

Further submission to National Land Policy

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**Land and
Equity Movement
in Uganda (LEMU)**

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The National Land Policy is a major step forward for protecting Ugandans' land rights, following on from the important progress made in the 1995 Constitution and the subsequent Land Act. The emphasis placed on the respect for the indigenous property owning systems, which are practised on over 80% of Uganda's land, and the improved recognition of both family and communal property ownership will be appreciated by Ugandans. It is obvious that a land policy has to try and serve several, sometimes competing objectives, and it will never be possible for a policy to satisfy the preferences of everyone. LEMU makes the following submissions to the NLP Working Group on the basis of appreciation for the work already done, and in the belief that our analysis has shown ways in which small improvements can be made which will advance the interests of most and will not impair any of the policy objectives either of this Government or of others working to develop the NLP. These submissions are in response to the national land policy working draft 3 of June 2007 and the Public Consultation Document of September 2008. For simplicity's sake, we are presenting specific modifications to paragraphs in plain text, which follow the numbering in national land policy working draft 3 and the Public Consultation Document. The justificatory arguments for our proposals are presented in italics.

1. Paragraphs A.15.1 and B.2.1 (In the consultation document. Not in Draft 3) – land not owned or vacant land.

(i) "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)", and B.2.1

"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"

Current law vests any un-owned land in a District with the District Land Board, and gives them the authority to allocate these lands. The proposed National land Policy continues this principle but with a change in terminology: it refers to 'unowned or "vacant" land'. The concept of 'vacant land' is not clearly defined. Is it intended to be a synonym for 'un-owned land' or to include land which is owned but not currently

being used or occupied? The latter concept of vacant land would be a major change in property rights and the power of the State to expropriate land not being developed or used. It is unlikely that this is what was intended. However, the danger of the terminology is that being vague, and being used together with – and hence implicitly as an extension of – the term 'unowned land', an interpretation could be made regarding land over which there were no titles or certificates of ownership and on which use or occupation was not evident. Most at risk would be community grazing lands such as that in Karamoja and in areas where communities have lost most of their livestock and so are not yet in a position to use the grazing grounds optimally – and their forests, which they use for collecting forest products and for hunting, but which could appear to be 'vacant'. The situation could be particularly serious for IDPs, who have been unable to occupy their land for many years because of war. The National Land Policy obviously does not intend to make the fact that their land has unavoidably been left vacant to constitute a threat to their land rights. It would therefore be sensible simply to remove the word and to remain with the correct terminology of land 'unowned'.

Recommendation: For the avoidance of doubt, the terminology should remain as 'unowned land' and the words 'vacant' removed from the National Land Policy.

2. Paragraph 67 of draft 3: Power of eminent domain (compulsory acquisition)

B.3.2 Emerging Policy Options in the consultation document

- (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.

The powers of the State to acquire land from private landowners where the owners do not want to relinquish their land rights is bound to be one of the most controversial aspects of land policy and land law. The needs and rights of the State to acquire land for public interest purposes, as defined by Article 26 of the Constitution, are not contested. The question of extending these powers is very much contested. The current draft and consultation documents of the NLP propose four major changes,

of which one is not explicitly referred to as using the power of eminent domain:

1. For resettlement of the landless
2. For resettlement of IDPs
3. For 'carefully defined investment'
4. For all urban land, with landowners instead being given leaseholds over their land and losing rights in perpetuity (of freehold/mailo or customary tenure).

The first two are said to have been 'generally accepted' in consultations. Draft three of the National Land Policy did not discuss either of these, and it is unclear when or why they suddenly arose for the first time in the consultation document.

1 Resettlement of the landless:

LEMU believes that resettlement of the landless by the State is neither sound policy in addressing landlessness, nor any justification for compulsory acquisition. This is especially so in the absence of any clear policy on resettlement. Landlessness is caused either by land grabbing or by land sales. (Historical issues relating to communities such as the Twa who lost land in the creation of national Parks are separate issue, and need to be clearly considered as such.) The State cannot commit itself to providing land for anyone who makes themselves landless through land sales: problems of poverty causing distress sales need tackling by measures such as safety nets, and not through a land policy. People who lose land illegally need the support of the State to enforce their rights through the justice system, rather than sending a signal to those who steal others land that the State will simply pick up the pieces. The State will never have sufficient funds to cater for all who need land, and the NLP should not encourage the possibility of the abuse of a Land Fund as selective political patronage. This is without entering such issues as the potential for conflict (as already seen in Kibaale) if people are settled in different parts of the country. Land for roads or schools needs to be situated in a restricted area, and if no willing buyer can be found there, then compulsory acquisition is a measure of last resort. Since resettlement could take place to a wider potential area, a justification is needed for the necessity of compulsory acquisition for such a purpose, and this is not given in the Land Policy.

2 Resettlement of IDPs

IDPs are not landless people, but people temporarily forced off their land. The responsibility of the State

is to help them to return to their own land as soon as possible. If they are resettled permanently elsewhere, what would happen to their own land? The State could legitimately argue that it needs land for the temporary resettlement of IDPs, pending their return. This may justify the use of the law for compulsory leasing or rental of land, for a period not exceeding the years provided for by the Land Act.

