



Republic of Uganda

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

Drafting the National Land Policy

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EXECUTIVE SUMMARY

Despite the existence of constitutional and legal frameworks brought about by the 1995 Constitution and the Land Act 1998 and other land related laws, a number of land-related challenges have emerged over the years, which must now be squarely confronted in order to foster notable economic development and poverty alleviation.

Land issues in their historical complexity do not appear to have been satisfactorily resolved despite numerous pronouncements in the land sector since 1984. These relate to land, first as property which necessitates facing the challenge of designing and universalizing a system of tenure that would instill *confidence in individuals, communities and institutions* that own or desire to accumulate land as an asset, secondly as a fundamental resource given the fact that *agricultural land* in Uganda has not always been optimally and sustainably used. The primary reason is that indigenous agriculture was always and still is neglected by the state; a fact which continues to contribute to the underdevelopment of the land sector. The challenge of development in the land sector is, therefore, to ensure that these issues are not only addressed but that land and associated resources are transformed for social and economic development in Uganda. These challenges cannot be resolved unless if a comprehensive policy on land is developed

The development of the Draft National Land Policy has followed a participatory consultative process whose objective is to obtain stakeholder consensus on the final product. The aim of the consultations is to ensure that the policy principles and prescriptions in the emerging options are politically and socially realistic in Uganda's context and are capable of efficient and cost-effective implementation. A number of sequential steps have been followed entailing a comprehensive review of available literature, preparation and revision of several drafts, discussion of drafts with civil society groups, the private sector, owners and users of land, various government agencies, and regional and national expert groups. The final version of the policy will be presented to a National Land Conference before transmission to the Cabinet. This consultation document is presented in a three-band model, comprising a definition of critical policy issues, statement of the problem and possible emerging policy options from the consultant and the stakeholders so far consulted.

1. INTRODUCTION

1.1 Most Basic Resource

Land is the basic resource (in terms of the space it provides, the environmental resources it contains and supports, and the capital it represents and generates). It is a **commercial** asset that can be used and traded, it is a critical **factor of production**; it is an essential part of the **national** patrimony; and it is a key factor in shaping individual and collective **identity** through its history, the cultural expressions and idioms with which it is associated, and it influences spirituality and aesthetic values of all human societies. Thus, land is perhaps the most essential pillar of national development.

1.2 Need for a National Land Policy

Land policy development in Uganda is driven by a number of factors:

- (i) The primary one being recognition of the fact that the problems burdening the land sector cannot be resolved unless steps are taken to develop a comprehensive sector policy. This much has been conceded in past and current official documentation.
- (ii) The second is the need to refocus the discourse on land from over-emphasis on property rights, to its essential resource value in development; this cannot be done outside a comprehensive land sector policy framework.
- (iii) The third is the existence of policy gaps on special issues of importance to the land sector itself as well as a large spectrum of land-dependant public policies/plans/programmes. These include energy, fragile eco-systems (including lakeshores, wetlands, hilly and mountains areas), water, dry lands (including rangelands), energy, PMA, and livestock, urbanization, infrastructure and industrialization. As much as policies exist on these issues, they are not properly integrated into land sector development; no effective sectoral development can take place.
- (iv) The fourth is that international and regional trends in land policy require that Uganda should broaden and deepen its policies by looking beyond its borders, especially within the context of the East African Community since all sectoral partner states policies are to be harmonized.
- (v) Lastly, lack of clarity in both the Constitution and the Land Act as to what the role of the state is or should be in land sector development and management is self-evident.

The land sector is the bed-rock of all development and is therefore, expected to play a crucial role in the development of other sectors and, specially, provision of leverage in efforts at poverty reduction, the promotion governance and social justice, political accountability and democratic governance, the management of conflict and ecological stress and sustainable modernization of the economy as whole.

1.3 Policy Objectives

The overall goal of land policy development is to agree on a framework which will ensure the sustainable utilization of national land resources for poverty eradication. Specific objectives are to:

- (i) stimulate the contribution of the land sector to overall economic development and poverty eradication in Uganda;
- (ii) rationalize and simplify the complex tenure regimes in Uganda so as to maximize their contribution to the development of the land sector;
- (iii) create an enabling environment for equitable access to land and security of tenure;
- (iv) reverse or mitigate adverse environmental effects at local, national, regional and global levels;
- (v) promote land use activities that ensure sustainable utilization and management of environmental, natural and cultural resources for national social-economic development;

- (vi) ensure planned, environmentally-friendly, affordable and well-distributed human settlements for both rural and urban areas; and
- (vii) upgrade and harmonize all land use related policies and laws, and strengthen institutional capacity at all levels of Government.

1.4 Overall Policy Principles

The following overall principles are to be applied to the formulation of the national land policy;

- (i) Land must be productively used and sustainably managed to ensure increased contribution of land to economic productivity and commercial competitiveness through a paradigm shift from emphasis on land ownership to land development.
- (ii) Land development must contribute to poverty eradication since land is at the centre of poverty reduction in Uganda (as has been the case elsewhere as the world).
- (iii) Access to land must reflect concern with equity and justice; access, control and management of land is an important human rights and social justice issue.
- (iv) Managing land resources must contribute to democratic governance, through development of mechanisms for efficient, transparent and participatory management of land resources.
- (v) Management of land resources must contribute to peace-making and security; in order to restore stability in land relations, and the resumption of sustainable livelihood activities, the national policy of Uganda needs to address all the root causes of historical and current conflicts driven by competition over land.
- (vi) Land policy must guide the development of policies in other productive sectors; it is an important determinant of the health and vitality of all sectors and sub-sectors which depend on land for productivity. Among these are agriculture, livestock and fisheries, energy, minerals, water, wildlife, forestry, human settlements and transport infrastructure. In addition, the overall condition of the environment depends, to a large extent, on how land resources are used and managed.

2. KEY ISSUES FOR THE NATIONAL LAND POLICY

A. THE LAND TENURE FRAMEWORK

Land tenure refers to the terms and conditions under which access to and rights in land are acquired, retained, used, disposed of or transmitted. It is generally appreciated that tenure (land ownership) is at the heart of land sector development since property rights are the primary basis of decision-making in land use matters. The Constitution and the Land Act have classified tenure only in terms of the quantum of rights held, i.e. whether absolute or temporary (leasehold). The two legal instruments have not classified land tenure in terms of the manner in which such land is held whether as private public or community property.

A.1 Paradigm Shift in Land Management

Since 1900 to-date, almost (if not all) legislation on land in Uganda has focused on ownership-cum-property rights. Making a departure from mere legislating over land ownership to policy development requires focusing on integration of land use, production and development. It also implies enhancing planning, management and enforcement of land use regulation through out the country and development control in urban centres.

A.1.1 Policy Issues and Problem Statement

There is need to refocus the discourse on land from overemphasis on mere legislation related to property rights, to its essential resource value in development. The paradigm shift requires that the land sector be fully integrated into the overall development planning of the country, through identification of effective linkages with other productive sectors, in order to ensure increased contribution of land to economic growth and development as well as commercial competitiveness.

A.1.2 Emerging Policy Options

The land policy will facilitate the design and execution of a paradigm shift from emphasis on land ownership to land development. All land related policies need to be consolidated under this policy as a permanent agenda on land for effectiveness. All land use sectoral policies will need to be harmonized with this mother of all policies. All this will involve:-

- (i) A move from small holder subsistence farming to large scale, commercial agricultural production;
- (ii) Enhancement of access to land for large- scale investments;
- (iii) Design of appropriate public policies and incentives to ameliorate problems associated with land, labour and credit markets with a view to enhancing productivity.;
- (iv) Putting in place measures to ease population pressure on land, especially for routine (or subsistence) settlements.
- (v) Divorcing land policy formulation process from political inclinations of the stakeholders.
- (vi) Articulate definition and resolution of the historical legacy and the land question in Uganda, to ease translation to a simple productive and enforceable legal regime.
- (vii) Promoting purposive ownership of land oriented towards development. It should not be sufficient for one to own land; therefore it is imperative to “*attach development duty to ownership rights*”. Land needs to be “liberated” for development.
- (viii) Sorting out the land ownership rights, interests and issues as the starting point is important before proceeding to development aspects.

A.2 Clarification of Land Rights under Various Tenure Regimes

The Constitution and the Land Act provide that land in Uganda may be held in terms of four tenure categories, namely: customary, freehold, mailo, and leasehold. Incidents of these tenure regimes (other than leasehold) are, however, defined in terms of generalities which establish no particular frontiers; the apparent finality with which the incidents of each tenure category is presented leaves little room for transitional or progressive adaptation in response, inter alia to changing demands exerted by population growth, technological

development and rapid (or unplanned) urbanization. The result is likely to be the growth and expansion of informal or secondary rights regimes in both urban and rural areas.

A.2.1 Policy Issues & Problem Statement

1. Does this classification of land tenure present any new values; was the description of the incidents of the various tenure categorized necessary or even adequate?
2. What about emerging, new tenure regimes?
3. If the system is closed, as is now growth and/ or expansion of informal or secondary land rights regimes in both urban and rural areas is likely to be promoted.
4. Should the policy push for uniform land tenure system through out the country? Is the tenure framework capable of facilitating the development of a land market?
5. Does it protect the natural resources and the common property resources?
6. Does it protect the rights of the poor, the marginalized and disadvantaged groups.
7. Does it protect the rights of women and children?
8. Does it protect the rights of victims of HIV/AIDS?

