession. |
| <p>Proof Of Ownership</p> | <p>Possession of a Freehold Certificate of Title (section 59 Registration of Titles Act).</p> |

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| Definition and Characteristics | <ul style="list-style-type: none"> • Leasehold land tenure system is provided for in the Constitution and section 3 (5) of the Land Act. • A person referred to as a tenant or lessee owns land through an agreement between him/her and the owner of the land known as landlord or Lessor. • Through the agreement, the Lessor grants exclusive possession of the land to the lessee for a specific period of time in return for a periodic payment of money called ground rent and a premium. • Land is held by the lessee for a given period of time from a specified date of commencement. • It is governed by terms and conditions, which may be regulated by law to the exclusion of any contractual agreements reached between the parties. For example, most leases granted on public land dictate that certain developments such as the construction of certain structures will be made. • A lessee can grant a sublease to another person (called a sub-lessee) who may register his/her interest as an encumbrance on the lessee's Leasehold Title. • In event of a breach of the lease terms and conditions, the lease may terminate. • A grantee of a lease of three years or more is entitled to a Certificate of Title if he or she is a Ugandan citizen and for non-citizens, the lease must be for five years or more for it to be registered. • Leases can be extended, varied or renewed. Variation affects terms of the lease including the duration and user clause. A lease is renewed when the full term has expired following which a fresh lease is granted. Extension of a lease increases the initial term which was granted.. <p>Note; a non-citizen cannot be granted a lease for more than 99 years (section 40 (3) Land Act).</p> |
| Methods of Acquisition | <ul style="list-style-type: none"> • <i>Private lease</i> - a person or institution can obtain a lease from an owner of freehold, customary or <i>mailo</i> land. • <i>Public lease</i> - a person can also acquire a lease on public land from the DLB or ULC on former public land or Government land respectively. Such leases are usually granted for duration of 5, 49 or 99 years. Five (5) years is referred to as the “<i>initial term</i>” where the lessee is granted a conditional lease to comply with the building covenant before it can be extended to 49 years which is called “<i>the full term</i>”. After expiry of the <i>full term</i>, the lessee may apply to the DLB or ULC for renewal of lease on different terms (premium and ground rent). Government institutions (schools, hospitals, installations) are given automatic <i>full terms</i> of 49 or 99 years. Any lease that was granted to a Uganda citizen out of former public land may be converted into freehold (section 28 Land Act). • Mining leases - these are granted for mining purposes by the Geological Department to holders of mining licenses. • Ranching leases - these are granted to owners of gazetted ranches under the Ranches Restructuring Scheme. |
| Proof Of Ownership | <ul style="list-style-type: none"> • Possession of Certificate of title. • Unregistered leases can be proved by a lease agreement between the Lessor and the lessee. |

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| Definition and Characteristics | <ul style="list-style-type: none"> • Created by the 1900 Buganda Agreement and is only peculiar in central and western Uganda. • It involves holding of registered land in perpetuity. • Ownership of land by a <i>mailo</i> owner is separated from ownership of developments on land made by <i>lawful</i> and <i>bonafide</i> occupants. • A <i>mailo</i> owner has full powers over his/her land and can sell, mortgage, or deal with it in any way BUT this is subject to the rights of <i>bonafide</i> and <i>lawful</i> |
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|-------------------------------|---|
| | <p>occupants on the land (section 3(4) (c) Land Act).</p> <p>Note: A <i>Mailo</i> owner is entitled to enjoy all the powers of a freehold owner. The only significant difference is that <i>Mailo</i> owners should not use these powers against the interests of <i>bona fide</i> or <i>lawful</i> occupants.</p> |
| Methods of Acquisition | <ul style="list-style-type: none"> • Some <i>mailo</i> owners acquired <i>mailo</i> land as a result of the 1900 Buganda Agreement where land was given to prominent members of the kingdom. • Subsequent rights under <i>Mailo</i> tenure can be gained through sale, gift and inheritance, and subdivision. |
| Proof Of Ownership | <ul style="list-style-type: none"> • <i>Mailo</i> owners possess a Certificate of Title. • Proof of ownership for <i>lawful</i> and <i>bonafide</i> occupants is a Certificate of Occupancy, social occupancy by oral evidence and receipt of payment of ground rent. |

Table 4: Customary Tenure System

| | |
|---------------------------------------|--|
| Definition and Characteristics | <ul style="list-style-type: none"> • Land is owned and disposed of in accordance with customs, norms and practices of a specific community. • It is applicable to a specific area of land and a specific class of people. • It is governed by rules and practices generally accepted as binding and authoritative by the class/group of people to which it applies BUT such rules and practices must not be discriminatory against women, children and persons with disability (section 3 (1) (b) Land Act). Note: These rules also apply to persons acquiring land in that area. • It provides for communal ownership and use of land. • Parcels of land may be recognised as sub divisions belonging to a person, family or traditional institution. • Land is owned in Perpetuity. • Customary land may be converted to freehold tenure by registration (section 9 Land Act). <p>Difference between customary tenure and other tenures;</p> <ul style="list-style-type: none"> ✓ Unlike other tenures, it is not titled i.e. one does not necessarily require a Certificate of Title to prove ownership. ✓ Customary land is governed by customs norms and practices of a particular community whereas other tenures are governed by written laws. ✓ The land is not surveyed; it is only demarcated by traditional plants e.g. <i>Oruyenje</i> (in Ankole), <i>Ebiryobwa</i> (in Bunyoro) or <i>Oluwanyii</i> (in Buganda). ✓ It constitutes over 80% of Uganda's land tenure regime and is the most susceptible to abuse by land grabbers. |
| Methods of Acquisition | <ul style="list-style-type: none"> • By inheritance following traditions, customs, rules and practices of a given community. • Through sale, transfers, gift, or lease. |
| Proof Of Ownership | <ul style="list-style-type: none"> • By Certificate of Customary Ownership (section 4 Land Act). Note: Non acquisition of Certificate of Customary ownership does not take away ownership rights of a customary land owner. • It can also be proved by witnesses, word of mouth supported by demarcations, receipts and sketches maps. |

2.2 Procedures for Acquisition of Certificates under the Different Tenure Systems

2.2.1 Procedure for acquiring a Certificate of Customary Ownership.

- The applicant submits an application form (Form I) to the Area Land Committee upon payment of an application fee of shs. 5,000/=.

- Committee puts a public notice (Form 9) in a known place in the parish usually on trees, church notice boards, market place, and on the land being applied for. The notice specifies the location and approximate area of the land and requires all persons claiming interest in the land applied for to attend a meeting of the Committee at a specified time and to put forward their claims. The public notice is for 14 days.
- The Area Land Committee adjudicates and makes a decision following the customs of the area on any interest, questions or matter concerning the land applied for.
- After expiry of the 14 days' notice, the Area Land Committee conducts a site inspection of the land and confirms and marks boundaries of the land applied for.
- The Area Land Committee makes an inspection report on the application and submits it to the DLB, gives a copy to the applicant and a copy for any person who submitted a claim on the land.
- The Area Land Committee fills in a demarcation form (Form 23), where they draw a sketch of the land applied for. Copies of the form are sent to the DLB, the applicant, and the ALC retains one. The sketch must be drawn with a black or blue pen and is not drawn to scale. It must reflect all possible easements and other prominent features on the land. This form must be signed by the customary land owner, neighbours, and at least two (2) witnesses.
- The DLB considers the application referring to the report and recommendations of the Committee and may reject or confirm the application.
- If the application is approved, the Board makes copies of the sketch, sends it to the Recorder, and in writing, requests him/her to issue a Certificate of Customary Ownership.
- The Recorder then makes and hands over the Certificate of Customary Ownership to the applicant.

A Certificate of Customary Ownership (CCO) is deemed by section 8(1) Land Act to be conclusive evidence of the customary rights and interest endorsed in it and the owner of the Certificate can lease, mortgage, pledge, transfer and sell that land subject to the rights of those mentioned in the Certificate. The Certificate is recognised by financial institutions, bodies and authorities as a valid Certificate for purposes of evidence of title. Where the transaction is a mortgage made under the Mortgage Act, the mortgagee has the power to sell and execute a transfer of that land to a purchaser in case of default by the mortgagor.

The holder of a CCO who undertakes any transaction in respect of the land to which the Certificate relates must provide the Recorder with a copy or record of the transaction. Failure to fulfil this requirement renders the transaction invalid¹. It should be noted that any third party who undertakes any transaction with regard to the land in the Certificate exercises his/her rights over the land in accordance with customary law.

2.2.2 Procedure for acquiring a Freehold Land Title from the District Land Board under Section 12 of the Land Act

There are three (3) methods of acquiring a freehold from the DLB, namely;-

- 1) Conversion of customary land tenure to freehold;
- 2) Grant of freehold; and
- 3) Conversion of leasehold to freehold.

Step I:

- For the first two (2) modes of acquiring freehold land title, the applicant submits an application in Form 4 under regulations 10, 11, 12, to the Area Land Committee. The applicant must clearly disclose what he/she is applying for, i.e., either for conversion of customary tenure to freehold or for grant of freehold. **NOTE:** A grant of freehold is given to a non-customary land owner who has acquired the customary land by purchase. The grant attracts a fee and any other charge at the fair market value which is set by the District Land Board and is assessed by the Chief Government Valuer (section 13(5) Land Act). Conversion of customary land to freehold, on the other hand, does not attract a charge at the fair market value because the land is already owned by the customary owner.
- If the applicant is applying to convert customary land to freehold, then the application fee is shs. 15,000/=. If he/she is applying for grant of freehold, the fee is shs. 20,000/=
- The Committee puts a public notice (Form 10) in a known place in the village e.g. market, tree, Church, and on the land being applied for, under Regulation 17. The notice (notice of hearing application for grant of freehold) stays in force for fourteen (14) days then the inspection is done and recommendation given.
- The Committee confirms and marks the boundaries during inspection and fills in the demarcation form (Form 23) under Regulation 28 which must be signed by neighbours, witnesses and members of the Area Land Committee.
- The Committee makes a decision following the customs of area on any question or matter concerning the land applied for. Listens to claims and interests of other people on the land.
- The Committee makes inspection report and submits it to the Board.
- The Board may confirm or reject the report of the Committee.
- If approved, the DLB then gives provisional approval for survey of the land by issuing an Instruction to Survey (IS) through the District Staff Surveyor. Survey is conducted by professional registered private surveyors, who map the land and process survey data in a file called a 'Job Record Jacket' (JRJ).
- Once the JRJ is complete, it is sent to the Drawing Office, which then issues "deed plans". Deed plans show the Block/Road name, plot number, acreage (in hectares) and location of the land on the cadastre.
- Once survey is complete, the Board gives the final approval and authorizes the issue of a Freehold Certificate of Title.
- If a person is not satisfied with the decision of the Board, he/she appeals to the District Land Tribunal (DLT).

STEP 2: The applicant must then present to Department of Land Administration (MLHUD) the following set of original documents in duplicate and photocopy of the same for checking:

- a) Completed Forms 4 (application for grant of freehold), 10 (notice of hearing of application for grant of freehold/leasehold), and 23 (demarcation form).
- b) A set of three(3) authentic deed plans
- c) Three(3) passport photographs
- d) Area Land Committee report
- e) District land officer report
- f) Receipts of payment
- g) A forwarding letter requesting for a freehold title signed by the District land officer of the respective district where the land is located.

STEP 3: The photocopy is then stamped “Received” and returned to the applicant as an acknowledgement of receipt. The applicant checks with the department of Land Administration after ten (10) working days to confirm their approval or rejection.

STEP 4: Once approved, the document will then be forwarded to the office of titles for issuance of a freehold land title. The applicant checks after twenty (20) working days.

STEP 5: The applicant then presents the photocopy given to him/her by the department of Land Administration stamped “Received” and identification documents on collecting the freehold Title. The applicant signs for the Title and the photocopy is stamped “Returned” on completion.

