

## **CHALLENGES IN IMPLEMENTING THE LAND ACT**

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The objective of the Land Act is to provide for the tenure, ownership and management of Land.

The second objective, according to the preamble of the Land Act, is to amend and consolidate the law relating to tenure, ownership and management of land and to provide for other related matters incidental to the Act.

Land is God given and a means of sustenance for all living things. Its rational and prudent use is therefore important to the continuation of all living species.

Land reform through the Land Act is meant to give small farmers in rural areas the security of their land holding by having absolute rights over their land.

The overall objective, of the Land Act, appears, to me, to be the repeal of the numerous land holdings and retaining of a freehold system of ownership. In a limited way the leasehold tenure is allowed by the Act.

Most Ugandans had been unsure of land tenure because of the various laws which were passed concerning land. There was mailo land tenure mainly in Buganda, some parts of Ankole, Toro and Bunyoro. In 1928 the colonialists fearing that landlessness will be created among the peasants, passed Busuulu and Envujjo law. This was to protect peasants, living in mailo land, from evictions.

There was freehold land tenure which gave the holder power to hold land, mortgage it, give it away and sell it as saw fit but within the law.

In the Northern and some parts of Eastern Uganda customary land holding was the norm. In some parts of Bugisu there was customary land ownership as well as freehold. There was also leasehold form of tenure especially in the urban areas.

In 1975 Land Reform Decree 3/1975 was promulgated and vested all land in Uganda in Government. Henceforth the occupants of all land were deemed to be leaseholders.

After successive regimes came into power, there was confusion as to whether Uganda had reverted to the pre 1975 land ownership or whether the 1975 Land Decree was still effective.

In the main, people who had freehold certificate and mailo land certificates tended to ignore the Decree and carried on as if there was no 1975 Land Decree. People who were tenants on mailo land ceased to comply with the 1928 Busuulu and Envujjo requirements.

The Land Act 1998, following Art. 237 paragraph (3) of the Constitution 1995 sets out the following land holdings:

- a) Customary
- b) Freehold
- c) Mailo; and
- d) Leasehold

Paragraph (4) Art. 237 of the Constitution then stipulated that “*All Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament.*” Paragraph (4) Art. 237 of the Constitution provided that land held under customary tenure may be converted to free hold ownership by registration.

Section 5 of the Land Act deals with the functions of the Sub-county Land Committee or a Division Land Committee in the case an application for customary certificate of ownership.

S.7 lays down the procedure and functions of the District Land Board on receipt of an application from the Sub-county or Division Land Committee.

The Sub-County Land Committee or Division Land Committee when it has received the application, for customary certificate of title, will visit the area where the land is situated. The committee must hold meetings with all interested parties e.g. family members of the Applicant, people owning adjacent land and any other interested parties in the land, the subject matter of the application.

The committee must solve disputes about the land in question and make recommendations to the District Land Board which may or may not approve the Application. Once the District Land Board has approved the Application, it communicates its decision to the Recorder who is the sub-county Chief in case or a rural area. In a Gazetted urban area, the Recorder shall be the Town Clerk. In a Division of a city the Recorder shall be the Assistant Town Clerk in charge of the Division.

A certificate of customary ownership is conclusive evidence of customary rights and interests specified in it. The holder can deal with the land as any freehold owner.

i. Conversion of Customary tenure into freehold tenure.

The Land Act recognises ownership of land by an individual, a family, a community or an Association. S.9 provides for the conversion of customary tenure into freehold tenure.

The procedure is more or less the same as applying for a customary certificate of ownership. However, where one has already got a customary certificate of ownership,. The preliminary procedure, of the committee visiting the land and holding meetings, is not necessary.

If, however, a person wants to apply for a conversion of his customary tenure to a freehold, he/she has got to go through all the procedure prescribed in the S.5 of the Act. He/she has to pay a prescribed fee.

The Land Committee, apart from the provisions of the Act, must also be guided by customary law prevailing in the area regarding individual ownership of land.

When the District Land Board gives consent for converting customary tenure into a freehold; tenure, it recommends the issue of a freehold certificate of ownership to the Applicant.

Where the land in question has never been surveyed, the Registrar of Title will endorse on the certificate the words: "Limited as to parcels". This is done where the surrounding areas have not been mapped and surveyed.

ii. Conversion of leasehold into freehold Section 28

A Ugandan citizen, who had previously been a holder of a lease on the former public land and was deriving his/her sustenance from that land may apply to have his/her leasehold converted into a freehold.

The following must be fulfilled before a freehold certificate can be granted:-

- a) The leasehold must be authentic and genuine;
- b) There must have been no customary tenants on the land at the time of acquiring the lease.
- c) If there were customary tenants, the applicant must have adequately compensated all of them.
- d) Development conditions and covenants must have been complied with.
- e) Laws and regulations must have been complied with at the time of granting the lease.
- f) The land to be converted must not exceed 100 hectares, and if it exceeds 100 hectares, it must be proved that the Land Board has verified it and approved its being converted into freehold. The District Land Board must be satisfied that the conversion of more land to freehold is being done in the public interest.