A.2.2 Policy Principles on Land Tenure Systems

Existence of ambiguities in the way the Land Act defines the land tenure systems is a good reason for comprehensive re-appraisal. Such appraisal needs to take account of a number of principles, among which are:

- (i) A good land tenure system should guarantee security of tenure and access, ensure equity in the distribution of land resources, eliminate gender discrimination in ownership and transmission, preserve and conserve resources for future generations
- (ii) The system of law defining the incidents of specific tenure regimes should derive its legitimacy and relevance from cultural, economic and social usages, indigenous to Uganda and not from incidents imported from elsewhere;
- (iii) Individual land tenure regimes should be facilitated to develop and evolve appropriate incidents in response to changes in social, structures technologies of land use and market demands.
- (iv) Enable primary tenure regimes (i.e. customary, freehold and mailo) to develop their own unique incidents in response to time, circumstance and durability and without artificial mechanisms for unidirectional conversion to freehold tenure currently perceived as the dominant system.
- (v) All the four (4 tenure systems to be retained; however, for urban areas, mailo, freehold and customary be qualified with development conditions).

A.3 Mailo Land in Buganda and Native Freehold in Ankole and Toro

Although it is similar to freehold, mailo¹ / native freehold² is subject to the rights of occupiers or *kibanja* holders which many times conflict. Mailo / native freehold separates the ownership of land from occupancy or ownership of developments by “lawful or bonafide” occupants, guaranteed by the Land Act. The *kibanja* holder has option to purchase and, thus, move on to the mailo / freehold title. The Act also guarantees statutory protection to the *kibanja* holder and his/her successors against any eviction as long as the prescribed nominal ground rent is paid.

A.3.1 Policy Issues and Problem Statement

This tenure has effectively locked out large and prime areas of tenanted land from the development process. This is likely to impede the growth and orderly planning of land in general, but more so around the Kampala metropolitan area. It is difficult for mailo / native freehold owners to make direct improvements to their registered land despite being titleholders because the tenure is frozen. In Buganda, studies reveal that over 80% rural mailo land is tenanted, hence it is of no actual value to the mailo owner — he/she can hardly

¹ As a result of the allotments under the 1900 Buganda Agreement

² As a result of Toro Agreement 1901 and Ankole Agreement 1900

sell the land (*it falls out of the open land market*); cannot easily mortgage the land (*it falls out of the credit system*); can hardly evict the many *bibanja* holders even on compensation thus cannot utilize the land.

These overlapping and conflicting rights in the same piece of land have created a land use deadlock between the statutory tenants (*kibanja* holder) and the registered land owner (mailo / native freehold owner). In addition, there is controversy surrounding ground rent as provided for under the Land Act 1998 instead of economic value or beneficial value to the occupant. The definition and rights accorded to bonafide occupants in the same Act are also unpopular. All these have resulted into rampant evictions of occupants/tenants.

Policy issues in the Mailo Tenure System can be summarized as below:

- i. The creation of “dual or competing titles” for the registered mailo owner and the lawful/bonafide occupants (*kibanja* holders) under the Land Act. This has created a paralysis. The registered land owner should have rights superceding those of the occupant. The multiple, overlapping and conflicting rights over the same piece of land need to be resolved as they have serious, social, economic, political and legal implications.
- ii. The land rights given to a bonafide occupants and the protection accorded to such protection “amounts to compulsory deprivation of an interest in or control over private property contrary to Article 26 of the Constitution. Some have argued that the law confers rights to a trespasser. Section 29(2) of the Land Act defines a bonafide occupant as a person who before the coming into force of the Constitution had occupied and utilized or developed any land unchallenged for twelve years or more . Since there was no law which required a registered owner to challenge a trespasser, this amounts to retrospective legislation which is unconstitutional.
- iii. The issue of nominal ground rent of a non-commercial value is still contentious. The protagonists argue that this is intended to address the historical injustices committed in 1900 when occupants of land were turned into tenants of new mailo owners. This argument can only work for the original occupants prior to the 1900 Agreement and their descendants. Research has shown that the majority of the occupants do not derive occupancy from original occupants. It is also a fact that the majority of the occupants do not do not derive occupancy from original occupants. It is also a fact that the majority of the current registered owners of land do not derive title from the original allocates of the mailo interest. They actually derive their rights through purchase of the mailo interest.
- iv. Automatic tenancy takes away the land owner’s right to negotiate fair tenancy which appears unfair and unjust.
- v. Can the lawful or bonafide occupants co-exist on the same piece of land in this era of agricultural modernization/commercialization, industrialization and rapid urbanization? If the two parties cannot exist, which party should surrender the ‘bundle’ of rights it holds and on what terms?

A.3.2 Emerging Policy Options

Legislative or other measures will be taken to phase out this tenure regime or liberate it from the restrictions placed upon it by the Land Act. Proposals in the Land Act are not effective in resolving the land use deadlock. What is needed is a win-win formula based on the principles of a good land tenure system.. The policy may opt to:

- (i) Maintain the current status quo (i.e. multiple layers of rights, nominal ground rent etc.)
- (ii) Retain Mailo / Native Freehold that is free of tenants as tenure in its own right.
- (iii) Assist the tenants by occupancy to buy out the registered land owners using the Land Fund.
- (iv) Lawful bonafide occupants are compensated by land owners – compensation to be agreed or determined by the Court.

- (v) The registered land owner has a right to rent commensurate with the value of the land (the Constitution Review Commission, 2005). The occupant should stay on the land on terms agreed upon with the owner (similar to lease arrangements).
- (vi) Convert the tenure to a fully - fledged freehold system in rural areas (what are the implications)
- (vii) Convert the tenure to leasehold in urban areas and provide a mechanism for automatic conversion on expansion of urban boundaries; and
- (viii) Put in place interim measures to pre-empt mass evictions by the registered land owners as the other measures are being implemented.

A.4 Customary Tenure

Throughout the history of Uganda, customary tenure has been suppressed, ridiculed and sabotaged by state-imposed property regimes. Despite that neglect, customary land tenure values and principles have survived and are known to sabotage the operation of statutory law in situations where customary tenure rights have been converted. Provision is made for the issue of certificates of customary ownership and conversion into freehold.

A.4.1 Policy Issues & Problem Statement

Customary land tenure was partially recognized in the 1995 Constitution and the Land Act 1998 as one of the four regimes however such recognition was borne on the back of hidden distortions and misconceptions, which must be removed if it is to evolve as a dynamic instrument for land sector development. Though recognized in law, in practice customary tenure is not regarded as being on the same value as other tenures; Courts of Law in the administration of justice still assess it as inferior to other tenures that have titles for proof of ownership. The titling of customary of tenure and conversion to freehold is still contentious and the efficacy of customary tenure in urban areas, given its rural and agricultural characteristics. There are also a lot of misconception and misinterpretation of customary tenure.

Current policy on customary tenure is, at best, confusing and non-conclusive, the incidents of customary tenure, as enumerated by the Land Act, do not, recognize essential characteristics of customary land tenure namely that:

- (i) access to land is a function of community, lineage and family membership;
- (ii) access to land though universal, is specific to a function or group of functions;
- (iii) allocation of and control of use of land are part and parcel of community governance;
- (iv) trans-generational rights to land are protected through rules of exchange and transmission designed to keep land resources within communities, lineages and families;

Policy needs to appreciate that customary tenure is not equivalent to tenure “communally owned” and similar to an open access tenure. Some quarters believe that customary is outdated and not conducive to economic growth. In most cases Customary tenure is treat as s inferior and not recognized by financial institutions for collaterals.

The policy needs to clearly differentiate: Private customary land (family customary land which with time converts into clan customary land because of family expansion through birth) and clan customary land. Distinguish between customary rights of ownership with perpetual rights and temporary rights of alienation limited to use of land.

A.4.2 Emerging Policy Options

Customary tenure must be strengthened to facilitate orderly evolution into a relatively more modern and productive land tenure system through legislative enactments, therefore:

- (i) Documentation and eventual codification of customary land tenure rules applicable to specific communities at the district or sub-county levels.

- (ii) Systematic recording, certification and registration of customary land rights (certificates of customary ownership)
- (iii) Rules of transmission of land rights under customary land tenure will be modified to guarantee gender equality and equity and joint ownership of family land by spouses in recognized marriages.
- (iv) Recognition of customary land tenure should be backed by amendment of the Registration of Titles Act. 225 to incorporate constitutional changes.
- (v) However, since customary tenure is un-plannable in urban areas it should be replaced by Leasehold (where it exists in gazetted urban areas).
- (vi) In rural areas customary tenure should be progressively replaced with freehold tenure.
- (vii) Provision in the Land Act relating to customary land tenure to freehold will be deleted to enable the former to evolve in response to social, economic, and cultural change.
- (viii) Community land structures will be strengthened and their roles recognized as mechanisms of first instance in land rights allocation, use regulation and dispute processing in respect of land under customary tenure. There is need to give decisions of customary institutions full backing of the state judicial system.
- (ix) Mechanisms for the recognition and enforcement of decisions of community land structures by local government and central government will be designed and administered; the land law should be amended to ensure that customary institutions function.
- (x) Common property resources will be inventorised and vested in communities to be managed under customary law, subject to management rules being approved by the relevant state authorities.
- (xi) Customary land tenure system should be considered and perceived as the dominant future system and it should be enabled to evolve.

