

A HISTORICAL PERSPECTIVE OF THE LAND PROBLEM IN UGANDA

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Introduction

Land should not be a problem in Uganda. It is abundant. It is fertile. It is beautiful. And, at least at present, it has not been polluted or defiled beyond the capacity of society to remediate. The “land problems” in Uganda deal with the ways in which we are trying to harmonize the traditions of Ugandans and the freehold system brought to us by the British in the far back days of colonialism. Before colonialism, land was available for communal use, held for grazing purposes and small scale subsistence agriculture. No single individual owned land. Land tenure and management was perpetually customary.² Today’s land problems have been shaped by history and the concept of freehold, a system that was appropriate for Great Britain in the 19th century but not consistent with the traditions of Uganda and its people at that time. As a result, land reforms in Uganda in the twentieth and twenty first centuries have been targeted to rectify those historical errors. This piece of writing views Uganda’s land problems from an historical perspective: from the days of colonialism to the present day.

The colonial era

When Uganda became a British protectorate at the end of the nineteenth century, the land tenure and management system was profoundly changed creating ‘haves’ and ‘have-nots’ in land ownership. The land reforms by the British in Buganda, the central part of the country, created a grossly unequal land tenure system. It gave large tracts of land to the political elite but turned most of the people of Buganda into tenant farmers.³ The colonial government entered into agreements with the Buganda, Ankole and Toro Kingdoms paving way for increased

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² See Joy M.B. Tukahirwa 2002: Policies, People and Land use change in Uganda: A case study in Ntungamo, Lake Mburo and Sango Bay sites. LUCID Working Paper Series Number 17, Kampala Uganda.

³ Elliott D. Green 2005, Ethnicity and the Politics of Land Tenure Reform in Central Uganda. DESTIN Working Paper Series. Development Studies Institute, University of London.

individualized ownership of land. Individualized ownership of land (the “freehold” system) made changed the focus of land use from communal grazing and farming into a means of supporting the industrial revolution in Europe and America with their huge demand for raw materials many of which came from Africa.

In 1900, the British government signed an agreement with the Kabaka of Buganda which fundamentally changed the land structure and market in Buganda and beyond. That agreement divided land in Buganda in two tracts: Mailo land and Crown land. Mailo land was doled out to the Kingship, the chiefs and some notables while Crown land was held for government purposes. Title was nominally vested in the Queen of England as “Custodian”. This agreement with the Kabaka led to the first major displacement of Ugandan people from the land they had occupied for periods long before a British foot found its way into Uganda. The Mailo land system created a situation where both Baganda peasants and immigrants on large tracts of undeveloped land were legally rendered landless. Their traditional customary unwritten right to use the land for grazing and farming was terminated. Instead, if they wished to use the land, they were supposed to pay ‘Busuulu’ and ‘Envujjo’ rent to the holders of certificates⁴ on the land they hitherto used by right of history and custom. This turned the bona fide occupants into tenants. Tenants were by law required to pay rent to their newly imposed owners. However, the landlords kept hiking the ‘Busuulu’ and ‘Envujjo’ rates. This forced the colonial government to intervene by enacting the Busuulu and Envujjo law of 1927 in Buganda, followed by the Toro Landlord and Tenant Law of 1937.

The land reforms enacted by the British colonialists brought about major advances in the individualization of land ownership in Uganda. Access to land was increased through direct purchase and through official alienation of hitherto communal land. Eventually, in areas where land tenure followed the British pattern, land became a commodity on the market. Plantations and estates were developed by non-Ugandans to supply export markets for tea, coffee, and cotton. Mailo land suffered underdevelopment due to absent landlords. However, apart from Buganda and a few areas of Bunyoro, Toro and Ankole, the colonial changes in the land tenure system did not affect many rural areas in Uganda. And indeed, the customary tenure remained very dominant with its demerits.