Fees to be paid on a Freehold Certificate of Title

- a) Registration fees – shs.10,000/=
- b) Application fees – shs. 20,000/= (for grant of freehold); shs.15,000/= (for conversion)
- c) Assurance of title – 1% of the improved value of the land (see s.34 of the RTA)
- d) Issuance of title – shs. 20,000/=

Adapted from MLHUD Access to Information Manual, 2012/2013.

2.2.3 Procedure for conversion of leasehold to freehold

STEP 1: The applicant fills in Form 5 in triplicate and pays the following fees on the application:-

- a) Shs.40,000/= for rural land
- b) Shs. 100,000/= for gazetted urban land
- c) Shs. 200,000/= for any land in excess of 100 hectares.

STEP 2: Form 5 must be commissioned by a Commissioner for Oaths and it must meet the following conditions under section 28 of the Land Act:

- a) The lease must be running and on full term;
- b) All the conditions under the lease must have been complied with by the lessee;

- c) The land to be converted must not be in excess of 100 hectares; otherwise, the applicant must pay for the market value for each extra hectare as assessed by the Chief Government Valuer;
- d) The lease must be genuine and authentic;
- e) The lessee must be a citizen of Uganda; a non-citizen is not allowed to convert a lease to freehold;
- f) Any customary tenants on the land must be compensated by the lessee before conversion to freehold.

STEP 3: The application is then tabled before the DLB, together with a technical report by the District Land Officer certifying that the application complies with s.28 of the Land Act.

STEP 4: Once approved, a freehold title is processed and the leasehold title is labelled “*Converted to Freehold*” by the office of Titles;

STEP 5: Once converted to freehold, the leasehold is automatically terminated.

2.2.4 Procedure for acquiring Leasehold land Title from the Board out of Public Land.

Step 1:

- The applicant submits application Form 8 to the Committee, which attracts a fee of shs. 20,000/=.
- Area Land Committee confirms and marks the boundaries during inspection by filling Form 23.
- The Committee makes decision following the customs of the area on any question or matter concerning the land applied for. Listens to claims and interests of other people on the land.
- The Committee makes inspection report and submits it to the Board. The Board may confirm or reject the report of the Committee.
- If approved, the District Land Board then gives provisional approval for survey of the land by issuing an Instruction to Survey (IS) through the District Staff Surveyor. Survey is conducted by professional registered private surveyors, who map the land and process survey data in a file called a “Job Record Jacket” (JRJ).
- Once the JRJ is complete, it is sent to the Drawing Office, which then issues “deed plans”. Deed plans show the Block/Road name, plot number, acreage (in hectares) and location of the land on the cadastre.
- If the land is already surveyed, the District Land Office requests for deed plans from the Department of Surveys and Mapping.
- Once survey is complete, the Board sets terms and conditions to the lease on the Lease Offer (Form 18) namely:-
 - a) Premium
 - b) Ground rent
 - c) User restrictions e.g. commercial, residential etc.
 - d) Building conditions especially for urban leases

- e) Other covenants e.g. redevelopment conditions etc.
- If premium and ground is paid, the lessee is deemed to have accepted the terms of the lease.
- If accepted the Board authorizes the issue of a Leasehold Certificate of Title.
- If a person is not satisfied with the decision of the Board, he/she appeals to the District Land Tribunal.

Step 2: The applicant must then present to Department of Land Administration (MLHUD) the following set of original documents in duplicate and photocopy of the same for checking;

- a) Completed forms 4, 10, 18, and 23.
- b) A set of three(3) authentic deed plans
- c) Three(3) passport photographs
- d) Area Land Committee report
- e) District land technical officer report
- f) Receipts of payment
- g) A forwarding letter requesting for a Lease hold Title signed by the District land officer of the respective district where the land is located.

Step 3: The photocopy is then stamped “Received” and returned to the applicant as an acknowledgement of receipt. The applicant checks with the department of Land Administration after ten (10) working days to confirm their approval or rejection.

Step 4: Once approved, the document will then be forwarded to the office of titles for preparations and issuance of lease agreements. The applicant checks after ten (10) working days to pick up Lease agreements for signing and sealing by the Chairperson and the Secretary of the respective District Land Board and to pay stamp duty, which is 1% of the premium multiplied by the number of years granted.

Step 5: The applicant presents fully signed and sealed lease documents by the Board Chairperson and Secretary and Lease agreements embossed by Uganda Revenue Authority.

Step 6: The applicant then presents the photocopy given to him/her by the Office of Titles (MLHUD) stamped “received” and identification documents on collecting the Leasehold Title. The applicant then signs for the Title and the photocopy is then stamped “Returned” on completion.

Fees to be paid on a Leasehold Certificate of Title

- a) Registration fees – shs.10,000/=
- b) Application fees – shs.20,000/=
- c) Assurance of title – 1% of the improved value of the land (section 34 of the Registration of Titles Act)
- d) Issuance of title – shs. 20,000/=
- e) Preparation of lease- shs.20,000/=

2.2.5 Subdivisions on Mailo land

- Step 1:** The Applicant must have in his/her possession a duplicate Certificate of Title, fully filled Mutation Form (which indicates how you would like the land to be divided), and two (2) authentic Passport photographs of the owner (seller). The Mutation Form must have been stamped by a registered Surveyor accompanied by Form 2 under the Physical Planning Act, 2010, fully filled by the registered owner, dated and signed by all the necessary parties.
- Step 2:** The Applicant presents the originals and a photocopy of the documents to the *Mailo* registry for checking and approval of the subdivision, in order to proceed. The documents are received and the photocopy will be stamped 'Received', as an acknowledgment, and returned to the Applicant.
- Step 3:** The Applicant checks after five (5) working days to collect the documents. The applicant will present the photocopy (acknowledgment) of the documents stamped 'Received' and on collection will be stamped 'Returned'.
- Step 4:** The Applicant presents to the Mailo Registry an Approved Mutation Form from the District Surveyor, with an Area Schedule, Receipts of checking fees, Deed Plan fees, registration fees, a duplicate Certificate of title and passport photographs, and a set of the same documents but in photocopy. The photocopy will be stamped 'Received' as an acknowledgment of receipt and returned to the applicant.
- Step 5:** The applicant checks after ten (10) to twenty five (25) working days.
- Step 6:** The Applicant presents identification documents and the photocopies (acknowledgment) to collect the Duplicate Certificates of Title. The applicant will sign for the Titles and the 'photocopy will be stamped 'Returned' on completion.

2.2.6 Special Certificates of Title/replacing a lost or damaged Title

- Step 1:** The Applicant must have in his/her possession an application for a Special Title, Statutory declaration attached to application duly filled, signed by the applicant and witnessed by a Commissioner for Oaths and two (2) Passport size photographs of the person requesting for the Special Certificate of Title. The Applicant must have paid shillings fifteen thousand (15,000/=) as Registration fees; shillings ten thousand (10,000/=) as Stamp Duty- shillings five thousand (5000/=) on the Application & shillings five thousand (5,000/=) on the declaration.

- Step 2:** The Applicant presents the full set of original documents and a photocopy of the same, to Office of Titles for processing. The Photocopy will be stamped 'Received' as an acknowledgment and returned to the Applicant.
- Step 3:** The Applicant should check with the Office of Titles after five (5) working days to pick a letter to the Uganda Gazette for notification of the public on the impending issuance of a Special Certificate of Title.
- Step 4:** After thirty (30) days notification, the Applicant presents a receipt for the Gazette to the Department of Land Registration for confirmation of the publication.
- Step 5:** The Office of Titles verifies the receipt and the Gazette notice and proceeds to issue a Special Certificate of Title.
- Step 6:** After ten (10) days, the Applicant, upon presentation of the photocopy stamped "Received" (acknowledgment) collects the Special Certificate of Title. The Photocopy will be Stamped "Returned" on completion.

2.2.6 Amalgamation/merger

Adapted from MLHUD Access to Information Manual, 2012/2013.

2.3 Forms of Land Ownership

There are two different forms of land ownership; private land, and land held in trust by Government. These two forms of land ownership are discussed in detail below.

2.3.1 Private Land

Private land is owned individually, by families or communities according to the existing tenure systems in Uganda. Every person has the right to own land either as an individual or in association under any of the four land tenure systems discussed above, and every owner is entitled to a Certificate of Title as per Article 26 of the Constitution. Land may also be held by several persons as co-owners, as joint owners, or as "owners in common" for example in marriage and communal ownership of customary land.

A person can only be deprived of their land through compulsory acquisition by the Government or a Local Government Article 26 (2) of the Constitution.

Communal land is land held by a specific community or group of people recognising individual rights in that land and regulating its use and management. It has more than one owner and the land is typically used by a specific community usually for grazing, hunting, forest land or cultural sites such as shrines. The Land Act provides for the formation of Communal Land Associations that can register their interest in the land by acquiring a CCO (section 15 Land Act).

To register community/communal land, the group must apply to the District registrar to

become an Association. The Registrar convenes and chairs a meeting of members of the Association in not less than 21 days. The officers elected prepare the constitution of the Association with the assistance of the Registrar who then certifies it. The Registrar has supervisory power over the activities of the Association. **Note:** Communal land can be held on a CCO, Freehold or Leasehold Title by the managing Committee on behalf of members of the Association.

2.2.2 Public Land and Land held in trust by Government

Government land is land vested or acquired by government for the purpose of carrying out the functions and services of government. Government land comprises and is limited to the land that was in use by government when the Constitution came into effect on October 8, 1995. Land in government use at that time includes: land on which there are government offices, schools, hospitals, police and military quarters.

Under Article 237(1)(b) of the Constitution of Uganda, Government or Local Government is mandated to hold in trust for the people, natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological (environmental) and tourist purposes for the common good of all citizens. Parastatal bodies are usually appointed by law to manage these lands e.g. National Environmental Authority, Uganda Wildlife Authority and National Forestry Authority. The Uganda Land Commission holds and manages land vested in or acquired by the government of Uganda in accordance with the Constitution such as Diplomatic Missions abroad.

Chapter 3: Land Transaction Protection and Restriction.

This chapter entails aspects of land administration relating to protection of interests in land of various categories of rights of individuals, institutions and communities, the different land transactions or dealings that accrue in land management and the restrictions and covenants associated with land usage, ownership, and acquisition under the four tenure systems in Uganda.

3.1 Land Transactions

A number of transactions take place in land involving different players such as sellers, purchasers, tenants, landlords and other parties dealing in land and these include:

3.1.1 Sale

This involves a seller and buyer arrangement by executing a sale agreement and applies to all the four tenure systems of land. For the case of registered land upon purchase of the land, the seller signs a transfer form in favor of the buyer. The buyer submits the signed form to the Land Registry from where his/her names are effected on the Certificate of Title.

Transfer of land under leasehold, Freehold and Mailo.

- The applicant /buyer presents a fully completed set of transfer forms which include a transfer form and two(2) consent forms, a photocopy of the duplicate certificate of title and two(2) authentic passport photographs of the buyer and seller to the valuation division for valuation assessment for stamp duty. Stamp duty is 1% of the value of the land as is assessed by the Chief Government Valuer. But for mailo land valuation is done by the respective District Cashiers.
- The applicant/buyer pays fees in the bank, obtains a receipt and the transfer form is embossed. The applicant is required to get consent from the controlling authority of the Lease Title (in case of public land).
- The applicant then submits the duplicate Certificate of Title, receipts and photocopies of all documentation to the Lease/Freehold /Mailo Registry.
- The applicant presents identification documents and photocopies to collect the Duplicate Certificate of Title. He/She signs for the Title and the Photocopy is stamped “Returned” on completion.

Adapted from MLHUD Access to Information Manual 2012/2013.

