



UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY

U C C A



HANDBOOK ON LAND OWNERSHIP, RIGHTS, INTERESTS AND ACQUISITION IN UGANDA

MAY 2018

COVER PIC: Pictures taken in Rwamutonga in 2016. A community of over 250 families living in a camp after being violently evicted to make way for the construction of an Oil Waste Treatment Plant.



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**Handbook on Land Ownership, Rights, Interests
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Introduction

In 2016, the Uganda Consortium on Corporate Accountability (UCCA) launched “*The State of Corporate Accountability in Uganda Report*.” The report was an outcome of the 2016 baseline study on the effects and impact of corporate activities on human rights in Uganda. The baseline was conducted in the areas of Karamoja within its mining sector, Mukono focusing on Stone quarrying and Hoima and Buliisa looking at the various activities within the oil and gas exploration. One of the major issues found across all regions visited, concerned increase in land speculators in light of natural resource and infrastructural developments, land grabbing and forceful and illegal evictions. The UCCA team spent considerable time with affected communities and also conducted follow up meetings and situation analysis in Tororo around the Usukuru phosphate mining project. Issues of land ownership, interests and acquisition were recurring from the affected communities in all visited areas. It was noted that many vulnerable communities living in resource rich areas, and some of the Community Based Organisations (CBOs) operating there did not fully comprehend the Uganda land tenure system and legal and policy framework therein. It was noted that issues of land rights, interests and compulsory acquisition of land remained illusory within affected communities and various stakeholders working in the regions.

There have been follow up engagements with communities and various stakeholders around mainstreaming corporate accountability in Uganda. These continuous engagements entail a critical discussion around land rights and acquisition processes in Uganda. The UCCA and its partners continue to raise awareness and conduct trainings with CSOs and CBOs around business and human rights. These engagements also extend to government standard setting and regulatory agencies around enhancing corporate accountability in Uganda.

This Handbook is a key resource highlighting Uganda’s land tenure system and the various policies and legal framework concerning modes of acquiring rights and interest in land and the requirements that have to be fulfilled for compulsory acquisition of land by the government. The handbook also briefly reflects on the linkages between property rights and other human rights and the international guidelines around forced evictions. Largely, the handbook focuses on the domestic policy and legal framework.

We hope that this handbook will be a useful guide for the various stakeholders to provide basic guidance on key aspects related to land in a simplified manner. That ultimately cases of land grabbing arising out of ignorance of these basic concepts will greatly reduce and to empower communities and different holders of interests in land to have Free Prior and Informed Consent in all land related transactions.

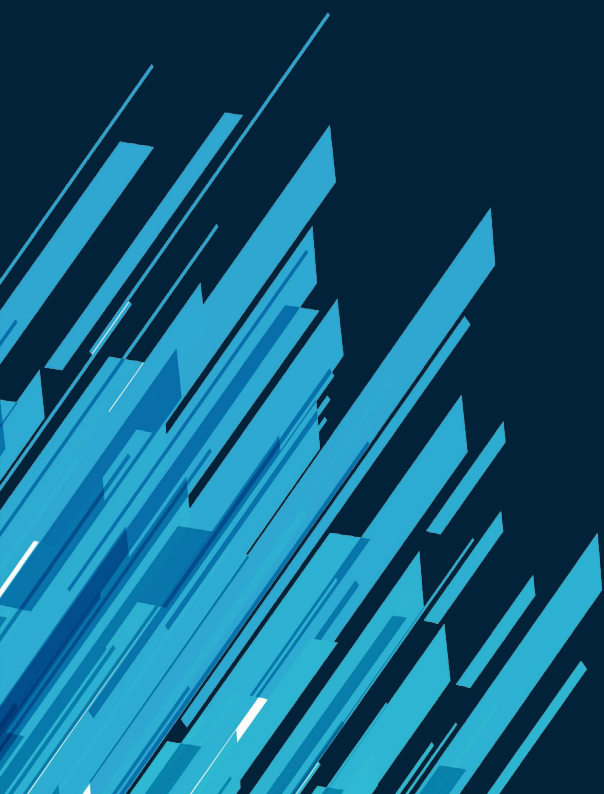
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THE POLICY AND LEGAL
FRAMEWORK RELATING
TO LAND OWNERSHIP, RIGHTS,
INTERESTS AND ACQUISITION IN
UGANDA