The applicant wishing to convert Government owned land into a freehold will have to pay the market price for it after the Government Valuer has valued it.

Where leasehold has been converted into freehold, any sub-lease on the same land will be converted into a full lease. Where necessary, the District Land Board will attach conditions of the leasehold to freehold, the Registrar will endorse on the certificate the words: 'Converted to freehold.'

In the case of sub-lease which is converted into a full lease, the Registrar shall endorse on the certificate the words: 'Converted to leasehold'.

On the other hand, the District Land Board may refuse the conversion of leasehold to freehold. If this is the case, the Board must give its reasons for such refusal.

In all cases where, whether customary conversion to freehold, or leasehold conversion into freehold, is refused by the Board, the Applicant may appeal

to the Tribunal. He/she may appeal from the decision of the District Land Board in any other land dispute.

All certificates issued in respect of customary land must be signed by the Recorder who must keep records and copies. A copy must be sent to the area where the land is situated.

In the case of freehold certificates the Registrar must sign and keep copies and records. The land owner gets his/her certificate ownership and the Registrar keeps one on his/her record of certificates.

The Registrar must also issue certificate in the case of a sublease which is converted into a lease and keep record of it.

The Land Act seems to favour freehold tenures for all Ugandan Citizens and, in some cases, limited leasehold tenures.

These are some of the advantages of Freehold tenure:-

1. maximum Security of tenure from Government or anyone else;
2. It encourages people to work hard on their land and increase production, thereby contributing to poverty alleviation;
3. The owner of freehold can insist on a substantial compensation if Government wants his/her land for development;
4. The owner has the freedom to lease, sell, mortgage or otherwise deal with the land as he/she sees fit.
5. Financial Institutions usually prefer security of a freehold land to those of leasehold or customary tenure.

### **Communal Ownership of Land in Eastern and Northern Uganda.**

In this paper, Eastern Uganda will encompass the districts of Kumi, Soroti, Katakwi and Kaberamaido. Northern Uganda shall encompass, Gulu, Kitgum and Pader.

Apart from the urban areas, Land in the above districts is held according to the customary land tenure. There are, however, a few cases of freehold and leasehold tenures, the later being mainly in urban and or trading centres. The former is mostly found in land near urban centres or trading centres.

Land in the districts above was communally held by tribes, clans or families. The Chief or a recognised traditional leader was entrusted with the overall division and supervision of the land on behalf of the community.

Once the land had been allocated to a family by a clan chief or a tribal leader, that land came to be looked at as belonging to that person or family. This type of tribal communal ownership of land no longer exists because of fragmentations of the land due to migrations, work and education. What has remained is, to small extent clan lands units. These units of land may have natural boundaries such as rivers, rocks, trees etc. the clan leader/head has power to allocate land to individual clan members and families. Sometimes land may be allocated to a stranger who gets assimilated into the clan.

Some time land may be loaned to a stranger on request for a limited period. This type of generosity was observed by CSOPNU to have generated conflicts as the person to whom the land use had been given tries to cling to it. Unfortunately such arrangements are not often documented but they are usually witnessed.

Once land is allocated to an individual or family it can be subdivided to accommodate male children. The head of the family carries on this responsibility and the clan head is only called upon in the most serious family disputes.

*“Once an individual has a valid claim over land he enjoys the following right: to utilise his land as he thinks best; to lend the land for temporary purposes; sell the improvement on the land, dispose of it according to customary law of inheritance...fence his homestead etc. (Obol-Ochola; Customary Land Tenure and Economic Development in Uganda, LLM Dissertation, University of Dar-es-salaam).*

The clan member has absolute right over the proceeds of what he/she farms on the land allocated to him/her.

Sometimes, the only restriction a person may have regarding his/her portion of clan land is that if s/he is moving away s/he either gives or sells the land to a fellow clansman.

Selling the allocated land to a stranger may need the permission of the clan head or community who will be affected by the presence of a stranger in their midst.

Communal ownership of land happens in villages where several clans may be living. In this the overall head may be a chief; village land is also individually owned by clans and members of each of the families within the clan. There is usually land which is agreed upon as land communal and used by the whole village. This may be grazing land, a strip of land which forms a passage to the watering places, wells and paths. These are common to the villagers and no person can claim them or settle in or near communal land without leave of the chief who will consult the community at large.

In conclusion, Customary Land Tenure seems to have been good at the time it was operating but Uganda is moving ahead with development. It is therefore fit and proper that customary land ownership be brought into modern and more rational land ownership systems.

### **Implementing the Land Act.**

It is doubtful whether customary land holders will rush to change their holdings into freehold or even to procure customary certificate of ownership. First of all there is the question of the financial implications of the process of obtaining registration of land. Most people in the rural area are poor.