A.5 Freehold Tenure

Although a small percentage of land in Uganda is held under freehold tenure, it is clear that public officials view it as the property regime of the future. This view is held despite the fact that current conversion exercises are unpopular. It ought to be noted that the process of conversion have enormous economic and social consequences, which include allocation of substantial resources for adjudication, and registration.

A.5.1 Policy Issues & Problem Statement

1. Despite its attractiveness, there is no empirical evidence to show that freehold tenure has made significant contributions to development in Uganda; therefore, there is a need to realistically review the place of freehold tenure in property system of Uganda and ensure that its current glorification is backed by its socio-economic performance.
2. Freehold titling may cause some people to lose user rights (secondary rights)
3. Titling works well where there is an efficient and equitable system of land administration and the country has reached a level of development where land rights are individualized.

A.5.2 Emerging Policy Options

Freehold Tenure will be reviewed to ensure that transactions under this tenure are efficient and cost- effective; to do this:

- (i) Simplify the land registry practice to eliminate complex and costly cadastral requirements, impose development conditions and regulatory power of the state.
- (ii) Review the conversion of customary tenure into freehold to avoid growth of overlapping rights; where such overlaps occur, recognize the continuation of family or community interests to discourage fraudulent conversions.
- (iii) Phase out the application of the English Common Law in the interpretation of property rights issues in Uganda.

- (iv) Convert all land held on freehold tenure to leaseholds and providing mechanism that would facilitate automatic conversion on expansion of urban boundaries.
- (v) Ensure that the regulatory power of the state is exercised as vigorously on freehold land as it is on other tenure categories.

A.6 Leasehold Tenure

Leasehold involves the derivation and enjoyment of land rights from a *superior title* in exchange for conditions, including but not limited to, the payment of rent. Many jurisdictions have paid its flexibility useful particularly in urban area or in situations of rapid land use change in response to market demands. The leasehold opens land use change in response to market demands. The leasehold opens land to a much larger range of users and use functions than either freehold or mailo (i.e. sophisticated forms of concurrent ownership like condominiums).

A.6.1 Statement of the Problem

It is important that access to land, through leasehold, be promoted especially in areas of high land demand, because it opens land to a much larger range of users and use functions than either the freehold or the mailo. However, lack of clarity as to whether leases can be created under customary land tenure is a complication for genuine application. A more general problem is conditions and processes for exercise of **reversionary rights** by the superior title holder; cases of arbitrary and non-transparent reversions, especially on high-value-developments land, has led to innumerable disputes and could negatively dim the very superiority elements of leasehold tenure.

A.6.2 Emerging Policy Options

Current tenure in urban areas is either rudimentary or rural in character; therefore leasehold should be promoted as the primary mode of access to land for development by;

- (i) Providing standards for leasehold on all tenures for registration, duration, specific development conditions, processes for exercise of reversionary rights e.g. first-option-of-refund-to renewal for the current lessee leasebacks etc.
- (ii) Encourage the use and development of urban land on the basis of leasehold only
- (iii) Facilitate the voluntary conversion of urban freeholds and mailo into long -term leases.
- (iv) It should be subject to development conditions and enforceable punitive measures such as land tax, irrespective of tenure type; however, leasehold be encouraged as the ideal urban land tenure.
- (v) Consider the introduction of land size ceilings for titles in urban areas (e.g. 0.125 of an Acre) for purposes of orderly development to avoid excessively sub-divisions into miniature plots.

A.7 Access to Land in Informal Settlements/ Slums

A.7.1 Policy Issues and Problem Statement

Informal land development often occurs on terms which conger access to land on a limited, temporary or illegal basis in urban areas or peri-urban areas. Land use under these conditions, although precarious is important for poverty eradication. State refusal or reluctance to legitimize such bases of occupation and use is the cause of much injustice and misery.

A.7.2 Emerging Policy Options

The Policy options include:

- (i) Stabilize and regularize informal tenancies for orderly development and land use management by according statutory security without compromising physical planning standards and requirements / mainstreaming in urban development plans.
- (ii) Avoid disguised slummarization by institutionalizing and enforcing Physical Planning, viz Master Plans for all urban areas.

A.8 Poor, Vulnerable and Disadvantaged Groups

A.8.1 Statement of the Problem

This category includes farm and urban informal settlement dwellers, ethnic minorities (including hunter-gatherers) and internally -displaced populations. These population groups occupy land on the basis of precarious and unprotected land rights systems, which expose them to constant evictions, removals, and displacements. This has become a major cause of poverty among such groups.

A.8.2 Emerging Policy Options

Legislative and other measures are put in place to document and protect occupation rights of such populations, against arbitrary evictions or displacements. Actions towards this end include:

- (i) Civil society advocacy for the protection of land rights is enhanced and consolidated.
- (ii) Defend and preserve the traditional lands of marginalized communities and provide infrastructure for their improvements.
- (iii) Provide special protection to widows and orphans against deprivation of land resources through distress sales and discriminatory transmissions.
- (iv) Accord security for informal sector activities without compromising physical planning standards and requirements.
- (v) Mainstream informal sector activities in overall rural and urban development planning.

A.9 Women, Widows, Children and Orphans

Land use is primarily an activity of the women-folk, who are unable to own or inherit land due to restrictive practices under customary land tenure or are not economically endowed to purchase rights in the market.

A.9.1 Policy issues & Problem Statement

Attempts to redress this situation by proscribing discriminatory practices (Land Act and Constitution) in land ownership, occupation and use, and further requiring spousal consent to transactions involving family land, have not been effective as these are routinely ignored and are, in any event, non-applicable to widows and divorcees.

A.9.2 Emerging Policy Options

Ensure that women and children are able to gain secure access to land. Special mechanisms are needed to protect rights in land and special mechanisms are needed to protect rights in land hence:

- (i) Mainstream gender into development planning and domesticate all international conventions, which outlaw discrimination against women and children.
- (ii) Reform property laws including those considered “gender neutral” to ensure equality and equity and review customary rules and procedures relating to succession to ensure that transmission of land to women is not impeded.
- (iii) Fully integrate women into all decision making structures and processes relating to access and use of land.
- (iv) Design and implement a regime of matrimonial property that protects spouses both within and outside marriages.
- (v) Family land is held in trust for the family and women’s inheritance of land is promoted.
- (vi) Powers of traditional leaders in handling land matters are restore because of their sensitivity to rights of vulnerable groups.

A.10 Access to Land by Pastoral Communities

A.10.1 Policy Issues and Problem Statement

- (i) Pastoral communities occupy dry lands which are harsh in terms both of climate and ecology. Due to global climate change, ecological resources on which pastoral communities depend are coming under increased stress, making mobility and competition over grasslands, limited woodlands and watering commons inevitable. The resulting stress leads to conflicts and competition over these resources. ***Therefore, a need to mitigate the severity of competition and conflict over pastoral resources is self-evident.***
- (ii) Agro-pastoralism has been neglected and there is now a need for a policy on agro-pastoralism. Agro-pastoralism should be recognized as a form of land utilization.
- (iii) The customary rights and social institutions of pastoralists in their grazing land are generally not recognized; pastoralists get easily displaced.
- (iv) Pastoral mobility provides the best strategy to manage the low net productivity, unpredictability and risk on arid and semi-arid lands. Pastoral mobility depends on access to key range resources, primarily pasture, water sources and migratory corridors. However the mobility often leads to conflict with neighbouring communities over grazing and water resources.
- (v) Pastoral land tenure and management systems are increasingly challenged by encroaching interests, including agriculture, tourism-driven conservation policies and property and resource ownership tenures. These, combined with related uncertainties regarding resource access have been the major sources of deprivation, vulnerability and insecurity.
- (vi) In many parts of the country, pastoral grazing areas have been alienated for establishment of national parks and wild life reserves (e.g. Queen Elizabeth National Park; Kaiso-Tonya Wildlife Reserve; Bugungu Wildlife Reserve), government military installations (included are Kabamba Military Barracks, Kyankwanzi Leadership Training Institute; Kaweweta Military Training School; Singo Military Training School etc.); and other institutions such as large scale farming schemes (Mubuku Prison Farm, Kiryandongo UPDF Farm, Ibugatison Farm etc.). Thus pastoralists are landless by successive governments following the alienation of their grazing areas.
- (vii) Land invasions/grabbing and “illegal” land buying by nomadic pastoralists are causing tenure insecurity (Buliisa District, Teso and Gomba)

A.10.2 Emerging Policy Options

Enact appropriate legislation on the tenure and management of pastoral resources to:

- (i) Ensure that pastoral lands are held, owned and controlled by designated pastoral communities as common property under customary tenure.
- (ii) Protect pastoral lands from indiscriminate appropriation by individuals under the guise of investment.
- (iii) Maintain an equitable balance between the use of land for pasture and for wildlife protection. Government should designate areas of production for people’s interests.
- (iv) Establish mechanisms for flexible and negotiated cross-border access to pastoral resources among clans, lineages and communities for their mutual benefit.
- (v) Establish efficient mechanisms for the speedy resolution of conflict over pastoral resources.
- (vi) Karamoja and Kasese District, where the largest percentage of the total land area is under protected areas deserves special consideration.
- (vii) Government should put in place adequate mechanisms to compensate communities whose rights to land were extinguished by government in order to establish protected areas and development projects (particularly for the historically marginalized disadvantaged communities).
- (viii) A pastoralism policy should be developed advocating for zoning of the country to establish appropriate cattle corridor, consider balancing pastoralism and crop production instead of emphasizing pasture and grazing land. Introduce taxation on the pastoralism industry and encourage them to own land.