The Policy and Legal Framework Relating to Land Ownership, Rights, Interests and Acquisition in Uganda

- a. The Constitution of Uganda, 1995
- b. The Land Act, Cap 227 as amended
- c. The Land Acquisition Act, Cap 226
- d. The Land Policy, 2013
- e. The Registration of Titles Act, Cap 230
- f. The National Environment Act, Cap 153
- g. The Environmental Impact Assessment Regulation, S.I. No. 13/1998.
- h. The Water Act, Cap 152
- i. The Mining Act, 2003
- j. The Petroleum (Exploration, Development and Production) Act, 2013
- k. The Electricity Act, 1999
- l. The Investment Code Act, Cap 92
- m. The Road Act, 1964
- n. The Access to Roads Act, Cap 350
- o. The Traditional Rulers (Restitution of Assets and Properties) Act, Cap 247
- p. The Succession Act, Cap 162
- q. The Illiterates Protection Act, Cap 78
- r. The Survey Act, Cap 232
- s. The National Forestry and Tree Planting Act, No. 8 of 2003
- t. The Physical Planning Act, No. 8 of 2010

“Land is not a mere commodity, but an essential element for the realization of many human rights. For many people, land is a source of livelihood, and is central to economic rights. Land is also often linked to peoples’ identities, and so is tied to social and cultural rights.” UN OHCHR



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KEY TERMS DEFINED

2.1 Land Owner

Any Ugandan Citizen who owns or holds land under any of the four (4) recognized systems of land holding. *(Section 2 of the Land Act)*

2.2 Tenants by Occupancy

These include bona fide and lawful tenants. They are considered tenants of the registered owner of the land which they occupy and are required to pay annual ground rent. *(Sections 1 and 31 of the Land Act)*

2.3 Bonafide Occupant

Any person who before the coming into force of the 1995 Constitution of Uganda, had either occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or had been settled on land by the Government or an agent of the Government, which may include a local authority for instance local council chairpersons. *(Section 29 (2) of the Land Act)*

2.4 Lawful Occupant

Includes persons occupying land by virtue of the repealed

- i) *Busuulu and Emujjo* Law of 1928;
- ii) Toro Landlord and Tenant Law of 1937; and
- iii) Ankole Landlord and Tenant Law of 1937¹

Other lawful occupants include: persons who entered the land with the consent of the registered owner including a purchaser; and persons who had occupied land as a customary tenant/*Kibanja* holder but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title. *(Section 29 of the Land Act)*

¹ These laws were repealed by the Land Reform Decree, 1975

2.5 *Kibanja* Holder /Customary tenant

Persons who had settled on the land in Buganda as customary tenants with the consent of the mailo land owner under the *Busuulu* and *Envujjo* Law, 1928. A *Kibanja* holder holds an equitable interest in mailo land which can be transferred with consent of a registered owner. It is worth noting that *Kibanja* is peculiar to mailo land found mostly in Buganda.² The following are also recognized as *Kibanja* holders before the law;

a. A person who had occupied land as a customary tenant/ *Kibanja* holder but whose tenancy was not disclosed or compensated for by the registered owner at the time of acquiring the leasehold certificate of title under the 1975 Law Reform Decree.

b. A successor in title of all persons listed above. (*Section 29 (1) of the Land Act*)

2.6 Lease

Permission to use some one's land with exclusive rights for a period of three (3) years and above for a specific purpose with agreed terms between the lessor and the Lessee. (*Section 101 of the RTA*)

2.7 Lessor

A landowner who creates a lease and allows another person (lessee) to use the land for a specific purpose for a defined period with exclusive possession.

