

Editorial

Towards a national land policy for Uganda: Can it go beyond reforming the Mailo land tenure?

Land reform generally denotes government measures designed for a relatively equitable redistribution of agricultural land, but actual reform measures can reflect a range of ideological positions. The political nature of reform is difficult to avoid given the effect of changes in land tenure arrangements on the social relations and hierarchies they embody. In Uganda, land reforms have consistently hit snags due to the failure to satisfy different Ugandans' needs.

According to the Ministry of Lands (2007), Eighty eight per cent of the population lives in the rural areas where densities vary from 226 persons per square kilometre in eastern, 176 in central, 126 in western to 65 in northern Uganda. Only 12% of the population lives in urban centers. The largest concentration of these settlements is to be found in the conurbation stretching from Kampala to Entebbe in the Central Region and Mbarara in the Western region.

Today, issues around land as a property but also as a resource that is fundamental to economic development in Uganda, have remained 'up in the air' as the country's population continues to grow, while related international obligations increase and / or change.

A process lead by the Ministry of Lands has since the beginning of 2007 come up with a draft national

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Land reform: A source unending conflict in Uganda



Forceful breakdown of houses/structures may remain if there is no comprehensive national land policy in place (Courtesy Photo).

Land reform has consistently hit snags in Uganda. Tension has been aroused each time the central governments have tried to reform the land laws. Right from colonial days, governments have failed to find a way to satisfy different Ugandans' land needs.

Historical conflict: colonial regime;

The first move to reform land in Uganda was witnessed in 1900 when the British protectorate government tabled it. This was this was the preamble of the debates with the British government at the centre of the reform to motivate the cultural leaders as a tool of imperialism.

Under a series of agreements, big chunks of land were given several cultural leaders in Buganda, Ankole,

Bunyoro and Toro kingdoms. This left most people who lived on such land turned into 'tenants.' Efforts have been made under various regimes to harmonise the situation, but nothing has come out of them.

Post colonial-leadership reforms;

In 1928, the *envujo* law was established to regulate how the tenants paid rent and tributes to landlords. This law favoured tenants in a way that landlords could not evict them without compensation. Although this was a mean to resolve the land crisis in favour of tenants, it caused grave conflict between the central government and landlords at that time.

In 1975, President Idi Amin declared a Land Reform Decree. To Page 2

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land policy to among other things: address the need to enhance the contribution of the land sector in development; land development and its contribution to poverty eradication; management of land resources for democratic governance; peacemaking and security; and land management in relation to other productive sectors. Though these are broader issues that need to be discussed through consultative processes, up to today, the reality is that current discussion on the development of a national land policy is centered around tenure systems. Equally pressing matters like women's rights, land in the development context, the environment, agricultural productivity have not yet received adequate attention. Instead, the draft national land policy debate is reduced around Mailo land reform: whether to do it or not?

UCSD's sustainable agriculture thematic group has in this issue come up with an article on land reform as a source of unending conflict in Uganda driven by the concern that 88% Uganda population lives in the rural, practicing largely small scale agriculture. We therefore think that the debate should be 'salvaged' to allow other realities alongside the mailo land debate to feature more prominently. Short of this, the rather worthwhile process will leave some Ugandans out - looking at it as irrelevant to their lives, while in actual fact it holds a key to sustainable development and the very future of their children.

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This was to convert all mailo land and freehold into state land on which individuals could acquire leases of 49, 99 and 999 years. This intensified the conflict between the mailo landowners and tenants.

In effect, the Decree moved the security of tenure that had been guaranteed by the 1928 *busuulu* and *envujo* law. However, the Decree never took effect until President Amin's government was overthrown.

The 1995 Constitution of the republic of Uganda made outstanding provisions vesting land in private citizens. However, it did not adequately solve the historical conflict between mailo landlords and tenants. It never resolved the issues of tenants that were dispossessed by their landlords. These loopholes paved way for many debates and it was evident that government was in for more problems. Eventually, the Land Act of 1998 was enacted.

The Act was regarded as a ray of hope that would solve Uganda's land conflicts by taking care of the loopholes in the 1995 Constitution. It created lawful tenants on land belonging to landlords by registration and owning titles. This too favoured tenants. However, this created complications because it guaranteed multiple legit-

imacy over the same piece of land. The multiple claims over land created impassables, as landlords with titles could not use their land while tenants lived on it.