The Registration of Titles Act gives general conditions of sale that form part of the contract if agreed. These conditions include;

- The sale is finalized when the last payment is made, however the buyer has a legally recognized interest from the date of the initial payment.
- All roads leading to the property, the areas shall be deemed by the purchaser to belong to the land or to have become public roads.
- The buyer has a legal obligation to do a title search and inform the seller of any

- problems associated with the land such as caveats and squatters among others.
- On completion of the sale the seller should sign the transfer forms of the land at the purchaser's expense.

Precautions when Acquiring Land through a Sale

- Visit the locus; inquire from neighbors if the land is occupied and by whom. In case of customary tenure, also establish whether the purported seller has a right to sell.
- Conduct a search at the land registry to confirm ownership of the land, to check for any encumbrances such as caveats mortgages (*this only applies to registered land*). When conducting a physical search, make a written request to the office of Titles giving description of the land i.e for Mailo; the County and Plot Number, for Leasehold; the leasehold Register Volume and Folio No and for Freehold; the Freehold Register Volume and Folio No. The application is then forwarded to the records section to retrieve the file. Upon payment of 10,000 Ugandan shillings in the Bank and verification of receipt of payment, a search letter is signed by the Registrar of Titles and issued to the applicant.
- In case of family land, make sure there is consent from the spouse.
- Draft a sales agreement.
- Make the seller sign transfer forms, which you submit to the registry to effect transfer to the buyer (*this only applies to registered land*).

3.1.2 Mortgage

A mortgage is a transaction whereby an interest in land is given as security for the repayment of a loan. The security is in the form of a Certificate of Title or Sale Agreement and CCOs for customary land. The landowner who has obtained the loan is called a “mortgagor” and the loan giver is called a “mortgagee”. This applies to all the four land tenure systems in Uganda and the land reverts back to the owner when the loan/mortgage has been paid off. Although mortgages do not transfer ownership to the mortgagee, they give him/her interest and a right over the land in question and default/failure to pay the loan gives the mortgagee a right to possess and own the land. Any transactions on the land are subject to the mortgage.

Registration of a Mortgage

- The applicant presents two (2) sets of embossed, duly signed and witnessed Mortgage Deeds; Duplicate Certificate of Title and two (2) passport photographs of the person registering the mortgage to the department of Land Administration for processing. The documents must be in both original and photocopies.
- The photocopies will be stamped “Received” as an acknowledgement of receipt and returned to the applicant.
- After ten (10) working days, the applicant upon presentation of the photocopy stamped “Received” then collects the duplicate certificate of title together with a Mortgage Deed. The Photocopy will be stamped “Returned” on completion.
- Stamp duty is 0.5% (section 2 Stamps (Amendment) Act, 2002) of the value of the mortgage and Registration fees is 15,000/=. If it is a Company, an additional 5000/= is paid for perusal of company records. If the Mortgage affects more than one title, 5000/= is paid for each extra plot.

Adapted from the MLHUD Access to Information Manual, 2012/2013.

3.1.3 License

A license is permission given to a *licensee* by the owner of the land (*licensor*) for a specific purpose. This arrangement does not create an interest or transfer ownership of the land but merely gives the licensee access to the land for a purpose. In addition, it only binds the parties to the license agreement; for example, people who conduct activities on wetlands National Environment Management (NEMA) Act, hunting in game reserves – Wild Life Act.

3.1.4 Lease

This is a form of tenure where the landlord grants the tenant exclusive possession of the land purchased for a given period of time with terms and conditions. The terms and conditions may include; duration of the lease, usage of the land etc. in addition, a tenant cannot sub lease without consent of the landlord.

3.2 Protection of Land Rights

Every person has a right to own property either individually or in association with others. The property in question includes land (Article 26, 1995 Constitution). The Constitution and the Land Act offers protection to land rights in a number of ways to different categories of individuals, institutions and communities. This sub section addresses protection of land rights of the women, minorities, *bonafide* and *lawful* occupants. For each of the categories, this section will address provisions within the law that provide for their rights to land and the different ways in which these rights can be enforced and protected.

3.2.1 Rights of women

Equality with men before the law and Prohibition of discriminatory customs

The 1995 Constitution guarantees women a right to equal treatment with men in political, economic and social activities under Article 33. It goes ahead to prohibit customs, laws, cultures and traditions that undermine the dignity welfare and interest of women as provided by the 1995 Constitution Article 32. This applies to customs that prevent women from acquiring land especially under customary tenure system, which is governed by customary law.

The law further restricts any dealings in land (selling, mortgaging, leasing, and donating) by providing for the requirement of spousal consent for any transaction on family land and this applies to all the tenure systems in land administration. (*Section 39 of the Land Act (Cap 227) and Section 20 of the Land Act 2004 as amended*) / The consent must be written before any undertaking is done and without it the transactions are deemed null and void.

Spousal consent in dealings on family land

The Land Act refers to “*family land*” as land where the family normally resides and derives sustenance and is treated as family land according to the norms, culture, customs, traditions or religion of the family.

“Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void” (section 27 Land Act).

Representation of women

The Land Act provides that a third of the DLBs composition must be women and at least one of the members to the ALC should be a woman. This enables women’s participation in land administration and management and ensures inclusion and protection of women’s rights in land matters (Section 57 of the land act cap 227 as amended). In addition, Land Committees are required to protect the interests of women, children and PWDs.

3.2.2 Minorities

The Constitution of Uganda makes provision for the protection of ethnic minorities/indigenous groups. National Objectives III and VI of the Constitution of Uganda 1995 prescribe a culture of cooperation and tolerance for the various customs and traditions resident in the country as well as the gender balance and fair representation of marginalized groups on all Constitutional and other bodies. Marginalization of Ethnic Minority Groups (EMG) is prohibited under Article 32(1) while Article 36 assures specific protection of the rights of minorities. Article 180(2) (c) provides for affirmative action and participation on local governments for all marginalized groups referred to in article 32 of the Constitution.

- Section 24 of the 1998 Land Act details the right to land of communities to graze, hunt, gather honey and other forest resources for food and medicinal purposes, and any other purposes as may be traditional among the community. It is noticeable however that the 1998 Land Act fails to address land claims of minority and marginalized groups. The Uganda National Land Policy seeks to bridge these gaps and contains important recognition of the rights of minorities and of pastoralists whose rights are to be guaranteed by the State. The Policy recognizes ethnic minorities as “*ancestral and traditional owners*” and that development of natural resources “*often takes place at the expense of the rights of such ethnic minorities*”.
- In the National Land Policy, the Government of Uganda commits to pay fair compensation to EMGs displaced from their ancestral lands - in the past and in the future - which provision is a fundamental step that could see disenfranchised indigenous communities such as the Karimojong, Batwa and Benet finally compensated for eviction from their natural habitats that were later gazetted as national parks.

- The National Environment Statute of 1995 protects customary interests in land and traditional uses of forests. However this Statute together with the Land Act authorize the government to exclude human activities in any forest area by declaring it a protected forest, thus nullifying the customary land rights of Indigenous Peoples.

* Adapted from *Ethnicity and Human Rights in Uganda: A Desk Study of Human Rights issues faced by Ethnic Minorities and Indigenous Groups Final Report 2012, Global Rights.*

3.2.3 Lawful and Bonafide Occupants on Land

The relationship between *lawful* and *bonafide* occupants (tenants) and registered landowners is regulated through the rights and obligations outlined in the Land Act. These regulations ensure protection of land rights of the tenants as follows:

- *Lawful* and *bonafide* occupants enjoy legal guarantee of continued occupancy under the Land Act. They can only be evicted under the following circumstances;
 - a) Failure to pay ground rent as determined by the Board in the locality where the land is situated (section 31 (3) Land Act).

3.3 Ways of Protecting Interest in Land

Any individual, institution or community whose interests in land have been violated may protect their interests through the following ways;

3.3.1 Lodging a Caveat

A *caveat* is an instrument that operates as security to protect the unregistered interests/claims of the *caveator's* to land. This is done through an application to the Registrar of Titles and before any registration on the title can be made, notice must be issued to the *caveator*.

To lodge a caveat the following is required;

- **A Caveat** is in the form set out in the Fifteenth Schedule to the Registration of Titles Act and it should be completed in duplicate.
- The Caveat should contain:
 - The name, address and occupation of the person lodging the it,
 - The description of the land,
 - The specific estate or interest being claimed,
 - The value of the interest being claimed,
 - An address for service of notices and proceedings,
 - Statutory Declaration setting out the circumstances under which the claim arises. (In cases where there are no documents to sustain the claim)
 - Appropriate Registration fees should be paid.
 - The caveat must be duly witnessed by an Advocate and signed by the person who is placing it (deponent) and dated; the Statutory Declaration must be signed by the deponent and a commissioner for Oaths.

- Two (2) passport photographs of the person placing the caveat.
- You may attach copies of the relevant documents evidencing the interest being claimed, for example, a sale agreement, marriage certificate spouses.
- However, the Registrar of Titles may request additional information or proof depending on the facts of each case. There is no need for the duplicate Certificate of Title to lodge a *caveat*. A *caveat* is noted on the original Certificate of Title only.

Note: Lodging a *caveat* without reasonable cause may lead to compensation to any person who may have sustained damage by the lodging of the same as the High Court deems just and orders as provided under Section 143 of the Registration of the titles Act.

3.3.2 Application to a Court

Where one's interest in land is under threat, she/he may apply to a court of law for an order by seeking remedies to protect this interest through a number of ways as follows;

1. An injunction to stop an act from being done on the land
2. An eviction in case of trespass on land
3. Compensation in case of deprivation

3.3.3 Registering Interest

One may apply for a Certificate of Title on which their names will be registered for proof of ownership (see notes above under sale). For the case of a *lawful* or *bonafide* occupant one may apply for a Certificate of Occupancy.

Application for a Certificate of Occupancy

1. The tenant by occupancy applies to the registered owner for a Certificate Customary Ownership using Form 2 with evidence that he/she has paid annual ground rent.
2. On receiving the application, the registered owner signs the application and forwards it to the Committee for verification.
3. The Committee visits the land and determines and verifies the boundaries.
4. The Committee sends back the application to the landowner who either grants the consent or refuses to grant consent to the application and gives reasons for refusal if that is the case.
5. The landowner gives consent for issuance of a Certificate of Occupancy. The form is presented to the Board for forwarding to the Recorder, who issues the Certificate of Occupancy (Form 32).

3.4 Restriction on Land Rights

Land rights are guaranteed for landowners and tenants however, there are a number of restrictions associated with land ownership and usage that form part of the agreement between landlords and tenants, and some are associated with the tenure systems while others apply to individual interest in land. This section therefore looks at the restrictions on land in the form of terms, conditions or covenants relating to the land.

3.4.1 Restrictive covenants

These are associated with lease agreements that contain terms and conditions. If the terms and conditions are breached they may lead to termination of the agreement between the landlord and tenant. Such covenants include;

- Quiet enjoyment of the premises by the tenant,
- The premises to be fit for habitation, and Payment of dues by the tenant.
- For leases granted by the District Land Board, a lessee cannot sublease without the consent of the Board.

3.4.2 Easements

This is an interest in land with rights attached to it that entitles the owner to either allow or restrict use of the land by third parties. Example of an easement is a path over a neighbors land.

3.4.3. Road Reserves

The Minister may by statutory instrument declare an area bounded by imaginary lines parallel to and distant not more than fifty (50) feet from the centre line of any road to be a “road reserve”. It must be kept clear and no person shall, except with the written permission of the road authority, erect any building or plant any tree or permanent crops within a road reserve (section 2 of the Road Act - Cap 358).

3.4.4 Physical Planning

The Physical Planning Act declares the entire country as a planning area. A Physical Planning Committee exists at the district, urban and local level and any developments to be carried out at all these levels must be with the permission of the PPC (section 33 of the Physical Planning Act 2010).