⁴ LUCID working paper 17, 2005

In short, the colonial period changed the traditional communal use of land and exposed it to market forces, that is, supply and demand. By distributing freehold interests in land to some individuals, social inequalities began to arise based on the British concept of ownership of land. In some cases, land was distributed to absentee landlords. This led to the evolution of squatters, people who settled, farmed and grazed animals on the undeveloped land of an absentee landlord but who could later be evicted by the landowners. As the population of Uganda continued to grow, the gap between land 'haves' and 'have-nots' grew even wider. Disputes over the use and ownership of land increased.

The Post-colonial era (The Land Reform Decree of 1975)

In 1975, the Land Reform Decree was passed during the reign of the late President Idi Amin Dada. Before the Land Reform Decree, the Public Land Act of 1969 provided for the protection of customary land rights. (This Act tried to bridge the gap that was created by the colonialists by reinstating customary land ownership). The 1975 Land Reform Decree declared all land in Uganda public land and title to it was vested in the Uganda Land Commission (ULC). All free land, including Mailo, was converted into leaseholds. Customary occupants were deemed to hold the parcels of land at sufferance⁵ which could be terminated any time without notice. Rent payment by tenants was also removed. Evictions from land became rampant and customary occupants could be evicted at any time. However, occupants could be evicted upon payment of compensation, though cases of illegal evictions existed.⁶ (Not clear to me what this means.)

There have been attempts to streamline the land tenure and management system in Uganda in the recent past. Among them are the 1995 Constitution of the Republic of Uganda, and the 1998 Land Act and its amendment in 2010.

The 1995 Constitution and the Land Act of 1998

⁵ Read Permission

⁶ In this period there was increased permissiveness and breakdown of law enforcement leading to land grabbing and enormous evictions of tenants.

Perhaps the outstanding land reforms in Uganda were brought about by the 1995 Constitution and the 1998 Land Act. The 1995 Constitution is very clear: it states that land in Uganda belongs to the citizens of Uganda.⁷ Land is vested in the citizens of Uganda in four land tenure systems: Customary, Freehold, Mailo and Leasehold. It establishes the Uganda Land Commission⁸ whose function is to *“hold and manage any land in Uganda vested in or acquired by the Government of Uganda in accordance with the Constitution and any other functions as may be prescribed by Parliament.”*⁹

The Constitution also provides that there shall be a District Land Board¹⁰ for each District whose functions are:

1. To hold and allocate land in the district which is not owned by any person or authority;
2. To facilitate the registration and transfer of interests in land; and
3. To deal with all other matters connected with land in the district in accordance with laws made by Parliament.¹¹

In the same Constitution, the District Land Board is mandated to act independently of the Uganda Land Commission in the performance of its functions. It shall not be subject to the direction or control of any person or authority but shall take into account national and district council policy on land.¹² However, government may, under laws made by Parliament and policies from time to time, regulate the use of land.¹³ Furthermore, Parliament shall by law provide for the establishment of land tribunals¹⁴ whose jurisdiction shall include the determination of disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, by the Uganda Land Commission or by other authority with responsibility relating to land; and the determination of any disputes relating to the amount of compensation to be paid for land acquired. Articles 237 and 242 enable the state to take charge of the land and enforce its planning and development although it might give leeway for mismanagement in a

⁷ Article 237(1) of the Constitution of the Republic of Uganda 1995

⁸ Article 238

⁹ Article 239

¹⁰ Article 240

¹¹ Article 241

¹² Article 241(2)

¹³ Article 242

¹⁴ Article 243

corrupt and poorly governed state. The 1995 Constitution tried to address the problem of land tenure in Uganda albeit many challenges still exist.