- (ix) Cross-border sharing of resources should be allowed (water & pasture). People should be allowed to negotiate freely with other parties and Government should not dictate terms.

A.11 HIV/AIDS

HIV/AIDS has colossal economic and social costs because it leads to a crisis of production and reproduction in agriculture through persistent morbidity of the population, loss of agricultural labour, and disablement of the land administration function.

A.11.1 Statement of the Problem

HIV/AIDS generates landlessness and poverty through asset transfers, distress land sales, evictions, land grabbing and abuse of land inheritance procedures. Widows and orphans are most at risk, they are often rendered destitute through denial of access to land resources and disinheritance.

A.11.2 Emerging Policy Options

- (i) Mitigate loss of and ensure access to land rights by HIV/AIDS victims (infected and affected), through:
- (ii) Mainstreaming HIV/AIDS intervention into all land sector activities.
- (iii) Regulation and control of the operation of the rural land market.
Legislation to enable widows and orphans to inherit family land.
- (iv) Encouragement of co-ownership of rural land by registering family or community trusts.

The policy should ensure that persons infected and affected by HIV/AIDS are accorded equal rights in acquisition and use of land.

A.12 Tenure of Natural Resources

A.12.1 Policy Issues and Problem Statement

The Constitution and the Land Act grant management trusteeship in respect of natural resources such as water, minerals, forests, wetlands, wildlife, nature reserves and sensitive ecosystems to state and local authorities. However, the issue of how access to these resources may be obtained or their products shared by ordinary Ugandans, who consider it indispensable as the holders of radical title, is not dealt with. There is need for tenure principles, regulating access to and the sharing of the products of natural resources by ordinary Ugandans.

“Trusteeship” does not carry ownership. A trustee simply holds the corpus of the trust while exercising fiduciary duties. The citizens are the beneficiaries of the trust. Recent judicial precedents suggest that using, managing or disposing of trust property in a manner that does not benefit the public interest or in a manner that limits traditional public use of resources is an abuse of the fiduciary relationship between the trustee and the beneficiary.

Government policy of modernization through fast economic growth and rural transformation is increasingly taking a trend of allocating trust resources and degazetting forests for increased production, in total violation of the principles for sustainable development. Today there is a stand off between the government and the public regarding change of land use from forest reserve to commercial agricultural production, as is the case with central forest reserves (CFRs) in Bugala Island and Mabira CFR.

Government has on several occasions been accused of abusing her fiduciary relationship in the realm of natural resources by selling/donating prime resources to private developers through incoherent and unsystematic procedures. Article 244 of the Constitution vests petroleum and minerals in Government on behalf of the Republic of Uganda, out of the public trust doctrine. Some have argued that Article 244 that casts petroleum and minerals out of the public trust, by vesting these critical national resources in government is

illegitimate. Important resources like petroleum and minerals must be held in trust for the citizens of Uganda. There is lack of clarity on the relationships of the state, government and the public vis a vis the trust resources.

A.12.2 Emerging Policy Options

Ensure that natural resources are protected, preserved and sustainably managed through a legislative and regulatory framework that;

- (i) clarifies who may have access to what natural resources products;
- (ii) ensures land use activities are controlled and systematically monitored for the health and vitality of natural resources and sensitive ecosystems;
- (iii) institutionalizes mechanisms for the joint management and sharing of benefits from natural resources; utilization and reparation in respect to communities owning or contiguous to land in or over which natural resources are situated.
- (iv) the state retains exclusionary control over extremely sensitive ecosystems such as water catchments, biodiversity colonies, and lake shores.
- (v) create a clear distinction between land tenure and resource tenure ownership that is often fused and tackled together.
- (vi) There is need to restore public confidence in the role of the state as trustee through respect of relevant laws and provisions
- (vii) The NLP should reinstate petroleum/oil and mineral resources into the beneficial interest of the public under the public trust doctrine.

A.13 Common Property Resources

Common property resources are usually managed through institutional arrangements, customs, and social conventions, designed to induce co-operative solutions to issues of access and benefit sharing. Among these are: grazing lands, woodlands, watering points, ritual grounds and forests, fisheries, irrigation systems and recreational parks.

A.13.1 Policy Issues and Problem Statement

Management trusteeship of some of the resources, reserved for ecological and touristic purposes, is currently placed under local governments and the state, without taking into account the role of local communities (these being the actual users) in the preservation and management of these resources. Guarantee of quality and value of common property resources is a dire need.

CPRs (especially communal grazing land) have in the past been grabbed, sold illegally or individualized by some members of the local communities. There has been contestation over land 'purchased' by migrant pastoralists in Buliisa, Teso and Lango. Land dispossession and tenure insecurities in these areas centres around buying and leasing these CPRs and the unfettered access to these resources.

A.13.2 Emerging Policy Options

Review existing laws and regulations on the management of common property resources to ensure complementarity with community practices:

- (i) Allow particular communities to manage resources they hold and exclusively use.
- (ii) Identify and gazette all common property resources irrespective of tenure status;
- (iii) Document indigenous knowledge of common property resource especially those of ritual or medicinal value.
- (iv) Develop mechanisms to mediate between state, local authorities, communities and individual interests' in particular common property resources.
- (v) Management should be decentralized to local governments or authorities in the given localities and capacity is built for their management.
- (vi) Access routes or corridors to common property resources often encroached upon and individualized should be identified and gazetted for public use.
- (vii) Community forests and traditional hunting grounds should be managed through associations which should get titles to legalize ownership.

- (viii) National organs like UWA and NFA should work with traditional institutions in the management and utilization of CPRs.
- (ix) Customary/Traditional institutions should be recognized and regularized in the management of CPRs. Local communities be empowered and roles defined in the management of CPRs.
- (x) Appropriate legislation to be developed to clarify who may have access to what type of CPRs and how this access will be secured.
- (xi) Ensuring that CPRs are managed sustainably by a particular community for their social and economic benefit.

A.14 Restoration of Properties of Traditional Rulers

An important political concession made in 1993 was the restoration of assets and properties belonging to traditional rulers previously confiscated in 1967. These included vast areas of land in Buganda, Ankole, Bunyoro and Busoga.

A.14.1 Policy Issues and Problem Statement

- i. The relevant legislation says that the interest restored is equivalent to that which was held by the Uganda Land Commission at the time of restoration. The relationship between traditional rulers as “owners” or “holders” of these properties and actual occupiers or cultivators is not clearly defined by that legislation.
- ii. It would appear that the land/properties were restored to the Traditional Rulers as trustees and not owners in so far as they were returned to the institution of the traditional ruler.
- iii. Buganda is still claiming for the public land (the so called 9000 square miles/akenda) which was confiscated in 1967. Buganda is also laying claim on 1500 square miles of forest land and the 160 square miles of land for official estates attached to county and sub-county chiefs. The 1993 statute that outlined assets its schedule to be returned immediately it provided that the rest (including the ‘9000 square miles’ and official estates) were to be returned following negotiations between the government and the traditional rulers concerned.
- iv. In the case of the “9000 sq.miles” and the 1500 sq.miles of forests, the Government has stated that the land is now vested with the Districts and therefore Buganda has no legal claim. But Article 241 of the Constitution provides that District land Boards shall hold land in the district which is not owned by any person or authority. Buganda argues that they are the true owners of the “9000 sq.miles and other assets confiscated in 1967. Indeed Article 108 of the 1967 Constitution the Uganda Land Commission was vested with land which was vested in the Buganda Land Board. Since Buganda has never ceded its rights over or been compensated for this land, the argument goes, it is inconceivable one to argue that the said land “has no owner” so as to fall within the jurisdiction of the District (Buganda Government Statement)
- v. In the opinion of the Attorney General of the Government of Uganda, “former crown land or public land, land which is not owned by any person or authority is vested in the district land boards. A part of the 9000 square miles is owned by the people who are customarily living on it. Part of it is also owned by people who got certificates of title issued by the Uganda Land Commission or district land boards” (5 March 2008).
- vi. Who/which authority owns the ‘9000 square miles’ -The NLP should sort out this issue?

A.14.2 Emerging Policy Options

- (i) Rationalize the tenure of Traditional Rulers by clarifying what was restored and prepare an inventory, showing the location of such land and the nature of interest, rights and protection accorded to occupants (*kibanja* holders).
- (ii) Traditional rulers own land in their own right; therefore, should deal with their land (in compliance with the law) just as any other ordinary land owners.