The Act further provides that the Physical Planning Committees of local government have the power to;

1. Prohibit the use and development of land in the interests of the community;
2. Prohibit the consolidation or subdivision of land or existing plots;
3. Ensure the proper execution and implementation of approved local physical development plans;
4. Initiate formulation of bye-laws to regulate physical development; and
5. Ensure the preservation of all land planned for open spaces, parks, urban forests and green belts, environmental areas, social and physical infrastructure and other public facilities, in accordance with the approved physical development plan (section 32 Physical Planning Act).

As such, developments cannot be made within a planning area without permission from a Physical Planning Committee (section 22 Physical Planning Act).

3.4.5 Rights of Way

“Rights of way” refer to the legal right to public pass through property belonging to another individual or institution in order to access an otherwise isolated plot of land or community resource such as river or borehole. Rights of way usually apply to a specific route or sections of the property known as easements. All land, whether alienated or unalienated, is subject to existing public rights of way and all rights of way must be maintained by the public unless terminated or altered by the direction of the Minister in writing.

3.4.6 Environmental Management

The Constitution vests natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and tourist purposes in the State in trust, to protect for the common good of all citizens (Article 237 (2) (b) of the Constitution).

The National Environment Act (Cap 153) provides for limitation on activities around lakes, rivers (section 33), wetlands (section 36) and mountainous areas (section 38 &39).

According to the Land Act, government or a local government shall not lease out or otherwise alienate any natural resource referred to under section 44 (4) of the Land Act. As such, any land titles for wetlands or land within regulated lakeshores and riverbanks are illegal unless issued before the 1995 Constitution. However, government or a local government may grant concessions, licenses or permits in respect of a natural resource referred to in the section subject to any law section 44 (5) of the Land Act.

The use of wetlands is heavily restricted and draining, building structures, damaging or disturbing the wetland by depositing substances, drilling or tunneling in a manner likely to have adverse effects on the wetland or any plants or animals within it unless authorized by the National Environmental Management Authority (NEMA) is strictly regulated section 36 (1) NEMA Act Cap. 153).

Activities permitted to take place in these areas with a permit from the Authority include;

- Brick making,
- Recreational activities such as sport fishing,
- Maintenance of green spaces,
- Cultivation,
- Drainage,
- Fishing using fish gear and weirs,
- Fish farming and other aquaculture,
- Construction of transport and communication facilities such as roads, railways, telephone lines, burning, and
- Any other exploitative activity of a commercial or trade nature, such as harvesting of papyrus for commercial purposes.

3.4.7 Landlord/tenant relationship

A tenant is restricted from undertaking any land transaction without submitting an application for consent from the owner of the land. The owner who wishes to transact is obliged to give the first option to the tenant to purchase the land. Furthermore, tenants who wish to assign the tenancy are obliged to give the first option to the owner of the land to purchase interest.

3.4.8 Central forest reserves

The National Forestry Authority under its established Act regulates any activities that impact on areas gazetted as national forests both central and local and for any activities to be conducted in these areas one must obtain a license from the Authority (Section 41 of the National Forestry and Tree Planting Act 2003).

3.4.9 National Parks Game Reserves

The Uganda Wildlife Authority under its established Act regulates any activities that impact on areas gazetted as national game parks, reserves, conservation areas and areas that are habitant to wildlife and one must obtain permission from the authority to conduct any activities in these areas.

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Chapter 4: Succession, Inheritance and Land Rights

Succession refers to the action or process of inheriting property and varies according to whether the deceased person left a valid Will (testate) or not (intestate). The discussion in this Handbook centres on succession of land related property, how to write a Will and how to apply for a probate or letters of administration.

4.1 Succession under Statutory Law

The law on succession is broad and focuses on the management of property of deceased persons. For titled land there are two ways to deal with a deceased persons' property depending on whether the person had a Will or not.

4.1.1 Testate Succession and Wills

Testate succession is where a deceased person leaves a valid Will describing how they want their property to be distributed. A person who makes a will is called the testator.

A Will is a document made by the testator while still alive declaring all his/her property and instructions on how he/she wants it distributed upon his/her death and by whom. A Will can be written or oral.

- A *written Will* is a document written by a testator indicating how his or her property can be distributed upon death.
- A *Privileged Will* may be made in writing or by word of mouth by any member of the armed forces being employed in an expedition or engaged in actual warfare, or any mariner being at sea, if he or she has completed the age of eighteen years section 53 Succession Act Cap. 162. The execution of a *privileged Will* is governed by the following provisions section 54 of the Succession Act;
 - ✓ It may be written wholly by the testator with his or her own hand, and in that case it need not be signed nor attested.
 - ✓ It may also be written wholly or in part by another person, and signed by the testator, and in that case it need not be attested.
 - ✓ If the instrument purporting to be a Will is written wholly or in part by another person, and is not signed by the testator, it is considered to be his or her Will if it is shown that it was written by the testator's directions, or that he or she recognized it as his or her Will; but if it appears on the face of the instrument that its execution in the manner intended by the testator was not completed, the instrument shall not, by reason of that circumstance, be invalid, if his or her non-execution of it can be reasonably ascribed to some cause other than the abandonment of the testamentary intentions expressed in the instrument.
 - ✓ If the testator has written instructions for the preparation of his or her Will, but has died before it could be prepared and executed, such instructions are considered to constitute his or her Will.
 - ✓ If the testator has, in the presence of two witnesses, given verbal instructions for the preparation of his or her Will, and those instructions have been reduced into writing in his or her lifetime, but he or she has

died before the instrument could be prepared and executed, such instructions are considered to constitute his or her Will, although they may not have been reduced into writing in his or her presence, nor read over to him or her.

- ✓ A testator may make a Will by word of mouth by declaring his or her intentions before two witnesses present at the same time; however such a Will becomes null at the expiration of one month after the testator has ceased to be entitled to make a privileged Will.

Who can make a Will?

- ❖ Under the Succession Act, any one above twenty-one (21) years can make a Will. The Constitution recognises the age of eighteen (18) as the age of majority. Therefore anyone above 18 years can make a Will.
- ❖ Both men and women whether married or single can make a Will.
- ❖ A person making a Will must be of sound mind, and must understand what he or she is doing,
- ❖ A person making a Will must make it freely without being forced or influenced or under duress by any person.
- ❖ No person can make a Will while he or she is in such a state of mind, whether arising from drunkenness or from illness or from any other cause that the person does not know what he or she is doing.

Property that can be given out in a Will

The Will cannot give away what does not belong to the testator; therefore, a testator can only bequeath what is his/hers.

- ✓ Under *Mailo land tenure*, a landlord can bequeath their title to the land while a *bonafide* occupant can only bequeath their interest in the land.
- ✓ Under *Leasehold land tenure*, the lessee can only bequeath the interest they hold as stipulated in the lease agreement e.g. a testator can only bequeath the lease for the period specified in the lease agreement.
- ✓ Under *Freehold land tenure* all rights are bequeathed in totality.
- ✓ *Matrimonial Home*: A testator cannot give away a matrimonial home in a Will unless adequate provision is made for the widow or widower, orphans and dependants. *Matrimonial home is a home which was occupied and owned by the deceased as his or her principal residence where the family resided.* A widow/widows or widower is entitled to live in the matrimonial home until he/she remarries and for the children of the deceased until they are eighteen (18) years of age.
- ✓ *Tenancy in Common*: Where two or more people own a piece of land in equal parts without the land being physically divided, upon death, the deceased person's share can be passed on to his or her beneficiary.
- ✓ *Joint tenancy*: Under joint tenancy, several persons own land jointly and there is unity in title, time and possession. Upon the death of one joint tenant, the land automatically vests in the surviving partner.

Note: The testator must sign or put a thumbprint on all the pages of the will in the

presence of two or more witnesses who should be of sound mind. The Will must also be dated to ensure its validity. At least three (3) copies of the Will should be made and kept with someone that the testator trusts e.g. religious leaders, courts of law, administrator general, banks, lawyers and friend.

All dependents/beneficiaries must be listed in the Will, where the testator disposes of all his or her property without making reasonable provision for the maintenance of his or her dependent relatives, court may order payment out of the estate of the testator for maintenance of dependents. Therefore if the testator marries another wife, divorces or acquires other children or if one of the beneficiaries dies before the Will is effected, it is advisable to write another Will or amend the last Will written. The executor mentioned in the Will must be an adult of sound mind.

Contents of a Will

- Name, full addresses, age, marital status, and place of birth of the testator.
- Date when the Will is made.
- The name, age and date of birth beneficiaries (children, dependants, spouses) to the Will.
- Name and full address of the spouse.
- A list of the testator's property.
- How the testator wants the property distributed among beneficiaries.
- Names of the guardians if the children are below eighteen (18) years of age.
- Name and address of the executor.
- Names and address of persons to be given specific gifts if any.
- Creditors and the amounts owed if any.
- Debtors and the amounts owed if any.
- Burial instructions and other wishes (e.g. burial place).
- It should be clearly stated that this is the last Will or an addition to the last Will.
- Dated and signed or thumb printed on every page by the testator and two (2) witnesses and a statement that the Will is made voluntarily by the testator.

Application for Letters of Probate

An application for Letters of Probate is made where the Testator has left a valid Will. The procedure is outlined below;

| Procedure for applying for Letters of Probate | | | | | | | | | |
|--|---|---------------------------------------|-----------------------------|--|--|--|--------------------|---------------------------------------|--------------|
| Step 1: | Upon the death of the Testator, the custodians of the Will must notify the family members and must read to all family members. | | | | | | | | |
| Step 2: | The Executor obtains a death certificate and letter from the Local Council stating that the person died. | | | | | | | | |
| Step 3: | The Executor reports the death to the District's Chief Administrative Officer (CAO) or Administrator General (AG) | | | | | | | | |
| Step 4: | The CAO or AG gives the Executor a Certificate of No Objection . | | | | | | | | |
| Step 5: | The Executor takes the Certificate of No Objection to court and applies for Letters of Probate. The application is done in writing in form of a petition with the Will attached thereto. When the Will is written in any other language other than English, an English translation should be attached and certified. The value of the testator's property determines which court the executor applies to: | | | | | | | | |
| | <table border="1"> <tbody> <tr> <td>• Less than 2,00,000 Uganda Shillings</td> <td>• Magistrate Grade II Court</td> </tr> <tr> <td>• Between 2,00,000 and 20,000,000 Uganda Shillings</td> <td>• Magistrate Grade I Court</td> </tr> <tr> <td>• Between 20,000,000 and 50,000,000 Uganda Shillings</td> <td>• Chief Magistrate</td> </tr> <tr> <td>• 50,000,000 or more Uganda Shillings</td> <td>• High Court</td> </tr> </tbody> </table> | • Less than 2,00,000 Uganda Shillings | • Magistrate Grade II Court | • Between 2,00,000 and 20,000,000 Uganda Shillings | • Magistrate Grade I Court | • Between 20,000,000 and 50,000,000 Uganda Shillings | • Chief Magistrate | • 50,000,000 or more Uganda Shillings | • High Court |
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| • Between 20,000,000 and 50,000,000 Uganda Shillings | • Chief Magistrate | | | | | | | | |
| • 50,000,000 or more Uganda Shillings | • High Court | | | | | | | | |
| Step 6: | The executor places an advertisement in the newspaper that she/he has applied to court for Letters of Probate. In the advert, the full names and address of the deceased must be stated. Anyone who wishes to complain about the Will or the application must then file a complaint with the same court within 14 days of the advertisement being placed. | | | | | | | | |
| Step 7: | <table border="1"> <thead> <tr> <th>If a complaint is filed</th> <th>If no complaint is filed</th> </tr> </thead> <tbody> <tr> <td>The court will hear the complaint and decide whether to grant Letters of Probate or not.</td> <td>Court then grants the Executor a Letter of Probate permitting him/her to carry out instructions in the Will.</td> </tr> </tbody> </table> | If a complaint is filed | If no complaint is filed | The court will hear the complaint and decide whether to grant Letters of Probate or not. | Court then grants the Executor a Letter of Probate permitting him/her to carry out instructions in the Will. | | | | |
| If a complaint is filed | If no complaint is filed | | | | | | | | |
| The court will hear the complaint and decide whether to grant Letters of Probate or not. | Court then grants the Executor a Letter of Probate permitting him/her to carry out instructions in the Will. | | | | | | | | |
| Step 8: | The Executor may then begin carrying out instructions in the Will, including making an inventory of property, distributing property and paying the deceased's debts. Once the Will is carried out, the Executor must file the final report with the court. If the Executor does not manage the property of the testator well, other beneficiaries may apply for revocation of Letter of Probate. | | | | | | | | |

4.1.2 Intestate Succession

Intestate succession is where a person dies without having made a valid Will. Intestate succession also applies in cases where a person makes a Will and does not name the Executor. When a person dies intestate, the Administrator General or a person chosen by the family to be the administrator of the deceased's estates can apply for Letters of Administration.