In 1998, the Land Act was enacted to regulate the land management system in Uganda. It provided for a certificate of occupancy to be issued to the occupant on application to the registered owner. The certificate is meant to enable the occupant to prove that he/she is bona fide¹⁵. This therefore makes bona fide occupants statutory tenants of the registered owner and these occupants are required to pay ground rent to their landlords on mutually agreed upon rates. So the original land owner remains but the law also provides for the rights of the inhabitants on the land. In 2010, a new amendment to the Act provided that tenants who have lived unchallenged on registered land for 12 years or more, or who are settled on the land by the government, cannot be evicted for any reason other than non-payment of a nominal ground rent. This could have solved the land problems in Uganda, but unfortunately it did not. Improved tenant security simply exacerbates dual claims to land in Buganda where title owners are unable to sell their occupied land and tenants find it difficult to develop the land they occupy because they do not own the title to it and therefore may be evicted. Furthermore, land grabbing still exists, as evident from the fact that evictions form daily news headlines today, despite the presence of land reforms.

One more interesting observation. In the historic concept of freehold ownership of land, a person who had a freehold title had, in addition to the surface of the land, the ownership of all minerals down to the center of the earth. If gold or diamonds were found, then the person with the freehold title would enjoy the good fortune associated with the discovery. But, in Uganda, according to the 2005 Amendments to the Constitution, the ownership of all petroleum is not vested in the person with freehold title to the land; rather Article 244 of the Constitution provides that "...the entire property in, and the control of, all minerals or petroleum in, on or under, any lands or waters of Uganda are vested in the Government on behalf of the Republic of Uganda". This language is in stark contrast to the provisions of Article 237(2)(b) which charges the Government to "hold in trust for the people and protect...lakes, rivers, wetlands, forest reserves, game reserves, national parks,... for the common good of all citizens." Clearly, the Constitution has established a significantly different standard for treatment of minerals and

¹⁵ As defined by Section 29 of the Land Act 1998

petroleum than it has established for the other natural resources of Uganda. There is no mandate that requires that petroleum and minerals be held “for the common good of all citizens”. The danger and the opportunity for improper actions are an area of concern to all who are thinking of how Uganda gets to the goals set out for the country in Uganda 2040.

What is happening today?

Today, land transfers is one of the most contested issues in Uganda. In the wake of development strategies in the country, the power to control and to use land in Uganda is seen as an impetus to investors for both agricultural and industrial development. Remember, the Land Act of 1998 made clear the tension between two parties (the landlord who is the ultimate owner of the land and the tenant who is the current user of the land) over the same land. These conflicting rights make it hard for landlords to develop their land even when they are financially able, which weakens the powers of the landlords over their land. The issue of willing buyer-willing seller coined in the Act further complicates the transfer of land from one person to another. Where the landlord might wish to buy the tenant off the land, the tenant must be willing to sell his/her rights to use the land and vice-versa. Moreover, tenants have failed to develop land out of fear that the landlords will one day evict them; likewise, landlords cannot develop land because they cannot evict the tenants. Even the very architect of the law, the government, is highly affected by these issues when trying to allocate land for investment.

Despite these problems, the majority of Ugandans are ignorant about the laws and land reforms. People have continued to occupy land they do not own without the consent of the landlords and later are evicted by the owners. This has led to many conflicts over land in Uganda today. There is ignorance of the law and land tenure on both sides: the landlord is ignorant of his or her rights and likewise the tenants do not understand their rights over land.

Way forward

The only way to end land conflicts in Uganda is by educating Ugandans on their land rights as clearly as possible. Landlords must learn that their rights on land are not independent of the rights of their tenants and therefore landlords must recognize their obligation to compensate tenants when seeking to change the rights of the tenants on land owned by landlords.. Tenants do have rights, but they also have responsibilities: they have the obligation of paying ground

rent to their landlords if they are to be considered legal tenants on the land. A tenant who fails to do so may be evicted. One way to reduce the tension would be for tenants to purchase titles from their landlords to avoid future conflicts. Interventions by organizations like HRAPF can help find solutions for problems arising from current state of land ownership in Uganda.

HRAPF is implementing a land project that is aimed at providing public awareness and legal aid to indigent Ugandans in the central region on issues of land. The project is headed by a Lawyer assisted by a law clerk.