Who pays for the committee members on a visit to a site to demarcate boundaries? Secondly, the Land Committee is at the Sub-county level which is two steps removed from the land holder. The Parish Land Committee would have been nearer, cost effective and efficient since it is more familiar with individual boundaries in villages.

There is likely to be delays in processing land applications because of poor logistic of the Committee and the sheer volume of work in the Committee.

The District Land Board in most districts are there in name only. They are not entertaining applications. In the districts of Acholi, according to the publication by CIVIL SOCIETY ORGANISATION for PEACE in NORTHERN UGANDA (i.e. CSOPUN), in 2004, the Land Tribunal for those districts had not done any work yet. At the time of carrying out that Research no Sub-county Land Committees had been established.

The Act gives the District Land Board wide powers: e.g.

*“To hold and allocate land, facilitate registration of land interest, assume powers of a lessor, demand surveys and compile and maintain rates of compensation etc.”*

In a study of Land in the three Districts of Acholi, i.e. Gulu, Kitgum and Pader, it was found that LCI are more consulted in land matters and are regarded as higher inn authority than clan leaders. See: **Land Matters in Displacement** (Published by CSOPNU i.e. Civil Society for Peace in Northern Uganda 2004).

LCI have no knowledge of the Land Act. Over 40 of the LCI were interviewed by CSOPNU and found to be completely ignorant of the contents of the Land Act. It is not far fetched to postulate that what was found in Acholiland is the case in the majority districts of Uganda.

I have not been able to find out how many land cases have been entertained by the District Land Boards throughout the Country.

I had an opinion that the cases might be very few or non existence so far. Most of the Land Tribunal Chairpersons do not live within the Districts where they are supposed to hear land cases.

Converting customary land into freehold may cause fragmentation of land beyond economic viability. Certification of customary land will cause social tensions causing violent upheavals in some cases as certificate holders sell their land to total strangers, some, with alien customs which annoy the natives.

The provision that spouses give consent to land alienation is also a potential source of conflict where the families do not have consensus.

In 1999 a study was carried out to assess the potential social-economic and environmental implications of the Land Act 1998, and the institutional, financial and technical needs of its implementation. The study was carried out by eight study teams each examining different aspects of the Act.

The study revealed that the implementation of the Act and its success depended on other laws and initiatives for economic and social development being in place. Some Laws needed amendments to bring them in tandem with the Act.

It was stated, in that report that the Act will not immediately lead to an expansion of credit by commercial banks.

*“It also seems unlikely that availability of certificates of title will have much impact on use of land as collateral by local micro-finance institutions”* (The excerpts of this report are found in: **Source of UGANDA’S LAND LAW by John T. Mugambwa: Fountain Publishers**)

It was observed in the study, among other findings, that section 39 which requires consent by a number of persons before transfer of land, might not be workable unless the range of dependants protected by the section is seriously curtailed.

It was further pointed out that economic viability of titled land will depend on its size not on the fact of the title.

In any case there is no guarantee that persons who own vast pieces of land will put such holdings to effective economic use.

Most of untitled customary land owners, interviewed seemed not to have any immediate sense of alarm for lack of titles.

The study showed that the cost of implementing the Land Act will in the short run out-weigh immediate benefits.

The study mentioned above stated that about shs. 19 billion, in operating costs, would be required annually for operationalising the Land Act. It is projected that the District Administration funds, required to sustain structures of District Land Boards and Local Committees, will be shs. 7,400,000 per annum.

The districts have no capacity to raise such funds to be spent only on land matters. There are other needs to catered for by districts. If donor funding is expected, how long will the donors be able to sustain this expenditure?

The report of 1999 on the potential impact of the Land Act raised the question of demarcation of Government’s land and compensation for encroachers thereon. Section 49 of the Land Act requires the Land Commission to “procure certificates of the title for land vested in Government. What will Government do with encroachers on its land, evict them? Most of the encroachers may not have the necessary means of buying Government land at the market price. Transplanting them to other places

may cause resentment by the natives of those places as happened in Kibale District.

The land commission must be facilitated to embark on the difficult process of acquiring titles to specified Government land following the normal procedures. However, Government must have a law; the framework within which its land will be administered and managed, on behalf of the citizens of Uganda, must immediately be put in place.

The Land Act cannot be implemented in isolation. Others laws have to amended to synchronise with the Act. Some of these laws are The Registration of Titles Act, The Land Acquisition Act, The Survey Act, etc. the Domestic Relations Bill must be enacted into law to cater for the rights of family members in the matter of land ownership with different scenarios. There is so much to say on the challenges of implementing the Land Act but they cannot all be exhaustively be discussed in this paper. I trust other presenters will give more detailed analysis of the situation.

The above comment on the Act is not meant to convey the impression that its implementation is impossible. This is just to point out some of the anticipated problems which may arise.

I thank you for listening to me.

God bless you all.