In 2003, the 1998 Land Act was amended. Still, the amendment neither solved the conflict between tenants and landlords nor helped Ugandans know when and how the central government can acquire land or lease out public land. The new land policy has come in the wake of the loopholes in the 1998 Land Act.

Today's reforms; the birth of a Land policy

In February 2007, the Ministry of Land, Housing and Urban Development presented the first draft of the land policy, for public review and comments. We indeed appreciate government's effort to put in place a comprehensive land policy and congratulate the land-working group in the Ministry of Land, Housing and Urban Development for its achievement so far reached. We hope that this achievement is sustainable. This is because the land policy which is still in its draft form, has given rise to many contentious debates; and the issue of mailo land tenure conversion rather reform, has continued to be at the centre of numerous conflicts. This issue has reduced the Comprehensive Land **To Page 3**

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- Membership and subscription fees total to Ugshs 45,000.
- ASSOCIATE and CORPORATE membership categories also exist.

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Uganda Coalition for Sustainable Development (UCSD) is a Civil Society membership network dedicated to coordinate advocacy and lobby work around issues and commitments made by world governments towards sustainable development. Collective actions for UCSD members are encouraged through the five Thematic Groups: Biodiversity; Climate Change and Energy; Integrated freshwater management; Sustainable agriculture; and Sustainable socioeconomic development.

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Selected key terms in land policy debate

The Land law and policy debate is sometimes 'heavily laddened and sometimes intimate' due to the technical and legal terms used. In order to fully appreciate the on going land policy debate, one may need to understand these terms within their historical contexts. Below, we attempt to give a quick guide to a few terms that have been used in this article (adopted from the Programme for Land and agrarian Studies - PLAAS and the Ministry of Lands documentation)

Land policy: According to the Ministry of Lands, the policy is a result of the recognition of the centrality of land in the overall social and economic development process in Uganda and calls for the development of an integrated policy for the sector. In addition, it calls for effective inter-linkages between the land and other productive sectors.

Land Reform Decree: This was promulgated in 1975 and made radical changes in respect of land and property relations by declaring all land in Uganda to be public land. It further provided that access would henceforth be on the basis of leasehold tenure only and vested all land in the state to be held in trust for the people of Uganda, being administered by the Land Commission. The decree also abolished all laws that had been passed to regulate the relationships between landlords and tenants in Buganda, Ankole and Toro. However, the decree was not fully implemented and remained in the books until 1995 when the new constitution was enacted. That constitution repealed the decree and restored the systems of land tenure (Mailo, Freehold and Leasehold and customary) that were in existence at independence

Land reform: Land Reform processes have been on going in several sub-Saharan African Countries. Many of these processes aim to transform traditional land holding systems to the 'modern' that is easier to market.

Land Act of 1998: Uganda's land law, developed to among other objectives, enhance the land market where it did not exist. This law also sought to clarify the content of the various categories of tenure created by the Constitution, provide for the nature and exercise of the police power of the state, and set out the powers and functions of land boards and tribunals.

Mailo land: This form of tenure was only peculiar to Buganda. It was created by the 1900 Buganda Agreement between Her Majesty's Government of Great Britain and the Kingdom of Buganda. By this agreement, chunks of land were given to some individuals to own in perpetuity. The royal family of Buganda received 958 sq miles as private Mailo, chiefs and other notables received 8 sq miles each. Local peasants previously on the land were not recognized and became tenants on land and had to pay rent to the Landlord commonly known as "Busulu." The owner of Mailo land was and is entitled to a certificate of title.

Freehold Land Tenure: This form of tenure also existed in Uganda especially in the Western part of the Country. This was a system of owning land in Perpetuity and was set up by agreement between the Kingdoms and the British Government. Grants of land in freehold were made by the Crown and later by the Uganda Land Commission. The grantee of land in freehold was and is entitled to a certificate of title. Most of this land was issued to church missionaries and academic Institutions.

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Policy to be only Mailo Land tenure.

Today, once someone talks of the new land policy, what comes to minds of the majority is the reforming of Mailo land.

Conflicting arguments for and against the policy

The Buganda Lukiiko has been clear and open; they have resolved not to support the policy because it undermines their cultural norms.

Land in Buganda is regarded as a cultural valuable. And, that is why the king is called Ssabataka. Land is the only asset most Baganda own and are proud of. So absence of land may mean no monarchy to them.