Who can apply for Letters of Administration?

- Persons connected to the deceased by marriage, such as the spouse, or family members of the deceased. However priority is given to the widow/widower and

- children of the deceased person.
- Any beneficiary of the deceased's estate.
- A creditor when no person connected to the deceased by consanguinity (by blood) are available can apply for letters of Administration,
- Legal guardian of a minor/child among others.
- The person applying must be an adult and of sound mind.

| Procedure for applying for Letters of Administration | | | | | | | | | |
|---|---|---------------------------------------|-----------------------------|---|--|--|--------------------------|---------------------------------------|--------------|
| Step 1: | The family of the deceased nominates a representative through a signed family resolution. If a family resolution is not made or some member(s) disagree to a nomination, the Administrator General (AG) or the CAO calls a family meeting at which a representative is chosen. | | | | | | | | |
| Step 2: | The AG issues a Certificate of No Objection to the person(s) nominated to enable them apply for Letters of Administration | | | | | | | | |
| Step 3: | An application for grant of Letters of Administration will then be made to a court accompanied by a Certificate of No objection . The application is in the form of a petition. The value of the testator's property determines which court the executor applies to: | | | | | | | | |
| | <table border="1"> <tbody> <tr> <td>• Less than 2,00,000 Uganda Shillings</td> <td>• Magistrate Grade II Court</td> </tr> <tr> <td>• Between 2,000,000 and 20,000,000 Uganda Shillings</td> <td>• Magistrate Grade I Court</td> </tr> <tr> <td>• Between 20,000,000 and 50,000,000 Uganda Shillings</td> <td>• Chief Magistrate Court</td> </tr> <tr> <td>• 50,000,000 or more Uganda Shillings</td> <td>• High Court</td> </tr> </tbody> </table> | • Less than 2,00,000 Uganda Shillings | • Magistrate Grade II Court | • Between 2,000,000 and 20,000,000 Uganda Shillings | • Magistrate Grade I Court | • Between 20,000,000 and 50,000,000 Uganda Shillings | • Chief Magistrate Court | • 50,000,000 or more Uganda Shillings | • High Court |
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| • Between 20,000,000 and 50,000,000 Uganda Shillings | • Chief Magistrate Court | | | | | | | | |
| • 50,000,000 or more Uganda Shillings | • High Court | | | | | | | | |
| Step 4: | The application must be advertised to the public in a local newspaper for at least 14 days or in a gazette. Any person who wants to object to the grant of Letters of Administration must notify the same court within 14 days from the date of the advertisement. | | | | | | | | |
| Step 5: | <table border="1"> <thead> <tr> <th>If an objection is filed</th> <th>Where no objection is filed</th> </tr> </thead> <tbody> <tr> <td>Court will not grant Letters of Administration until it has determined whether or not the complainant/objector has a good cause for the objection. If there is no reasonable cause; court will go ahead and grant the Letters of Administration to the Applicant.</td> <td>If no application has been filed, court will go ahead and grant the Letters of Administration. The Letter of Administration grants permission to the person named in it to manage the estate of the deceased person.</td> </tr> </tbody> </table> | If an objection is filed | Where no objection is filed | Court will not grant Letters of Administration until it has determined whether or not the complainant/objector has a good cause for the objection. If there is no reasonable cause; court will go ahead and grant the Letters of Administration to the Applicant. | If no application has been filed, court will go ahead and grant the Letters of Administration. The Letter of Administration grants permission to the person named in it to manage the estate of the deceased person. | | | | |
| If an objection is filed | Where no objection is filed | | | | | | | | |
| Court will not grant Letters of Administration until it has determined whether or not the complainant/objector has a good cause for the objection. If there is no reasonable cause; court will go ahead and grant the Letters of Administration to the Applicant. | If no application has been filed, court will go ahead and grant the Letters of Administration. The Letter of Administration grants permission to the person named in it to manage the estate of the deceased person. | | | | | | | | |
| Step 6: | The Administrator appointed must hold the properties in trust for the beneficiaries and must distribute the same to the beneficiaries. The Administrator should file within a period of six (6) months a record of the deceased's property and how it has been managed. | | | | | | | | |

Registration of Administrators or Executors of a Will on a Land Title.

- Section 143 of the Registration of Titles Act provides that an applicant must present the Duplicate Certificate of Title; an office copy/certified copy of letters of Administration/letters of probate; a request letter for registration of their names as administrators/executors, two (2) passport size photographs and receipts showing payment of registration fees and Stamp Duty to the Department of Land Registration for processing.

- The photocopies of the documents is stamped “Received” as an acknowledgment and returned to the applicant. The applicant should check after ten (10) days to collect the Duplicate Certificate of Title.
- Upon presentation of the photocopy stamped “Received”, the applicant collects the Duplicate Certificate of Title. The photocopy is then stamped “Returned” on completion.
- Registration fees is 10,000/=

Adapted from the MLHUD Access to Information Manual, 2012/2013.

4.2 Succession of Land held under Customary Tenure

Subject to Article 2(2) of the Constitution, any law or custom that is inconsistent with any provision of the Constitution is null and void. Decisions made relating to land held under customary tenure shall be in accordance with the customs, traditions and practices of the community concerned and shall not discriminate against women, children or persons with a disability (section 27 of the Land Act). Therefore succession of land held customary tenure maybe managed in accordance with the customs, traditions, norms and practices of a particular community as long as it does not contravene the above provisions.

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Chapter 5: Compulsory Acquisition of Land by Government

The Registration of Titles Act Cap 230 generally governs Land acquisition. However, compulsory acquisition of land is governed by the Constitution of Uganda and the Land Acquisition Act Cap 226 of 1965. The Act makes provision for the procedures and methods of exercising compulsory land acquisition whether for temporary or permanent use. The Act addresses four central issues namely; 1) recognized and established uses of compulsory land acquisition, 2) procedures for exercising authority for compulsory acquisition, 3) compensation awarded for expropriated property, and 4) the rights for redress.

This chapter addresses conditions/reasons under which government can compulsorily acquire private land, the procedure through which government can acquire land, and the issue of compensation for compulsorily acquired land.

5.1 Purposes and Conditions under which Government can Compulsorily Acquire Private Land (Acquisition Restrictions).

Article 26(2) (a) of the 1995 Constitution of Uganda empowers the government to acquire private land in a compulsory manner, provided that the taking of possession or acquisition is necessary for;

- *Public use* - or example to settle Internally Displaced People.
- *In the interest of defense* e.g. if the land is strategic and the army needs to use it to protect our country.
- *Public safety* for example if there is toxic waste, or landslides in the case of mountainous areas, or a serious earthquake envisaged.
- *Public order* – if the place is being used for assembling riotous crowds, thieves, e.t.c.
- *Public morality* – if the place was being used for immoral acts.
- *Public health* – if there is an outbreak of a serious disease e.g. *Ebola*.

The Land Acquisition Act 1965 also provides that land can be acquired for public purposes and for matters incidental thereto and connected therewith. **Note:** according to the Act, the government is not required to justify the proposed acquisition in these terms or demonstrate that the taking is in the public interest.

The sub section below discusses the purposes/grounds for compulsory acquisition of land by government i.e. a) land required for public works, b) land required for petroleum and gas exploration, c) land required for mineral exploration and exploitation, and d) land required for electricity transmission.

5.1.1 Public works

The Land Act gives the Minister power to compulsorily acquire land that is necessary for public works where the undertaker fails to enter into mutual agreement with the occupier or owner of the land (section 73 of the Land Act).

Section 1(w) Land Act, “*public works*” means the construction of railways, roads, canals ,or air fields, the placing of telegraph lines, electric lines, and the erection of supports for those lines, the laying of sewer and water pipes, the construction of drains, the prospecting, exploration, mining and extraction of petroleum resource, the construction of dams and hydro power plants, the establishment of meteorological and water quality stations, the construction of water and sewerage treatment plants, storage reservoirs and pumping stations and any other works, construction of public buildings and other public institutions, declared by statutory instrument to be public works, the construction of buildings for public use, such as hospitals and universities, and any other work ancillary or incidental to the forgoing.

Section 1(c) “*authorised undertaker*” means a person or authority authorised or required by law to execute public works.

NOTE: The rights of the *authorised undertaker* to execute *public works* upon or take stone, murrum or similar material from the land, have access to the land and other rights as reasonably necessary for the execution, construction and maintenance of the works or the removal of the material is subject to those rights whether or not they have been registered under the Registration of Titles Act. The obligation to pay compensation subject to Article 26(1) is on the *authorised undertaker*.

5.1.2 Land required for Petroleum and Gas exploration

The Constitution of the Republic of Uganda

Subject to Article 26 of this Constitution, the entire property in, and the control of petroleum in its natural condition in or upon any land in Uganda is vested in the government on behalf of the Republic of Uganda. Accordingly the Government of Uganda holds petroleum rights on behalf of and for the benefit of the people of Uganda.

Petroleum (Exploration, Development and Production) Act 2013

The exploration of oil in Uganda is governed by the Petroleum (Exploration, Development and Production) Act 2013. This Act;

1. Gives effect to Article 244 of the Constitution;
2. It regulates petroleum exploration, development and production;
3. It establishes the Petroleum Authority of Uganda;
4. It provides for the establishment of the National Oil Company;
5. It regulates the licensing and participation of commercial entities in petroleum activities;
6. It provides for an open, transparent and competitive process of licensing;
7. It creates a conducive environment for the promotion of exploration, development and production of Uganda's petroleum potential;
8. It provides for efficient and safe petroleum activities;
9. It provides for the cessation of petroleum activities and decommissioning of infrastructure;
10. It provides for the payment arising from petroleum activities;

The Act in Part IV deals with issues of licensing, where by persons intending to carry out petroleum exploration may apply to the Minister for a license. Upon grant of a license, a license agreement is entered into between the government of Uganda and the licensee. The license is granted subject to a number of conditions, among which include rights of landowners (*surface rights*), and compensation for disturbance.

5.1.2.1 Rights to Surface Activities, and Rights of Land Owners

A licensee is required to obtain the written consent of the landowner;

- i. Upon any land which the site is of or which is within two hundred (200) meters of any inhabited, occupied or temporarily unoccupied house or building;
- ii. Within fifty (50) metres of any land which has been cleared or ploughed or otherwise *bona fide* prepared for the growing of agricultural crops or on which agricultural crops are growing;
- iii. Upon any land from which during the year immediately preceding agricultural crops have been grown,
- iv. Upon any land which is the site of or which is within one hundred (100) meters of cattle dip tank, dam or water used by human beings or cattle;
- v. Produce evidence of possession of a license to the land owner of the land upon which the right is being exercised. The licensee may be treated as a trespasser where the license is not produced.
- vi. Respect the land owners right to graze stock upon or to cultivate the surface of the land in so far as the grazing or cultivation does not interfere with petroleum activities or safety zones in the development area.
- vii. The land owners rights to erection of buildings or structure is however subject to the written consent of the licensee or if the consent is unreasonably held, that of the Minister in consultation with the Authority.