- (iii) Majority of institutions used by community (schools, hospitals etc) were established on land that belonged to traditional institutions, such land should revert to Government since traditional institutions do not have administrative powers.
- (iv) NLP should create a distinction between traditional rulers' personal land and that belonging to the institution which should be held in trust for their subjects.
- (v) Regarding the "9000 sq.miles" Government needs to administratively put in place a mechanism for negotiations with the traditional ruler in order to expedite the process of return of the confiscated land.

A.15 Government Land and Public Land

The Uganda Land Commission has power to hold any land entrusted to/with or acquired by the government (including land acquired abroad). The exact location of such land and its tenure status, are not, specified nor do mechanisms exist for identifying or adjudicating such land. It is to be assumed that such land includes land used by government agencies for public purposes, land reserved for future public use, road reserves and land carrying social infrastructure.

A15.1 Policy Issues and Problem Statement

Potential for conflict between District Land Boards, Local Governments' Central Government, Traditional Institutions and communities is a likelihood given the following issues;

- (i) There is no clear distinction between Government Land and Public Land, neither in the Constitution nor in the laws.
- (ii) There is a need to make a clear distinction between government land and public land.
- (iii) Government presently deals with government land and public land as if those estates are held for the beneficial interest of government as an institution. There is no clear legislation that creates checks and balances by prescribing the powers and limits of government in dealing with government land and public land which fall out of the ambit of article 237 (2) (b) i.e. trust resources.
- (iv) The above problem is replicated at the local government and community levels institutions where district land boards have been accused of disposing of land vested by law with no foresight to the best public interest in the disposal
- (v) Management of public land and government land especially rules and guidelines on how Uganda Land Commission handles disposal of institutional land in particular.
- (vi) Public land held by District Land Boards (Government is Clashing with Local Governments over this, there is a clash between communities and DLB over vacant land and CPRs)
- (vii) District Land Boards operate as if they are owners of public land when in fact they are "hold it in trust" especially with the Land Act provision for District Land Boards to hold and allocate land in the district" ... *which is not owned by any person or authority...*".

A.15.2 Emerging Policy Options

Minimize the possibility of such conflict and ensure that government land and public land is managed in the public interest:-

- (i) Adjudicate survey and register any such land in the name of the Uganda Land Commission.
- (ii) Ensure the management of such land is in compliance with the doctrine of public trust state until otherwise allocated to private or other uses.
- (iii) Expand the pool of public land and government land through land banking arrangements.
- (iv) There is need to differentiate between government land and public land; in instances where corruption has "nibbled away" or depleted government land and public land through self-appropriation, land policy should provide for re-possession, especially if such land is out of former public land.
- (v) Policy needs to clearly define "the stake" and "power" of the Citizens of Uganda (as holders of radicle title) in public land.

- (vi) Why are squatters or occupants on government or public land not recognized, yet occupants on private registered lands are legislate for? The same principle should apply to all tenancies!
- (vii) Why is all government land centralized under Uganda Land Commission? It should be decentralized to local governments.
- (viii) All government land and public land should be titled.
- (ix) Government land lying idle should be allocated to communities.
- (x) In the event of closure of resettlement schemes such land should be put under the management of district land boards as public land..
- (xi) As a policy direction, the NLP should provide for the protection of public assets like government land and public land under the public trust doctrine and call for substantiating rules and directions.
- (xii) The land policy should extend the public trust fiduciary relationship to localized institutions under the decentralized system of administration.
- (xiii) The NLP should extend the doctrine of public trust to the realm of public land and government land as this will help to cut apparent excesses by government and enhance transparency and accountability in managing public resources.

A.16 Tenure and Land Markets

A16.1 Policy Issues and Problem Statement

Land markets are concerned with the transfer of rights and interests in land through sale, assignments, rental, hire, pledge, and similar forms of exchange. Apart from direct allocation and transmissions, the land market is the primary avenue through which access to land is obtained. All tenure regimes operate in the context of their own peculiar market characteristics. What is important is that whatever market exist functions efficiently and equitably and in support of the socio-economic and cultural needs of the land using public. Further, land markets, like any other, are subject to imperfections and distortions caused, inter alia, by lack of effective regulation, poor land use planning and under capitalization. These factors often impede the land sector development.

A16.2 Emerging Policy Options

In order to ensure that land markets in all tenure regimes, function efficiently and equitably, an enabling environment will be created to:

- (i) facilitate the exchange and transmission of land rights and interests without compromising tenure security for individuals and communities;
- (ii) stimulate the development of land markets through fiscal, taxation and similar measures, in areas of high demand for land;
- (iii) improve the operation of land markets through efficient land delivery services involving, where appropriate, registration of rights and record of transactions, and speedy dispute processing under specific tenure regimes;
- (iv) facilitate the recordation or certification (without necessary conversion), of land rights under all tenure regimes throughout Uganda, and
- (v) ensure that land rights registers are established and are periodically updated so as to guarantee transactional accuracy hence minimize costly disputes.

A.17 A Framework for Supporting Land Rights

A17.1 Policy Issues and Problem Statement

The vast majority of Ugandans may not be able to afford the cost of securing land rights under any of the tenure regimes recognized by law. Land rights delivery mechanisms along cannot be entrusted to guarantee tenure security to the land using public especially the poor. It is therefore necessary to put in place a framework that would ensure that land rights held by all Ugandans are fully and effectively enjoyed.

A17.2 Emerging Policy Options

To facilitate the establishment of that framework, measures will be put in place to ensure that:-

- (i) community management structures relating to land under customary tenure are strengthened;
- (ii) civil society advocacy for the protection of land rights security is enhanced and consolidated
- (iii) land delivery services are further decentralized below to the local authority level.

B. CONSTITUTIONAL AND LEGAL FRAMEWORKS

B.1 Overall Policy Context

In Uganda, the land question has always been at the centre of the constitutional and legal discourse. The result is that land issues are mired in a bed of complex constitutional structures and processes, drawing legitimacy from historical as well as contemporary political exigencies. This has created problems and ambiguities in the property system.

Currently, there is lack of clarity as to what the role of the state is or should be in relation to land is evident with regard to:

- (i) The implications of shifting radical title to land from the state to the citizens of Uganda (as per the 1995 Constitution).
- (ii) The proper role of the state and local governments or authorities in relation to land. What should be the exact scope of the power of eminent domain and the police power, and who apart from the state should exercise those powers.
- (iii) The administration of issue specific components of the regulatory framework lies within different bureaucracies which are often uncoordinated and in competition with one another for recognition and resources.

B.2 Radical Title & Residual Sovereignty over Land

B.2.1 Policy issues and Problem Statement

Radical title is the allodium power or authority over land in Uganda. The Constitution (Article 237) and the Land Act vest this title the citizens of Uganda. Previously the radicle title was held by the State in trust for the citizen of Uganda, and the citizens wrestled it back due to abuse. This location created serious ambiguities in other directions:-

- (i) It is not entirely clear whether the citizens of Uganda, individually or collectively, can exercise residual authority against the state, local governments and community governance organs; in respect of unallocated or "vacant" land
- (ii) In which manner can the citizens exercise this residual sovereignty over land/the radical title over the land or which specific persona on behalf of the citizens.
- (iii) Because the radical title to land is now vested in the citizens of Uganda.
- (iv) The state no longer has reversionary rights over land. Authority to allocate "vacant" land, which the law vests in district land boards, does not appear to rest on any legally recognized reversionary title. So where are the powers of the district land boards derived from. What is the legal and proprietary foundation of these powers?
- (v) Can government guarantee "any title on land" in Uganda when the radical title is vested in the citizens? On what grounds or basis?

B.2.2 Emerging Policy Options

- (i) Eliminate ambiguities on sovereignty over land and simplify the framework of land law by amending the Constitution and Land Act to clarify how the citizens shall hold and exercise the radicle title to land.
- (ii) Although vesting the radicle title in the citizens of Uganda is still the preferred choice by stakeholders, it is important that policy:-
 - a) Differentiates between land as a national territory and land as a property, Land as a territory vests in the State while land as property vests in the citizens.

- b) No consensus has emerged yet on the **persona** to exercise the radical title on behalf of the citizens of Uganda and in or under what circumstances? Some people are for a permanent recognized institute of the state to be established for this purpose and the agency be answerable to parliament.
- c) For land held under trust for the Citizens of Uganda, the **terms** and **conditions** of trusteeship.

B.3 Power of Eminent Domain (Compulsory Acquisition of Land)

Eminent Domain or the Power of Compulsory Acquisition is to do with the power of state to extinguish or appropriate any title (private property) or other interests in land for public or other specified purposes. Because radical title to land is now held by the citizens of Uganda, the state no longer has reversionary rights over land. Eminent domain (i.e. the power to take over land for public purposes) now derives only from Articles 26 and 237 of the Constitution and is exercised in terms of the provisions of the Land Acquisition Act (Cap. 226) subject to the payment of prompt and adequate compensation before acquisition or possession taken. The constitution limits the grounds for compulsory acquisition. It must be in the public interest, provided the acquisition is necessary for public use or is the interest of defence, public safety, public order, public morality or public health and provided there is prompt payment of fair and adequate compensation prior to the taking possession or acquisition

B.3.1 Statement of the Problem

The state and local government authorities have not in the past exercised this power responsibly and strictly in the public interest.