3 For carefully defined investment

Compulsory acquisition for obtaining land for private investment was already proposed by the Constitutional amendment of 2005, and rejected by Parliament. It is not clear why the NLP would be used to try and reopen this question; especially given that no justification is given for why private investors should be given land acquired in this way. The role of the State in facilitating investors to obtain land directly from landlords, through purchase or lease, is not, of course, contested. Support for renting or leasing customary land, for example, has the high potential to make available large tracts of land, if land administration gives both lessor and lessee the confidence that a contract would be honoured and enforced. It does not need repeating why such a provision would create hostility and mistrust of (much needed) investment, and current realities would give little faith in the likelihood of this clause being used in a transparent way for the benefit of ordinary Ugandans.

4 On all urban land

The proposal to turn tenure on all urban land into leaseholds is effectively the compulsory acquisition by the State of the ownership of the land (essentially, the freehold rights), and the granting to the landowner of inferior, limited leasehold rights. It is obvious why it is convenient for Government (central and local) to be able to control the allocation and development of all land in urban areas: it is less obvious that it is desired by the actual landowners. Given that the State cannot afford to acquire the limited land which it needs in urban areas for public land such as roads, or for schools etc., it is hard to see how the State could afford to acquire all urban land in the country. The alternative would be to acquire the land without compensation. This would be a grave violation of the current constitutional safeguards. The current policy draft does not make it clear whether it is proposing a 'conversion' (i.e. compulsory acquisition of the freehold) with or without compensation, and this is in itself worrying. No justification is given for

the necessity to take over land rights in this way. The use of leaseholds on existing public land is certainly sensible. Development of land once under leasehold would be done in the knowledge that possession was not in perpetuity. Current landowners may have purchased and developed land in the belief that their rights were permanent. The rights of the State to control development in the public interest and in the interests of the wider economy by using planning regulations are not contested. Indeed, it should rather be argued that planning is a duty and not a right of the State, and one which it has failed to fulfil. Physical planning and the provision of public utilities have become almost impossible in some urban areas because the local authorities did not use their existing powers to control development (e.g. by granting planning permission where it should not have been given, or by allowing development without planning permission). Given the rapid urbanisation of Uganda, permanent tenure (freehold, mailo, customary) on much land could be in jeopardy, for no good reason. Future slums and constraints on development can be avoided through the rigorous application of planning regulations, or alternative provisions. Where land is idle, alternative measures short of compulsory seizure of the land can be used: these could include the compulsory acquisition on leasehold by the State (i.e. freehold or customary ownership remaining with the land owner who would receive commercial ground rent from a developer to whom a leasehold were granted by the State; taxes on undeveloped land; and the facilitation of landowners unable to develop their land to enter into voluntary agreements with investors (private leases, partnerships, sales, etc.). This latter should form part of the investment policy of Uganda, rather than Land Policy.

Recommendation: The current Constitutional provision on compulsory acquisition should remain unaltered.

3. Paragraph 96, Draft 3, and A 9.2 of the consultation document) - Gender equality in land rights

It is welcome that the Republic of Uganda repeats its commitment to the need for gender equity in land rights in the NLP. The concern is in the wording of paragraph A.9.2 of the Emerging policy options of

the consultation document which seeks to ensure women's access rights to land. The use of the term 'access rights' implies inferior rights to those of men, since 'access rights' are rights which are granted to the holders by the holder of the ownership or management rights in the land. This is in fact an inferior situation, a step backwards, compared to the legal position currently existing on most land in Uganda. The provision is probably based upon a misunderstanding of the land rights currently held by women in customary tenure.

Rights to titled land are held by those whose names are listed on the title alone. Because a woman would have no legal rights to titled land owned in her husband's name (except the power to stop a sale of the land, through S39 of the Land Act), there have been many who have argued for the automatic co-ownership of land for married couples. (This proposal remains in the Domestic Relations Bill.) However, customary land law is quite different. It already grants a status somewhat similar to co-ownership, in that inherited private land is always family land and never individual property. Although it is referred to as the land of the husband, his rights over the land are not equivalent to the rights of a husband whose name is the only on the title of freehold land. This is why a widow takes over all her late husband's responsibilities for managing family land when she assumes the role of family head on his death. Divorced and unmarried women have land rights from their parents' land. These rights are not limited to access rights, but include the right to allocate land to their children, to rent out their land, etc. These rights are often abused by those seeking to deny them rights (e.g. in-laws of widows, brothers of divorcees), but customary land principles are clear. They have even been written down in the North and East of Uganda by the customary authorities, for the avoidance of all doubt. Limiting the defence of women's rights only to access rights is too weak, and implicitly accepts the mistaken claim that "women do not own land under customary tenure."

Recommendation: paragraph A.9.2 of the consultation document to be replaced with the original paragraph 96 on women's land rights in paragraph of Draft 3 of the national Land Policy.