Payment of compensation for disturbance of rights

A licensee is obligated to pay the land owner fair and reasonable compensation for any disturbance of his or her rights and for any damage done to the surface of the land due to petroleum activities, and shall, at the demand of the owner of any crops, trees, buildings or works damaged during the course of the activities, pay compensation for the damage. **Note:** Payment of rent to or compensation to a land owner for termination of his or her lawful occupancy shall be deemed to be adequate compensation for deprivation of the use of the land to which the rent or compensation relates.

5.1.2.2 Acquisition of exclusive rights

A holder of a petroleum production license may obtain a lease of the land or other rights to use it if he or she requires exclusive use of the whole or any part of the land upon such terms as rent to be paid for the land, duration and extent or area of the land to which the lease shall relate as may be agreed between the holder of the license and the land owner. This exclusive acquisition is subject to the written consent of the landowner discussed above, the Constitution, Land Act and Land Acquisition Act.

5.1.3 Land Required for Mineral Exploration and Exploitation

All minerals are vested in the Government, which grants mineral rights to carry out exploration and exploitation of minerals. The Mining Act 2003 defines a mineral as any substance, whether solid, liquid or gaseous that occurs naturally in or on the earth, formed by or subject to a geological process; but does not include petroleum (Petroleum (Exploration and Production) Act, 2013). The Constitution further excludes clay, murrum, sand or stone commonly used for building or similar purposes as minerals. Unlike oil, the Mining Act, 2003 stipulates that landowners with minerals are entitled to 3% of the proceeds from the minerals.

5.1.3.1 Acquiring a license for subsurface activities

A person may acquire the right to search for, retain, mine and dispose of any mineral in Uganda by acquiring such right under the section 4 of the Mining Act. Such right may include a prospecting license, an exploration license, a retention license, a mining lease or location license.

An application for a mineral right, shall be made to the Commissioner and shall be in such form and contain such information as the regulations prescribe section 9 Mining Act. The Mining Regulations give a further detailed procedure and information required for any person to acquire such a mineral right under the Act.

5.1.3.2 Rights to Surface Activities and Land Rights Owners

A mineral right holder is obliged to obtain the written consent of the owner or lawful occupier or the duly authorised agent:

- i. In respect of or on any land which is the site of, or which is within two hundred (200) metres, or such greater distance as may be prescribed, of any inhabited, occupied or temporarily unoccupied house or building,
- ii. Any land within five metres (50) or such greater distance as may be prescribed,
- iii. Any land which has been cleared or ploughed or otherwise prepared in good faith for the growing of, or upon which there are growing agricultural crops; or
- iv. (iv) Any land which is the site of, or within one hundred (100) metres, or such greater distance as may be prescribed, of any cattle dip, tank, or similar body of water,
- v. On demand made by the owner or lawful occupier of any land subject to such mineral right, pay fair and reasonable compensation for any disturbance of the rights of the owner or occupier (section 82 Mining Act) or to a share of royalties
- vi. Respect the right of the owner or lawful occupier of any land within an area, which is the subject of a mineral right to graze stock upon or to cultivate the surface of such land.

5.1.4 Land Required for Electricity Transmission

A licensee authorized to generate, transmit, distribute and sell electricity may place and maintain electric supply lines over any land with written authorization from the

Electricity Regulatory Authority (ERA) (section 67 Electricity Act). The licensee must cause as little damage as possible to the land and to the environment, and ensure prompt payment of fair and adequate compensation to all interested persons for any damage or loss sustained by reason of the exercise of the powers under the section 67 (3) Electricity Act.

If a licensee considers that they require the acquisition of land, or an interest in land greater than the right of use necessary for the purpose of providing or maintaining electricity supply lines, the licensee may, with the approval of the Authority, request action by the Minister responsible for Lands.

Where the Minister responsible for Lands is satisfied that the land or interest in land is required for the purpose of providing or maintaining electricity supply services to the public and that it is required in the public interest, the Minister can order the acquisition of the land on behalf of the licensee in accordance with the Constitution, the Land Act and the Land Acquisition Act as discussed earlier.

5.2 Procedure for Compulsory Acquisition

Below is the procedure for compulsory acquisition of land;

| Procedure for compulsory acquisition of land | |
|---|---|
| Seeking authorisation from the Minister | <ul style="list-style-type: none"> • A person desiring to acquire any piece of land for a public purpose seeks authorization from the Minister responsible for Lands. • The Minister may then authorize any such person to enter upon the land to find out the suitability of land for the purpose it is being acquired. • This includes surveying the land, digging or boring the land for samples and any other thing necessary for ascertaining suitability for that purpose. • Note: Government is required to pay compensation for any damage that occurs as a result of the activities undertaken to determine the suitability of the land. |
| Minister issues a Statutory Instrument | <ul style="list-style-type: none"> • The Minister upon satisfaction that the land is required by the government for a public purpose makes a declaration by Statutory Instrument (by law) that the land is suitable, and a copy of the declaration is given to the land owner (section 3, Land Acquisition Act). • The Instrument should specify the location of the land to which it relates approximate area of the land and if the plan of the land has been made, place and time at which the plan may be inspected. |
| Assessment Officer orders marking, measuring of the land | <ul style="list-style-type: none"> • The Assessment Officer (a Public Officer appointed by the Minister) orders the marking, measuring of the land, and a plan of the land to be made (section 4, Land Acquisition Act). |

| | |
|---|--|
| Issuance of a notice to those with interest(s) in the land | <ul style="list-style-type: none"> • A notice of not less than 15 days is given inviting all people having interest in the land to the Assessment Officer on a day, time and place specified in order to determine the nature of their claims, the amount of compensation to be paid and any objections they may have to the plan for the land use (section 5, Land Acquisition Act). |
| Assessment Officer hears the claims, makes an award | <ul style="list-style-type: none"> • The Assessment Officer on the specified day hears the claims and makes an award specifying the true area of the land and the compensation, which should be paid to each person having an interest in the land (section 6(1), Land Acquisition Act). |
| Determination of the amount payable | <ul style="list-style-type: none"> • Compensation is paid basing on the current market price of the land in the area prepared annually by the District Land Board (section 59 (1) (e) & (f), Land Act). |
| Appeal to the Assessment Officer's award | <ul style="list-style-type: none"> • Any person aggrieved by the award of the Assessment Officer may appeal to the District Land Tribunal or the High court if the value of the land exceeds 50,000,000 Uganda Shillings (section 76 I (b) &(c), Land Act). |
| Payment of compensation | <ul style="list-style-type: none"> • The Uganda Land Commission then pays compensation for the value of the land if no appeal is made to the Courts of Law (section 6(4) (b), Land Acquisition Act). |
| Taking possession of the land | <ul style="list-style-type: none"> • It is only after all people having interest in the land have been fully and adequately compensated that Government then takes possession of the land, and the land is then managed by the Uganda Land Commission (section 7, Land Acquisition Act, Article 26(2)(b)(i) of the Constitution). |

Precautions to take before COMPUSORILY acquiring land

The compulsory taking of the property or acquisition of the land in question must be made under the law, which provides for;

- ✓ Prompt payment for compensation prior to the taking of possession or acquisition.
- ✓ Right to access to the Courts of Law by any person who has an interest or right over the land.
- ✓ The right to property in relation with a right to privacy. Article 27 provides that; “no person shall be subjected to unlawful search of the person, home, or property” hence prohibiting the unlawful entry to the premises of a person. Violation to the right to property may lead to a suit in the Courts of Law or it can be a subject of complaint for investigation.

The National Environment Act 1995 and Environment Impact Assessment Regulations of 1998 requires an Environment Impact Assessment (EIA) to be conducted for developments that are justified uses of compulsory land acquisition such as public roads, dams, any activity out of character with its surrounds and major changes in land use. The EIA must be conducted before the land is acquired. These regulations require public participation in making the study and in commenting on the Environmental Impact Statement. So while the Land Acquisition Act does not explicitly require public hearings or citizen participation, the National Environment Act mandates both measures helping to ensure citizen's input into certain compulsory land acquisition decisions.

5.3 Compensation

According to Article 26, the government is obliged to offer prompt payment of fair and adequate compensation prior to taking of possession or acquisition of property. The Land Acquisition Act section 6 also states that the Assessment Officer shall take possession of the land as soon as he/she has made his/her award. As far as compulsory acquisition in regards to minerals and oil is concerned, the compensation relates to compensation for surface rights and deprivation for the use of the said land.

The Constitution does not expressly provide for compulsory acquisition for exploration and extraction of mineral wealth, oil and gas. Thus as much as the minerals, oil and gas vest in the government, the ownership of land is not tampered with. Compensation is therefore offered to the landowner for surface rights, which comprise of the development on the land but not for the land value and for deprivation of use for the duration of the taking. The various laws that govern extraction of petroleum and exploration of minerals have provisions that provide for compensation of surface rights of landowners. The deprivation can be either exclusive or partial. There is exclusive deprivation when all the user rights of the landowner or lawful occupier are affected, and partial deprivation is the curtailment of a particular use right or part of the land.

Computing rates of compensation provided under the Land Act;

- a) In the case of a customary land the value of the land shall be the open market value of unimproved land;
- b) The value of buildings on the land which shall be taken at open market value for urban areas and depreciated replacement cost for the rural areas;
- c) The value of standing crops on the land, excluding annual crops, which could be harvested during the period of notice given to the tenant.

In addition the government must pay a disturbance allowance of 15% of the compensation or if less than six (6) month notice is given 30% disturbance allowance.

DLBs are required to compile a list of rates of compensation taking into account; (i) the current market value of economic crops and trees; (ii) current market value for buildings of a non-permanent nature and any other thing that may be prescribed. These rates are supposed to be reviewed every year (section 24 of the Land Regulations 2004, in reference to subsection (e) of paragraph 1 of section 59 of the Land Act).

Any person aggrieved either by the decision to compulsorily acquire the land, or the compensation that has been offered has a right challenge the same before courts of law.

The Constitution vests land in the citizens of Uganda, as such surface rights are privately owned except where they fall under the ambit of trust property vested in the State.

5.3.1 International obligations relating to compensation

Companies operating in Uganda may have higher obligations than those set out in national laws. The most common set of standards are those of the World Bank's private sector lending arm, the Performance Standards of the International Finance Corporation (IFC Performance Standards). These standards can apply to companies in a number of

different ways:

- If a company receives funding from the IFC, the Performance Standards will apply.
- If a company receives project financing or a loan from an Equator Principles Financial Institution. Under *Equator Principle 3*, in a non-designated country such as Uganda, the company will be bound to apply the then applicable IFC Performance Standards and the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines).
- The IFC Performance Standards also apply to the 32 Export Credit Agencies of Organisation for Economic Co-operation and Development (OECD) member countries, as well as European Development Finance Institutions, such as the European Bank for Reconstruction and Development, meaning they apply to companies receiving financing from these financial institutions.

If a company claims to comply with international best practice, then the IFC Performance Standards would apply.

5.3.1.1 IFC's Performance Standards on Environmental and Social Sustainability

IFC's Performance Standards on Environmental and Social Sustainability offer a yardstick to international best practices. Developed using experiences over a number of years and across a large number of projects by the World Bank social and environmental practitioners; they define clients' responsibilities for managing their environmental and social risks. There are eight (8) Performance Standards (available at www.ifc.org), but of particular importance is Performance Standard 5 (PS 5). This standard reaffirms the concepts of physical displacement (loss of shelter) and of economic displaced (loss of means of livelihood); both physically displaced and economically displaced people are to be considered in resettlement planning.

The major objectives are to:

- Avoid displacement and resettlement wherever possible by considering all viable alternative activities or design options;
- Minimise, mitigate or compensate for adverse project impacts on those affected where such impacts cannot be avoided; and
- Enhance, or at least restore, the livelihoods of affected people relative to pre-project levels, and improve standards of living for displaced poor and other vulnerable groups.