1. Should the grounds and scope for exercise of this power be extended?
2. Do local governments have capacity to exercise this power?
3. The Government, during the Constitutional Review Commission in 2003 tried to extend the scope of the power of compulsory acquisition and a new ground i.e. compulsory acquisition of land for investment. Government argued that it was necessary to widen the scope in order to promote the national economy and that the provisions of article 26 impede development and are not in the national interest. The Government further proposed to scrap the requirements for prompt payment.
4. The Constitutional Review Commission found that the provisions of Article 26 were adequate and thus threw out the proposals by Government.

B.3.2 Emerging Policy Options

- (i) Extend the exercise of this power to land owning communities for orderly development.
- (ii) Extend scope of this power to include acquisition of land for carefully defined investment, physical planning and resettlement.
- (iii) The current position as provided for in the Constitution is sufficient and should not be amended to include investment and resettlement as grounds for compulsory acquisition.
- (iv) Exercise of this power by local authorities and communities is supervised and monitored by the state or agency for planning land use at regional or local levels.
- (v) If the public purpose cannot be justified, yet the state has already used the land, automatic restitution of land and reparations for loss should be undertaken.
- (vi) Compensation is uniformly applied across all tenure for land acquired compulsorily at land market prices.
- (vii) Amending the Land Acquisition Act to conform to the provisions of the Constitution.
- (viii) By virtue of decentralization, local governments cannot be excluded from the exercise of this power; their capacity needs to be built to exercise it responsibly. Local governments in the specific localities should be involved.
- (ix) In case the exercise of this power is limited by resources for compensation, central government should institutionalize a conditional grant to be selectively applied.
- (x) The proposal for compulsory acquisition of land for 'investment' has been much debated. It would effectively undermine every one's security of tenure. It would be

wrong anyway to reintroduce as policy, a recommendation which was explicitly debated and rejected by Parliament-as this one was.

- (xi) Despite attaching conditions for Environmental Impact Assessment and cost benefit analysis, **investment** is yet to be accepted as ground for exercise of this power, but **resettlement** has been accepted.
- (xii) Such compulsory purchase should strictly be on approval
 - (a) By Parliament for the Central Government and
 - (b) By the relevant Council for local governments.

B.4 Police Power of the State

The doctrine of the police power of the state is concerned with authority regulate the use of land held under any tenure. It is the state's residual duty to ensure that the way a land owner uses his/her land does not sabotage the public welfare and/or orderly development. This doctrine suppresses or limits undesirable land use without revoking ownership of the land. It is derived from Articles 242 (on regulation of land use) and 245 (on protection and preservation of the environment from abuse, pollution degradation and management for sustainable development) of the constitution and is extended to local governments.

B.4.1 Policy Issues and Problem Statement

This power has not been responsibly and strictly exercised in the public interest. In addition, it has been extended to local governments without adequate guidelines or framework planning at the national or regional levels. Law enforcement has not been effective as is evidenced by widespread disregard, throughout Uganda, of land use/physical planning regulations, environment, and natural resources legislation and regulations.

The regulatory framework of land use and land management is complex, internally fragmented, conflictual, bureaucratic, highly centralized and has tended to impede the effective management of land resources.

B.4.2 Emerging Policy Options

- (i) Educate the land using public on the need for public regulation of land use to secure public confidence in the implementation of regulatory mechanisms.
- (ii) Build capacity for enforcement and periodic monitoring of the effects of public regulation.
- (iii) Develop and enforce guidelines on the exercise of the police power at all levels.
- (iv) The exercise of the police power should take into account sub-sectoral policies on land use, the environment and natural resources.
- (v) Secure the involvement of the land using public in the implementation of regulatory mechanisms
- (vi) The three aspects of this power should be held as follows, with sufficient co-ordination from the centre: control-central government; regulation-district or regional governments; management – lower local governments.
- (vii) Criteria for the change of land use due to environmental, social and economic needs to be clarified.

B.5 Doctrine of Trusteeship

Under this doctrine, essential natural and cultural resources or common resources are held by the State, in trust for the people, the purpose is to preserve resources in a manner that makes them available to the public for certain public uses. Since 1995 Constitution was promulgated, the State has in theory, only held management trusteeship over natural resources, sensitive eco-systems, land reserved for ecological and touristic purposes, because the Radicle Title is held by the Citizens of Uganda as per articles 237 (1).

B.5.1 Statement of the Problem

Absence of defining characteristics, guidelines, terms and conditions for State, use (appropriation or change of land use), control and regulation of land held under trusteeship has led to degeneration of essential natural or common resources. This has resulted in

questioning the adequacy of the current legal framework on State's stewardship under this doctrine and what safeguards can be incorporated in the land policy to strengthen the doctrine of trusteeship.

B.5.2 Emerging Policy Options

Conflict between the executive and the people of Uganda over protection natural resource under this doctrine is apparent. Therefore:

- (i) Allow for citizens of Uganda to exercise decision - making on change of land use under this doctrine.
- (ii) Extend the scope of land/resources to be held by the state in trust for the common good of citizens to include sensitive eco-systems like hill tops and marginal land defined as sensitive eco-systems held in trustee under this doctrine to include marginal land and hilltops.
- (iii) Government must respect the provisions on natural resources with regard to trusteeship.
- (iv) Specify, in an Act of Parliament, the terms and conditions upon which the state or its established agencies exercise public trusteeship over these lands and resources.

C. LAND RIGHTS ADMINISTRATION

C.1 Land Rights Administration System

Land rights administration refers to the structures and processes through which land rights and incidents are refined, created and recorded; additionally, integrity of transactions are assured and guaranteed, land rights disputes processed, and land information inventoried, utilized or otherwise archived.

The Uganda land rights administration system performs at least five functions, namely: (i) land rights delivery, (ii) demarcation and survey, (iii) dispute processing, (iv) information management and (v) revenue generation. The functions are performed by institutions operating under state as well as customary law, the former being highly centralized and the latter informal.

C.1.1 Policy Issues and Problem Statement

1. Institutional and systemic conflict between statutory systems and customary systems is an every day reality.
2. The traditional system has a number of inconsistencies (use of physical features as boundary marks, un-codified/unwritten rules, marginalization of children.
3. The customary rules are not respected by all members of the community in some areas because they are not written, they do not respect gender aspects.

C.1.2 Emerging Policy Options

The malfunctions to be addressed through dismantling and engineering the present system to:

- (i) Fully decentralize land administration functions to local governments and let the public pay for land services as required.
- (ii) Further decentralization of functions to community land governance levels.
- (iii) Consolidation and rationalization of the decentralized administration in terms of cost, simplicity, efficiency, accessibility and affordability.
- (iv) Re-design of the hierarchy to enable community -based institutions to operate as tiers of first instance on customary tenure.
- (v) Full and effective participation by land users especially women in land administration.
- (vi) Clearly separate land rights administration system from public and political administration, so as to enhance management of land as a property and not as a political service.

- (vii) The traditional systems should recognize female inheritance of land as the formal system does. The rules and regulations of the traditional system should be written.
- (viii) There is merit in allowing communities governed by customary law to design and operate their own land and resource management systems, with appeals to the formal system. Traditional/cultural systems of land administration and management should be recognized and legalized as the first instance of redress with appeals to formal systems.
- (ix) The policy should not advocate for privatization of any land services, instead it should re-emphasize decentralization to districts.
- (x) Divest or privatize land services delivery as appropriate.

C.2 Land Rights Delivery

Land rights delivery functions involve the receipt and processing of rights and interests by public agencies under the different tenures by a land registry system which is still manually organized and expensively maintained. Land rights delivery under customary tenure is, however, based on memory and folklore, which are no less authoritative.

C.2.1 Statement of the Problem

Since neither of the systems has served the land sector well, it is imperative that land rights delivery functions categories are improved (for all land tenure categories).

Registration process is long making it slow expensive and corruption leading to fake titles.

C.2.2 Emerging Policy Options

- (i) Establishment and maintenance of community land registries for the recording and certification of land rights under customary law.
- (ii) Amendment of existing laws to eliminate the need for expensive cadastral maps and deed plans.
- (iii) Computerization of all land registries beginning with urban areas.
- (iv) Simplification of all land registry practice and systematic tracking of changes in proprietorship through transmissions, sub-divisions, mutations and boundary adjustments, to prevent distortions in land registry information.

C.3 Land Demarcation, Survey and Mapping

Land demarcation, survey and mapping functions support the registry system in particular and the planning process in general, by supplying accurate information on parcel characteristics, sizes, boundary markings and servitudes. It is also important for the determination of international boundaries. Under customary tenure, boundary-marking is conducted by the use of physical features such as rivers, particular trees and durable natural characteristics.

C.3.1 Policy Issues and Problem Statement

The performance of these functions has been impeded by a variety of factors, chief amongst which are shortage of qualified personnel, administrative bottlenecks in the preparation and approval of sketch and deed plans, and prohibitive private survey costs.