The Prime Minister, Prof. Apollo Nsubambi recently told Buganda Kingdom ministers that the Baganda in top positions in the central government like himself, the Vice President, Speaker of Parliament and ministers own mailo land which was inherited from their parents. So, there is no way they would support this clause passed in the new land policy because it will affect them too.

The Minister of Lands, Omara Atubo, says that Government of Uganda does not intend to grab anybody's land. He says government has not yet taken its position on the land policy since it contains recommendations made by experts who are not part of the government. That, government's objective is to make land more accessible for economic development and poverty eradication. And, mailo land will not be scrapped but will be 'reformed' or 'liberated' so as to address the clarity and certainty of tenure rights and the relationship between the occupants and land owners in view of the numerous land evictions and stalemates to clear land to be utilised for investment.

To Hon. Erias Lukwago, a lawyer and Kampala Central Member of Parliament, eliminating mailo land will not work. To him, it is not possible to have similar land tenure in all regions in the country given the different cultures across the board. Land consultants at Uganda Land Alliance, believe that although the conversion of mailo land tenure to freehold is acceptable, it is of no consequence as the two tenure

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Bwebajja residents on Entebbe Road watching in disbelief as their houses are demolished due to land wrangles. (Courtesy Photo)

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stature. It is therefore difficult to conceptualise the added advantage of engaging in such a huge undertaking. In addition, it will have an implication on land readjustment and redistribution in which enormous amounts will have to be compensated to the landowners with tenants by occupancy.

Article 237 of the 1995 Constitution made outstanding provisions vesting land in private citizens who can own land under any tenure systems like; mailo, leasehold, freehold, and customary. This implies we need the different land tenure systems as laid out in the Constitution. The government should only amend the envujo law to harmonise the landlords and the tenants since these are the cause of conflicts. Call for a broader land policy debate.

It is not obvious whether the land policy will end the debates and conflict surrounding land or intensify them. When the conflict is intensified, there may be need to amend the policy, or enact another law. In the end, it may become difficult for any government to come up with a final law on land.

Therefore, for a final comprehensive national land policy to emerge, UCSD believes that equally pressing matters like women and children rights, land in the development context, the environment, agricultural productivity, structures that need to be put in place for better land administration and management, the most appropriate documentation system to be put in place for registration (for confidence building) of all land transactions and land-related international obligations should receive equal attention like the Mailo land reform discussion. The Ministry of Lands, should expeditiously work with the media and CSO actors to 'plug' this gap.

Resources and events

1.Ministry of Lands, Housing and Urban Development (January 2007). Drafting the National Land Policy. Working Draft 3:

http://www.enteruganda.com/brochures/nationalland-policydraft3jan_feb_versionforconsultation.doc

2.The Land and Equity Movement in Uganda (LEMU)

is a movement which aims to unite the efforts of local people, local Government, local civil society organizations, students, elders, volunteers, and anyone with contribution to make land work for the poor. For details, visit: <http://www.land-in-uganda.org/>

3.The Pan-African Programme on Land and Resources Rights (PAPLRR)

works to develop and articulate a pan-African voice on land and resource rights, policies and advocacy, and engage with other stakeholders at regional and international research and policy-making events. This programme provides an opportunity for scholars, practitioners and advocacy groups across Africa to enhance their capacity to engage critically but constructively with these challenges to analysis and action in the interests of the poor.

4.Online discussion on "Financing for gender equality and the empowerment of women" from June 18 - July 15, 2007

The online discussion, to be conducted in English, where each of the first three weeks of the discussion will be devoted to one theme, while the last week will provide the opportunity to raise additional issues and wrap up. The purpose of the online discussion is to contribute to a further understanding of the existing mechanisms and processes of financing for gender equality and the empowerment of women at the national, regional and global levels; identify good practices and lessons learned and highlight gaps and challenges requiring further action.

The discussion is part of the preparatory process of the 52nd session of the Commission on the Status of Women (CSW), held 25 February to 7 March 2008, which will consider "Financing for gender equality and the empowerment of women" as its priority theme. You can share your ideas and experiences (for example land issues) as an input to further development of global policy in this area.

There are two ways to participate in the discussion. You may post a message by clicking the "post message" button on the website or you may reply to the email messages sent to the group by the Moderator.

More information: <http://www.un.org/womenwatch>