Chapter 6: Land Administration

This chapter discusses the different institutions and offices responsible for land administration from National to Lower Local Government level, their functions and how the public can access them.

6.1 Statutory Institutions

The Land Act is the main law governing land ownership, administration and management in Uganda. It mandates a number of institutions to provide land administration services as explained below:

6.1.1 National Institutions

Ministry of Lands Housing and Urban Development

The Ministry provides policy direction, national standards and coordination of all matters related to lands, housing and urban development in Uganda and establishes policies, laws and regulations to ensure sustainable land management. It is comprised of the following three (3) Directorates; 1) Directorate of Housing, 2) Directorate of Physical Planning and Urban Development, and 3) Directorate of Land Management which is comprised of the following three departments;

Ministry Zonal Office

This is a technical office under the Land Information System, located at the pilot project areas of Kampala, Wakiso, Jinja, Mukono, Mbarara and Masaka. It comprises the offices of survey, land administration, land valuation, land registration and physical planning.

Department of Surveys and Mapping

Located in Entebbe, the Department of Surveys and Mapping is responsible for the establishment of survey and geodetic controls, quality checks of cadastral jobs, surveys of government land international boundaries, and the production and printing of topographical maps.

Department of Land Administration

The Department of Land Administration is responsible for supervision of land administration institutions and valuation of land and other properties.

Department of Land Registration

The Department of Land Registration also known as the *Office of Titles* is responsible for issuing Certificates of Title, general conveyance, maintaining the land registry for all *mailo*, leasehold and freehold land transactions and technical support to local governments relating to land registration and acquisition processes.

Uganda Land Commission (ULC)

The Uganda Land Commission is established by the Constitution and it consists of at least five (5) members appointed by the president and approved by parliament. Its main function is to hold and manage all land vested in or acquired by the Government of Uganda in accordance with the Constitution. The Commission also processes

Certificates of Title for land owned by and vested in the government (section 49 (c) Land Act. It is a body corporate with perpetual succession and can sue or be sued.

6.1.2 District Level Institutions/Offices

District Land Board

District Land Boards are provided for under section 56 of the Land Act. This is a body corporate with perpetual succession that may sue or be sued. It has a minimum of five (5) members with a chairperson and at least one (1) member representing Municipal Council, Urban Council and each County in the district. According to Land Act at least one-third of the five (5) members of Boards must be women and at least one (1) member should have knowledge and experience in land matters (section 57 (3) of the Land Act). District Land Boards are independent of the Commission and from influence by any person or authority in the performance of its functions. They have the following roles:

- Holds and allocates land in the district which is not owned by any person or authority.
- DLBs help people register and transfer interests in land.
- They cause surveys, plans, maps, drawings and estimates to be made by or through its officers.
- Compiles and maintains lists of rates of compensation payable in respect of crops and buildings of a non-permanent nature which is reviewed every year.

District Land Office

Section 59 (6) of the Land Act establishes a District Land Office which provides technical services/guidance to the Board. It advises on matters that the Board may not be able to address; provides technical services to the public in the district including surveys, planning, land administration procedures, and valuations for properties/compensation rates; and facilitates the District Land Boards. According to the Land Act, each District should have a District Land Office, which should provide technical services through its own staff or external consultants. The Land Office keeps custody of all land records in the district which include; land files, cadastral sheets etc.

The District Land Office also provides technical advice for formation of Communal Land Associations by owners of community land. The District Land Office consists of the District Land Officer, District Surveyor, Registrar of Titles, and District Physical Planner and the District Valuer.

District Council

A Council shall be the highest political authority within the area of jurisdiction of a local government and shall have legislative and executive powers as per section 9 of the Local Government Act. The Executive Committee of each district Council section 16 Local Governments Act. Under section 17 of the Local Act and section 64 (1) of the Land Act the Executive Committee shall recommend to the Council persons to be appointed members of the Districts Land Boards and Area Land Committees.

Section 58(2) confers powers on the District Council on the recommendation of the

District Executive Committee powers to remove a member of the Board for inability to perform the functions of his/her office arising from infirmity of body or mind; misbehavior or misconduct; incompetence; absents himself or herself from meeting of the Board for six (6) consecutive time without reasonable cause. Section 66 of the Land Act a member of the Committee shall be paid a remuneration determined by the District Council on the recommendation of the District Executive Committee.

6.1.3 Sub County/Division Level Institutions/Offices

Recorder

Section 68 (1) of the Land Act provides for the establishment of the office of the Recorder for each sub county, each gazetted area and each division in the case of a city, who shall be answerable to the Board. The Recorder is responsible for keeping records relating to Certificates of Customary Ownership and Certificates of Occupancy section 68 (2). The Recorder should be a:

- Sub-County Chief,
- Town Clerk (in Town Councils or gazetted Urban areas), or
- Assistant Town Clerk (for Divisions of Municipalities) (section 68 (3)).

Area Land Committee

The District Council at the Sub-County or Division level appoints Area Land Committees. They consist of a Chairperson and four (4) other persons who serve on a part time basis. All members of the Committee should be thirty (30) years of age or over, and the Chairperson should be able to speak and read English. According to the 1998 Land Act, at least one (1) of the four (4) members of the Area Land Committee should be a woman (section 65(2) Land Act), and at least one (1) member should have knowledge and experience in land matters.

Members hold office for three (3) years and can be re-elected for one (1) more term. Their roles include: Determining, verifying and marking boundaries of customary land within in their parishes, and Advising DLBs in matters relating to land, including ascertaining land rights.

6.2 Administrative Bodies for Customary Land

The 1995 Constitution reintroduced legal recognition of cultural institutions with restrictions on their capacity to engage in politics. The Land Act states that customary land may be governed according to socially acceptable rules (section 3 (1) (b) of the Land Act). In Northern and Eastern Uganda, where clans remain strong, land is managed by the clans while in many other parts of the country the authority and involvement of clans has reduced and land has become individualized or family owned.

Where the clans remain active in land management, cultural institutions play an important role in the administration of land. Cultural institutions act as bodies for land dispute settlement in different degrees across Uganda. Unlike land under *mailo*, leasehold and freehold tenure that have clear administrative structures defined by law, customary tenure remains ambiguous and varies from region to region. Cultural institutions such as the *Ker Kwaro Acholi*, *Iteso Cultural Foundation (ICU's)*, and the *Lango*

Cultural Foundation (LCF) have played a big role in managing customary land in the respective regions.

In Lango Sub region, land is privately owned at the level of household, extended family or clan not by the individual and rights are derived through membership of the family or clan. All clan members have rights to access and use land. Land cannot be sold or lent to individuals outside the family or clan without the consent of the family or clan elders who are regarded custodians of the land for future generations. Transfers of ownership through inheritance or redistribution among family members and sales or loan of the land to outsiders can only be done with the approval of family and/or clan elders. Once land is allocated amongst members of the family or clan it cannot be taken back and the rights to the land exist in perpetuity, however land allocated to people who do not have children reverts back to the family or clan upon their death. A widow takes over the management of land from her late husband. The rights to land she already had at marriage, jointly with her husband. An unmarried woman has the right to land from her parents. The woman's rights are as secure as the man's under customary law.

Where community land such as grazing land still exists, Grazing Land Management Committees are formed to manage the land. The management depends on rules agreed by members. Within grazing land, one might have different kraals under the management of Kraal Committees.

Chapter 7: Land Justice

This chapter examines the principles, institutions and mechanisms for resolving land related disputes under formal statutory and informal customary laws and the relationship between these two systems.

7.1 Principles of Natural Justice

Principles of natural justice under statutory and customary tenure are to ensure there is an enabling environment for the rule of law.

The Principles of Natural Justice comprise of:

Fairness that decisions will be made on the basis of a set of established rules that are known.

Transparency that the legal system can be seen and understood by the general public, and Courts and Tribunals are open to public scrutiny.

Equality before the law that no one is above the law and that each person should be treated the same irrespective of gender, ethnicity, nationality, occupation, financial capacity or position in society.

Impartiality and freedom from bias to ensure that decision makers have no personal interest in the decision being made or the people involved.

Right to be heard ensuring that people affected by decisions in the legal system have the right to present their views and evidence before the decision is made. It also requires that the accused has the right to be informed of the charges against them and to examine all evidence so they can prepare a defence.

It is important to note that on closer examination, most of these principles are basically an attempt to ensure fairness in the resolution of cases. This same fairness is emphasized in the principles that govern customary practices in Uganda.

The primary principle under Customary Tenure is the restoration of relationships and peace in the family and the community. The ideal is for all conflict to be resolved amicably with compromise to share the land. Dispute resolution is based on mediation by local leaders and the handling of land disputes by the family heads or clan elders is based on win-win situations premised on equity, restoring relationships and promoting harmony in the family, clan and community.

The 1995 Constitution and the Land Act 1998, establish both formal and informal structures for land dispute resolution. The formal includes structures within the judiciary and the disputes are settled through litigation. The informal includes clan structures, which vary from community to community in respect of customary Land (section 88 of the Land Act).

7.2 Formal land justice

7.2.1 Mediation

The Judicature (Mediation) Rules 2013 obligates the Court to refer every civil action for

mediation before proceeding for trial.

- A party to a civil suit is therefore required to file a case summary with the Court at the time he or she files his or her pleadings. The case summary includes for a land case, the names and address of the parties, the facts giving rise to the land dispute and the defence to the facts, names of the advocate of the party, name of the person with full authority to sign a settlement, name of lead negotiator, proposed mediator, documents the parties intend to rely on.
- The Court notifies the parties within fourteen (14) days after pleadings are complete of the commencement of the mediation sessions.
- The mediation is to be completed within sixty (60) days after commencement of mediation.
- The mediation may only be conducted by a Judge, Registrar, Magistrate, person accredited as a mediator by court, person certified by Centre for Arbitration and Dispute Resolution (CEDAR) or person with relevant qualifications and experience in mediation and chosen by the parties.
- A Judge, Registrar or Magistrate is barred from further taking part in the proceedings relating to any case for which they conduct an unsuccessful mediation.
- Where the parties reach an agreement, through mediation, the agreement is filed with court and treated as a consent judgment.

7.2.2 Litigation

Litigation refers to the action of bring in an issue before court to have a particular right enforced. When a person begins a civil lawsuit, they enter into the process of litigation. Under the various rules of procedure that govern actions in state courts, litigation involves a series of steps that may lead to a court trial and ultimately the resolution of the matter.

Before a lawsuit is filed, the person considering the lawsuit (called the plaintiff) usually demands that the person who caused the alleged injury (called the defendant) undertake certain actions to resolve the conflict. If the demand is refused or ignored, the plaintiff may start the lawsuit by serving copies of a summons and complaint to the defendant and submitting the complaint to civil trial court. The complaint must clearly state the alleged injuries, attributing them to the defendant and requesting compensation.

If the service of the complaint on the defendant does not result in settlement, the plaintiff must begin the discovery process. This involves sending written questions to the defendant to seek information involving the dispute at issue. The plaintiff may present the defendant and others concerning the issues with a written statement recorded by a Court Reporter. The plaintiff may also request copies of documents for review.

Once litigation commences the defendant is entitled to information on the allegation from the plaintiff within a set period of time depending on the complexity of the case and the level of cooperation between the parties. Courts in Uganda have the power to order the parties to first go for mediation. In fact, the mediation rules of 2013

explained above; dictate that Courts should refer all civil actions for mediation before proceeding to trial (Judicature (Mediation) Rules, 2013).

7.2.2.1 Litigation of Land Disputes

Courts of law are highest in determining land disputes. No other body has parallel powers to Courts. Under the court system, the parties present their case before a judicial officer(s) who makes a ruling according to the facts presented and the principles of law. They include the Supreme Court, Court of Appeal, High Court and other lower Courts such as Magistrate Courts, and Local Council Courts (Article 129 of the Constitution).