C.4.2 Emerging Policy Options

- (i) Institutionalize and organize training of land demarcation, survey and mapping personnel by public or private sector agencies, including local governments to recruit personnel, e.g. surveyors, for standardized service delivery and supervision.
- (ii) Encourage simple demarcation and general (not fixed) boundary-marking procedures in all tenure categories.
- (iii) Privatization of topographical, geodetic, hydrographic and triangulation mapping and provide to strict standard-setting and public regulation.
- (iv) Recognize and confer official status to community based boundary-making for customary tenure.

- (v) Cycle for registration of land and procurement of land titles is too long and very complex; hence need to establish and review the real cost of title processing;
- (vi) Review the titling Cycle to re-affirm the absolute necessity of each “point of call” and signature in order to introduce measures for faster action.
- (vii) Implementation of systematic demarcation needs to be cognizant of the unique values and virtues of customary tenure.

C.5 Land Dispute Resolution

The Land Act, under decentralization, established an elaborate structure of tribunals (implemented under a circuiting model) and appointment of **ad hoc** mediators, initially under Ministry of Lands, later transferred to Ministry of Justice. It is also common for dispute mediation to be severally undertaken by the offices of Resident District Commissioners, Local Councils and traditional organs (chiefs and clans).

C.5.1 Policy Issues and Problem Statement

The operations of tribunals have since been suspended by the judiciary, citing limited resources and duplication with Magistrates Courts. Secondly, no specific recognition is given to indigenous mechanisms for dispute processing under customary law. In addition, overlaps in dispute resolution institutions have resulted into fora shopping by aggrieved parties, without a clear hierarchy.

C.5.2 Emerging Policy Options

- (i) District Land Tribunals are still needed; they should be re-instated under the Ministry of Lands. Each district should have a tribunal and they should be well – facilitated.
- (ii) Operation of land tribunals be restored devoid of complex jurisdiction and litigation procedures associated with ordinary courts of law
- (iii) Specify criteria to permit simultaneous application of state and customary law depending on the circumstances.
- (iv) Define a clear hierarchy in order to guarantee the finality and authoritativeness of decisions of all dispute processing mechanisms subject to appeal to higher levels of jurisdiction. Need to harmonize the several for a for land dispute resolution by clearly stating the roles/function of each for a.
- (v) Strengthen indigenous institutions by according them precedence in respect of the processing of disputes under customary land tenure. Recognize customary institutions as the first instance for redress with appeals to formal system. Recognize the council of elders as court of first instance.
- (vi) Research the use of traditional leaders as *mediators* in dispute resolution, before extending jurisdiction to traditional institutions.
- (vii) RDCs may carry out mediation but must be cautioned and be aware of land law, because their judgments are administrative and not legally binding.
- (viii) LCs need to be trained to commence dispute resolution roles on land matters or this jurisdiction is removed and restored to Magistrates Courts.
- (ix) Significantly enhance the speed of dispute resolution with clear cut-off time for higher review.
- (x) Separate civil and criminal cases arising from land conflicts and clearly indicate which system of justice should handle the criminal or civil cases.
- (xi) District Land Tribunals should not be reinstated, but the council of elders should be strengthened to fit into the judicial system. The council of elders should be legalized at the parish level and a committee formed.
- (xii) Land Tribunals should be completely waived off because the lower dispute resolution for a can ably resolve land conflicts and appeals can be registered with Magistrate Courts.

C.6 Revenue Generation and Fiscal Functions

Decentralization of the land rights administration system under the Land Act and Local Governments Act has created opportunities for revenue generation and fiscal management through land taxes, land rates, stamp duty, rental income, delivery of land services, and other forms of access.

C.6.1 Statement of the Problem

In Uganda, revenue and fiscal generation functions of the land rights administration system are not fully developed. It is important that the capacity of land institutions to generate revenue is enhanced.

C.6.2 Emerging Policy Options

- (i) Develop the capacity of land sector institutions for effective revenue generation and fiscal management.
- (ii) Streamline fiscal transfers between national, local and community institutions, sharing and use of land services revenue.
- (iii) Review land taxation as an avenue for revenue generation
- (iv) Control levies on land transactions in urban and rural areas through the development of guidelines to be administered by local councils.
- (v) Unproductive land in urban areas should be taxed. Idle land in rural areas should also be taxed.
- (vi) Income from land transactions should go back to the land sector.
- (vii) Government should retain some revenue for land services to cover costs; the rest to be shared with local governments.
- (viii) Policy should provide for taxation of unutilized land such that the land owners are encouraged to lease out such land; administration of this tax should be by local governments.

C.7 Divestiture and Privatization

C.7.1 Policy Issues and Problem Statement

There is growing concern that the concentration of land rights administration services in government institutions and agencies is the primary cause of inefficiency and wastage. It has been described as one of “.....the slowest, most haphazard and development debilitating factors.....” It is now agreed that some of these functions should either be privatized or divested to other agencies to enhance efficiency in the delivery of land rights administration services. Which services ought to be privatized or divested? And how?

C.7.2 Emerging Policy Options

- (i) Create a semi-autonomous state agency/authority to manage physical planning, land registration, land surveys, valuation, mapping, allocation of rights and interests in government / public land, and the management of land information services.
- (ii) Facilitate the privatization of a limited number of land rights administration services under guidelines established by the semi-autonomous agency;
- (iii) Retain policy and power of standards setting and supervision as a core ministerial function.
- (iv) Retain dispute processing functions in communities, and decentralized state institutions established under the Land Act.
- (v) There is no need for a separate land authority.

In doing all these attend to issues below:

- (i) Privatization of some land services has made the titling process more expensive.
- (ii) Ensure harmonization and reduce or stamp out stand offs between different institutions responsible for land use and administration.
- (iii) Formalization procedures for quality control and supervision of the land administration boards of traditional rulers, churches etc.

- (iv) Some Land Boards operate outside the Land Act 1998 and need regulation (cultural and other land institutions) e.g. Buganda Land Board, Church Land Boards that own land in their own capacity and grant it out to people under their own terms and conditions.

D. LAND USE AND MANAGEMENT

Management of land resources, viz their essential quality, multiple uses, and factor influencing environmental change, is the development, problematique for the land sector. In evolution of this policy, it is tackled at two broad levels: Land Management and Land Utilization

D.1 Land Management

Land management is the authority and capacity to design, enforce and guarantee the integrity of standards for land quality assurance, productivity, physical development planning, and the environment.

D.1.1 Land Quality Assurance

One of the most serious problems in the land sector of Uganda is the deterioration and degradation of land quality, especially in rural areas and in peri-urban settlements.

Emerging Policy Options

- (i) Land management should enhance the proprietary value of land resources by restoring and maintaining the quality of land resources.
- (ii) Initiate programmes for rehabilitation of degraded lands.
- (iii) Create a system of incentives for the implementation of land conservation measures and adoption of natural vegetation regeneration techniques in land use
- (iv) Develop and implement programmes for the delivery of community-based land management extension services.
- (v) Develop clear national guidelines on industrial waste

D.1.2 Land Productivity

Land sector in Uganda is dominated by the poor, women and children using inefficient technologies of production.

Statement of the Problem

Although a national land use policy has been developed, it is important that clear guidelines for productivity management are available.

Emerging Policy Options

- (i) Enhance the overall productivity of the land sector through.
- (ii) Design of sound land use practices to facilitate the attainment of orderly, productive and sustainable land use.
- (iii) Promote individual and community participation in environmental action.
- (iv) Integrate land use planning through information-based and participatory processes.
- (v) Explore the possibility of irrigation development in arid and semi-arid areas.

D.1.3 Physical Development Planning

Physical planning is an important tool in the management of land under any tenure. It enables the state, local authorities, communities and individuals to determine, in advance, the direction and rate of progression of land sector activities by region and area.

Statement of the Problem

Planning legislation has failed to provide adequate guidelines for framework planning at the national and regional levels, and none at all for the development of implementation plans in

rural areas. Besides, local planning authorities, i.e. local councils do not always have the resources and technical capacity to plan or implement approved plans.

Emerging Policy Options

- (i) Land Use Planning (Physical Planning) must be given first priority in land management and declare the entire country a Physical Planning Area.
- (ii) Ensure that physical development plans are, indeed, prepared and the machinery of development control, vigorously enforced.
- (iii) Physical planning should be long term and broader to cater for future urban centers; made mandatory and extended to rural areas for effective and efficient land use, declared to the whole country.
- (iv) Prepare a medium to long-term framework for a Physical Master Plan for Uganda
- (v) Facilitate development and constant revision of long-term Master Plans as well as implementation plans for urban areas.
- (vi) Design of a framework and capacity for land use auditing in rural and urban areas
- (vii) Establish measures for strict enforcement of development controls, especially in urban and peri-urban areas.
- (viii) Integrate physical infrastructure policy i.e. roads, transportation, and service lines into overall national and regional physical development planning schemes.
- (ix) Physical planning should be extended to rural areas and involve local people.
- (x) National Land Use Policies is prepared on the basis of the National Land Policy.

D.1.4 Environment

A major environmental challenge in Uganda is how to prevent or control the process of destruction of natural resources, through indiscriminate excisions, unregulated harvesting, and politically correct investment promotions; and the pollution of land by effluents and solid wastes generated by urban settlements.

Policy Issues and Problem Statement

Although policies and legislation exist, these have proved too complex and bureaucratic to permit efficient decision-making in this sector. Indeed, there appears to be widespread political interference with the implementation of the National Environmental Act (Cap. 123) and regulations.

Emerging Policy Options:

- (i) Restore the integrity for environmental management
- (ii) Design of appropriate environmental standards for all production sectors.
- (iii) Revise and restructure of the legal framework of environmental governance by entrusting implementation functions with local stakeholders.
- (iv) Strengthen legal and institutional machinery for environmental management.
- (v) Discourage settlement encroachment into water catchment areas, lake shores, wetlands, and protected areas.
- (vi) Promote sustainable use of marginal lands and fragile ecosystems.
- (vii) Establish mechanisms and or institutions for management of special or fragile ecosystems, including biodiversity colonies.
- (viii) Develop clear guidelines on waste management and re-cycling need to be drawn.
- (ix) Government should recover the hill -tops that were formally under public land for conservation option.
- (x) Consider community management for fragile-eco-systems.

D.2 Land Utilization

One of the strategic objectives of land sector is that land resources must be put to sustainable management and productive use. In Uganda, land remains under or sub - optimally utilized nationally, severely degraded in many parts of the country, poorly planned in others, and is an arena for fierce competition in areas of high physiological pressure. In a

land policy, land utilization can be divided into three interlinked components, namely: agriculture (crops and livestock), the built areas, and land reserved for conservation.

D.2.1 Human Settlements

Rapid urbanization and the projected modernization of the agricultural sector will generate further demand for land by various categories of uses and users.

Statement of the Problem

The greatest demand in the urban sector is likely to be for housing development, physical infrastructure and recreation. In the rural areas, demand is likely to focus on large-scale investment, resettlement of the landless and displaced populations, and the location of service centres. In heavily settled areas, land fragmentation is a significant problem and is expected to worsen, leading to land degradation. In areas of fixed tenures, especially in the freehold and mailo systems, land inheritance means sub-division of existing holdings.

Emerging Policy Options

- (i) Develop and maintain an inventory of land availability and suitability as part of the national land information system.
- (ii) Establish land banks in response to land needs at their respective levels.
- (iii) Strengthen urban and rural land use planning processes to prevent land wastage or sub-optimal uses.
- (iv) Regulate subdivision of land in urban and rural areas
- (v) Facilitate periodic consolidation and re-adjustment of land parcels for optimal use.
- (vi) Develop a comprehensive human settlement policy for both rural and urban areas.
- (vii) Encourage regionally balanced urbanization by availing appropriate socio-economic infrastructure services in up-coming growth centers.
- (viii) Institute well-planned urbanization, through long-term Master Plans.
- (ix) Ensure that land for human settlement is properly planned and social services allocated evenly.
- (x) Address the need for urban policy. The need to create incentives for people to move from rural areas to urban areas for productive use.
- (xi) Advocate for planning of upcoming urban centers prior to their creation, currently the reverse is time.

D.2.2 Agriculture

In land evaluation, the fitness of a tract of land is assessed for various current and potential uses. This assessment is based on a comparison between land use and land quality, with an evaluation of bio-physical and socio-economic opportunities and constraints. In Uganda, agricultural production is mainly by small holder subsistence production. In heavily settled rural areas, land fragmentation is a significant problem and is expected to worsen.

Problem Statement

Land evaluation for the purpose of assessment of land productivity potential, land capability and land sustainability for agriculture is not adequately done. This, in turn, makes it virtually impossible to allocate land to its most optimal uses, therefore, a need for establishing agricultural zones of production excellence. Soil maps are outdated and not detailed enough for land use planning purposes

Emerging Policy Options

- (i) Make available a land resource inventory and any other necessary information on which appropriate decisions can be made on land use for agriculture.
- (ii) Promote and ensure viable zonal agricultural production for land use improvement.
- (iii) Make available an updated soil resource inventory and present the data in form of a map.
- (iv) Promote farming practices that will reduce soil erosion hazard and enhance soil productivity.

- (v) Encourage voluntary periodic consolidation of agricultural land holdings to sizes suitable for economic and productive use.
- (vi) Discourage socio-cultural, economic and other practices that degrade the quality of rangelands.
- (vii) Zoning is important to evaluation of suitability of land to the different land uses.
- (viii) Land fragmentation to be discouraged by law, bye-laws, and practice.

D.2.3 Conservation

Uganda is pursuing various policies (formal and informal), which allow changes in land use of protected areas, especially forests, wetlands and wildlife reserves. The total area under conservation in the country is neither adequate nor representative of all the Uganda's ecosystems in Uganda. Management of protected areas is largely in the hands of Government, which at the same time has had several policies that have resulted in land use changes of these areas. Present land use activities not only cause environmental degradation but also loss of biodiversity, both in protected and non-protected environments. It is important to protect both the water sources and catchments if water supply is to be maintained.

Problem Statement

In general, conservation of biological diversity outside protected areas has not received the attention that it deserves. The criteria for setting aside areas for conservation in the country are not well established or known. Wildlife does not know any boundaries; as such they live both inside and outside protected areas. Policy and legal mechanisms for wildlife conservation outside protected areas has continued to receive little attention.

Emerging Policy Options

- (i) Develop harmonized and well-established criteria for gazettement and de-gazettement of conservation areas. Criteria for degazettement should consider the following: the reason for which an area was gazetted no longer exists; degazette to address historical or colonial imbalances (e.g. Karamonga Kibaale); degazette for common good, or as agreed upon by the entire country; a technical evaluation in relation to intended use should be carried out.
- (ii) Establish and implement an effective mechanism for the management of wildlife outside protected areas.
- (iii) Protect and maintain all water sources and catchments in the country.
- (iv) Halt loss of, biodiversity, and restore and maintain the same.
- (v) Hill tops be recovered, defined and provide guidelines to regulate use.
- (vi) The Policy should not advocate for degazettement of forest reserves and fragile ecosystems
- (vii) Sensitize ecosystems should be recovered and clearly demarcated.

D.2.4 Institution, Legal and Administrative Framework

Sustainable management and use of national land resources cannot be achieved without comprehensive reform of the institutional legal and administrative framework currently in force. Indeed, the said framework has grown over a long period and in response to various political and economic concerns, remains internally fragmentary, conflictual and highly centralized.

Problem Statement

Administration of land law lies within many and different bureaucracies, often uncoordinated and in competition with one another for recognition and resources. Land management framework is, therefore, in dire need of reform.

Emerging Policy Options

- (i) Develop and enforce adequate land use standards for development of the land sector.

- (ii) Develop capacity, through training, to enable land management agents to function efficiently.
- (iii) Revise policies related to all land-related sectors (and sub-sectors) to ensure complementarity as well as compliance with the national land policy.
- (iv) Deploy professional land auditors at local and community government levels, to monitor and enforce the implementation of land use standards.
- (v) Install and operationalize an effective forum for inter-sectoral consultation and co-ordination of land sector activities.
- (vi) Create land management structures that are efficient cost-effective and democratically-operated in a decentralization policy framework.
- (vii) Develop and enforce adequate standards for development of the land sector as a whole.
- (viii) The need for the NLP to strengthen co-ordination mechanisms between institutions that deal with land use and resource management to facilitate integration of sectoral concerns and strategies.

3. IMPLEMENTATION ISSUES

3.1 Direction of the Implementation Process

It is important to emphasize that, once formulated and approved; the National Land Policy must be implemented. Hence, a need to design a land policy implementation framework as part and parcel of the policy formulation in order to avoid landing a ‘shelf land policy’ as has often been the case in most developing countries. Since the process of policy implementation involves the conversion of the policy principles and statements into a comprehensive programme of land sector reform, realistic measures have to be undertaken by recognizing that the process:

- (i) is not simply a technical and bureaucratic exercise, but one which is essentially social, political and cultural, affecting deeply entrenched values and practices;
- (ii) will require economic social and political capital consisting of the will and commitment to proceed, the professional infrastructure and service to support it;
- (iii) will require full and participatory involvement of stakeholders at all levels
- (iv) must be supported and facilitated by competent and informed institutional arrangements operating with targets and clear time-lines;
- (v) must, ultimately, be legislated, an activity which could involve new, revised, or amended legislation on a wide range of land policy issues, including, in some cases, constitutional amendments.

3.2 Implementation Principles

The resultant of application of the above principles normally results into an effective Land Policy Implementation Plan. The implementation process will be guided by six (6) major principles, viz:

- (i) Realistic *costing* of the policy framework must be prepared.
- (ii) The policy framework must be widely *disseminated*.
- (iii) The implementation of the policy framework must be *time-programmed*.
- (iv) *All stakeholders* must be fully *involved* in the implementation of the land policy framework.
- (v) The land using public must internalize the land policy framework, implying a need for a comprehensive Information, Education and Communication (IEC) Strategy.
- (vi) An *M & E Framework* for the continuous *monitoring* and *evaluation* of progress inland policy implementation must be in place.

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