Local Council Courts

Local Council Courts (LCCs) are very important for access to justice in local communities. LCCs were established through the Local Council Courts Act 2006. LCCs are not procedurally complex; they are accessible both geographically and financially. These courts are at the lowest rank of the judicial hierarchy.

LCCs are found at village, parish, and sub-county level and are therefore geographically spread throughout Uganda. Each court has an Executive Committee which is duly constituted into a court when it is sitting with not less than five (5) members. The courts are mandated to hear cases originating within their area of jurisdiction, including family disputes, unregistered land cases and assaults.

7.2.3 Enforcement of Judgment

Court Bailiffs

Once the Court or Tribunal has made an order/judgment or award, individuals can apply for the enforcement by the Bailiff if the order/judgment or award is not complied with. Applications for a writ of execution are made to the Court or the Lands/Small Claims Tribunal where the order/judgment or award was made. Care must be taken to provide the correct address of the judgment debtor/defendant.

7.2.4 Legal Remedies

This is what the law allows for Judicial Officers and Local Councils to give as remedies after a party wins a case. Some of these remedies include;

- 1) Recovery or partition of immovable property such as land,
- 2) Compensation of wrongs done,
- 3) Attachment and sale of land in case of mortgages,
- 4) Interim order, and
- 5) Temporary injunction and damages among others (section 202, Magistrates Courts Act and the Local Council Courts Act).

- **Interim order**

An interim order refers to a temporary order of the court pending a hearing, trial, a final order, or while awaiting an act by one of the parties.

- **Injunction**

An injunction is a court order that prohibits or requires a party to perform a specific act. It can be temporary or permanent. The purpose of a temporary injunction is to maintain the status quo and prevent irreparable damage or change before the legal questions are determined. After the trial the court may issue a "permanent injunction" which cancels the temporary injunction.

- **Eviction**

The removal of a tenant from possession of premises in which he or she resides or has interests. The landlord evicts a tenant either by re-entry upon the premises or through a court action.

- **Damages**

Damages are a monetary compensation awarded by a court in a civil case to an individual who has been injured through the wrongful conduct of another person.

7.3 Informal Land Justice Mechanisms

Section 88 (1) of the Land Act stipulates that, traditional authorities may determine disputes over customary tenure, or act as a mediator between persons who are in dispute over any matters arising out of customary tenure. Accordingly, the traditional institutions apply customary rules and norms in order to resolve land disputes. The structural, procedural and normative structure of this institution is not dictated by the state.

- Such methods include the use of family and clan elders or a neutral third person (mediator).
- In addition, the Land Act provides for the appointment of two (2) or more mediators in each district. These mediators are appointed on a temporary case by case basis. The role of mediators is to act as neutral third parties who help parties to a land dispute to reach a mutually agreed settlement of their land problem.

In dealing with traditional institutions in mediating land disputes it's pertinent to bear in mind the following;

- Traditional institutions are given a flexibility to apply customary norms, any decisions taken by them must however comply with the human rights standards embodied in the Constitution and international instruments ratified by the Republic of Uganda. Such principles include equity and non-discrimination.
- The application of any customary rule is subject to that rule not being repugnant to natural justice, equity, and good conscience, or being incompatible either directly or indirectly with any written law. *Section 27 of the Land Act expressly renders void any customary rule or practice that denies women, children and disabled persons access to ownership and use or occupation of land.*

Note: The Constitution declares that it is the supreme law of the land, and it prohibits the application of any custom that is inconsistent with any of its provisions.

7.3.1 Enforcement of Decisions

The decision of the traditional authority is accepted because of the respect the people have for them. If there is no respect and the decisions are ignored, the clans do not have legal recourse to enforce their decisions. There is no provision in the law that stipulates how decisions of traditional institutions are to be enforced. Since the outcome of traditional procedures is mediation it is not binding on any of the parties. Parties merely have a moral obligation to respect the decision. Therefore social pressure plays a powerful role in achieving compliance.

Where the decisions are not respected the affected parties may file a fresh suit in a Court of Law. In this situation the mediation results may be used as evidence in the proceedings before the Court. Likewise mediations conducted by CSOs and other trained mediators are not binding. Judicial Officers are therefore not bound by the outcome of mediation but the mediation results are merely persuasive. However where Courts with consent and request of the parties agree to settle the matter through mediation, the parties are required to file a resolution of the mediation which resolution is considered as a consent judgement.

Under customary tenure, remedies comprise of restoring the peace that was lost through land conflict. This might be through dividing the land in conflict amongst the parties or asking the encroacher on the land to leave the land.

7.4 Linkage between Formal and Informal

There is no direct linkage between the traditional institutions and the formal land justice sector. The Local Council's II Courts are taken as Courts of first instance in relation to customary tenure from where an appeal moves to the Local Council Court III and subsequently to the Magistrates Courts (section 22, Local Council Courts Act, 2006, 3rd Schedule).

Appendices

I. Application to lodge a Caveat

THE REPUBLIC OF UGANDA

THE REGISTRATION OF TITLES ACT CAP.230

BLOCK 255
PLOT 962
LAND AT
MUNYONYO
SABAGABO
KYADONDO
WEST MENG0

CAVEAT FORBIDING REGISTRATION OF ANY CHANGE IN PROPRIETORSHIP OF ANY DEALING WITH THE ESTATE OR INTEREST

TAKE NOTE that I, AIDA NAKITO KASULE of C/o Ausi Twijukye and Co. Advocates P.O. Box 385. Kampala, do hereby claim an interest in the above mentioned land as beneficiary having bought it from the registered proprietor and I do forbid the registration of any person as transferee or proprietor of this land or any instrument affecting the said estate or interest until NOTICE of such registration is given to me at the address hereinafter mentioned or unless such instrument be expressed to be subject to my claim or unless I consent in writing thereto.

I APPOINT M/S AUSI TWIJUKYE & CO. ADVOCATES PLOT 50. KAMPALA ROAD P.O BOX 385 KAMPALA as the place at which NOTICES and proceedings relating to this CAVEAT may be served.

DATED at KAMPALA this..... Day of2008.

SIGNED by the said
AIDA NAKITO KASULE

.....
CAVEATOR

BEFORE ME:

.....
COMMISSIONER FOR OATHS

DRAWN AND FILED BY:

AUSI TWIJUKYE & CO. ADVOCATES

2. Sale Agreement

THE REPUBLIC OF UGANDA
THE REGISTRATION OF TITLES ACT CAP 230
THE CONTRACT ACT CAP 73
SALE AGREEMENT

This agreement made this.....day of2009 **BETWEEN**
SSEMAKULA MOSES of KATWE MUTEBI 2 ROAD LC 1 (herein after referred to as
the “Landlord”) of the one part

AND

TAKASHI HATTORI ENTERPRISES LTD OF KATWE MUTEBI ROAD 2 P.O. BOX
9835 KAMPALA (Herein after referred to as “the Tenant”) of the other part.

WHEREAS

- a) The Land lord is the owner of the premises above-described.
- b) The Land lord has agreed to let the premises to the tenant on the terms and conditions herein contained.

NOW THEREFORE THIS AGREEMENT WITNESSETH:-

1. The Landlord shall let and the Tenant shall rent the above said commercial building.
2. The Tenant shall pay for the premises a monthly rental of Uganda Shillings. 1,800,000/= (one million and eight hundred thousand) for which a commitment fee of Uganda Shillings. 1,000,000/= (one million) shall be paid by 3rd August 2009 by the tenant and the Land lord acknowledges receipt thereof.
 - a) After which the monthly rental of Uganda Shillings. 1,800,000/= (one million and eight hundred thousand) will be paid 3 (three) months in advance.
 - b) The rent shall be revised after three (3) years if all circumstances remain constant.
3. The parties hereto agree that the tenancy shall commence on the 1st day of September 2009.

Tenant further agrees as follows.

- a) To pay the rent herein reserved in the manner aforesaid.

- b) To pay for water and electricity as used on the premises.
- c) To keep the premises and fixtures thereon in good tenable repair, fair wear and tear accepted.
- d) To make additions or adjustments, upon the premises which do not require the approval of the Land lord and the Town Council. PROVIDED any such modification and addition shall form part of the land and not to be removed.
- e) To keep the premises clean within the requirements of good hygiene and in keeping with the Local and/or Health authorities.
- f) Not to assign, sublet, or in any way part with the possession of the premises without the written consent of the Land Lord.
- g) To permit the Landlord and/or his agents and servants to enter upon the premise to examine the state of repair thereof and carry out any necessary repairs.
- h) To hand over vacant possession of the premises at the end of the tenancy.
- i) To maintain in tenable repair the interior of the premises.

The Land Lord agrees as follows.

- a) To allow the tenant peaceful and quiet enjoyment of the premises upon paying the rent herein reserved and observing the other covenants.
- b) To maintain the exterior of the premises in good condition.

6. The tenancy shall be automatically terminated if the rent remains unpaid for a period of ten (10) days from the due date whether the same be formally demanded or not save for the fact that the parties have negotiated about late payment.

7. It shall be proper for the Land Lord to reenter the premises and take possession thereof without prior notice if the tenant shall commit any breach of the terms of this agreement.

8. Either party shall give the other three (3) months' notice of termination of the tenancy.

In witness WHEREOF both parties hereto have hereunto affixed their hands on the date and year first above mentioned

Signed by the said SSEMAKULA MOSES:

LAND LORD

In the presence of:

Signed by the said: TAKASHI HATTORI ENTERPRISES

TENANT

In the presence of:

In the presence of:

3. **Form 6_Transfer and Consent form**
4. **Form 25_Notification of Survey of Customary Land**
5. **Form 1_Application for Certificate of Customary Ownership**
6. **Form 23_Demarcation Form for Certificate of Customary Ownership**
7. **Register of Certificate of Customary Ownership**
8. **Form 5_Application for Conversion of Leasehold out of former Public Land to Freehold**
9. **Form 9_Notice of Hearing of application for a Certificate of Customary Ownership**
10. **Form 4_Application for conversion from customary Tenure to Freehold tenure/Grant of Freehold**
11. **Form 19_Freehold offer**
12. **Form 10_Notice of Hearing of application for Grant of Freehold**
13. **Form 18_Lease/sublease Offer**
14. **Form 8_Application for a Leasehold**
15. **Mutation Form**

References

1. Foley, Connor: *A Guide to Property Law in Uganda, Human Settlements in Crisis*, United Nations Human Settlements Programme, Nairobi: UN Habitat and USAID, December 2007
[<http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2444>].
2. Ministry of Lands, Housing and Urban Development (MLHUD): *Training for District Land Boards and District Land Management Offices in Land Administration and Land Law in Uganda*, Participants Resource Guide/Manual, Final Version, June 2010.
3. Ministry of Lands, Housing and Urban Development (MLHUD): *Clients' Charter*, March 2012.
4. Mugambwa, John Tamukedde: *Principles of Land Law in Uganda*, Kampala, Fountain Publishers, 2002.
5. Mugambwa, John Tamukedde: *Source Book of Uganda's Land Law*, Kampala, Fountain Publishers, 2002.
6. National Centre for State Courts (NCSC): *The Role of Community Legal Volunteers in Promoting and Safeguarding Land Rights in Uganda: A Training Manual for Civil Society and Community Based Organizations*, USAID Support Access to Justice, Fostering Equity and Peace (SAFE), 2013.
7. Norwegian Refugee Council (NRC): *Partner Training Programme Manual*, Incomplete series of draft Power Point Presentations, Undated. Norwegian Refugee Council (NRC), Community Sensitization Manual, Produced with support from the UNDP Peace Building Fund, Undated.
8. United Religious Initiative (URI) and Acholi Religious Leaders Peace Initiative (ARLPI): *Mitigating Land Based Conflicts in Northern Uganda: A Must Guide for Stake Holder Mediation, Sensitization and Reconciliation Processes*, Supported by IFA/ZIVIK.