2.8 Lessee

A person who is given a lease by a lessor and is allowed to use the land for a specific purpose during a defined period of time, on specific terms with exclusive possession.

2.9 Exclusive Possession

Possession or utilization of land without interference from the land owner for a given period.

2.10 Sublease

A lease granted by a lessee to a third party with consent of the lessor for a period of not less than three (3) years. The original lessee becomes the sub- lessor and the sub-lessee becomes the lessee. (*Section 109 of the RTA*)

2.11 Tenancy

An agreement where a land owner grants another person permission to occupy land and enjoy exclusive possession for a period below three (3) years in exchange for rent.

Tenants do not acquire an interest in land but simply enjoy rights to use the land for the duration of the tenancy. There are three types of tenants namely: periodic tenancies, tenants at will and tenants at sufferance.

2.12 Periodic Tenant

This refers to a person who enters an agreement with a land owner to occupy his or her land or property, enjoy exclusive possession and pay rent on a regular periodic basis for instance weekly, monthly, quarterly, bi-annually or annually.³ A periodic tenancy is renewable depending on the agreement between the parties.

Before a periodic tenancy is terminated by either the landlord or tenant, reasonable notice must be given depending on the terms of the agreement or the period of the tenancy, if the agreement is silent on the notice period.⁴ For instance a weekly tenancy requires notice of one week, a monthly tenancy requires notice of one month⁵ while a quarterly tenancy requires notice of three months⁶ and so on. The only exception to this is an annual tenancy which requires notice of six months.

2.13 Tenant at Will

A tenant who is in possession of the land with consent or permission of the land owner before the tenancy contract is finalized or continues to stay on the land after the tenancy has expired prior to its renewal. This tenant is not entitled to notice to leave the premises but it is prudent to give them reasonable notice. (*Bweya Steel Works v. National Insurance Company (NIC) (1985) HCB 58*)

2.14 Tenant at Sufferance

A tenant who remains in possession of the land after the expiry of the tenancy without the consent or objection of the land owner. This tenant is not entitled to notice to leave the premises but it is prudent to give them reasonable notice. (*Christopher Ssebuliba v. AG Supreme Court Civil Appeal No. 13 of 1991*)

3 Bweya Steel Works Ltd v. NIC 1985 HCB 58.
 4 Prudential Assurance Co. v. London Residuary (1992) 3 ALLER 504.
 5 Queens Club Gardens Estate Ltd v. Bigwell (1942) 1 KB 117.
 6 Musumba v. Haji Kasaka (1971) 1 ULR 222.

2.15 Licence

Permission to enter another person's land for some specific purpose, which without such authorization would amount to trespass. A licence neither grants the licensee exclusive possession nor an interest in the land.

2.16 Interests and Rights in land

An interest relates to ownership which might be legal (registered owner and his or her successors) or equitable (for example tenants in occupancy or unregistered land owners). Interests are different from rights to land which relate to use of the land for a specific purpose with the consent of the land owner.⁷

2.17 Legal interest in land

This refers to an interest held in land by a land owner who has registered under the Registration of Titles Act so as to give the world notice of his or her ownership⁸ for instance owners of land in the mailo, freehold and leasehold tenures who have been registered.

2.18 Equitable interest in land

This refers to an interest held in land which has not been registered for instance tenants by occupancy, interest of a spouse in family land and a purchaser of land who has not yet been registered as the land owner among others. All interests which have not been registered under the Registration of Titles Act are equitable interests.

7 Ssesazi Kulabilawo v Robinah Nalubega Court of Appeal Civil Appeal No. 55 of 2000.

8 Section 54 of the Registration of Titles Act.

2.19 Persons having an interest in land

All persons who claim an interest in respect of land which the government seeks to acquire under the Land Acquisition Act including persons having an interest in an easement affecting the said land.⁹

2.20 Land Transactions

These include selling, leasing, mortgaging or pledging, subdividing, creating rights and interests for other people in the land and creating trusts of the land. (*Section 3 (2) of the Land Act*)

2.21 Family Land

Refers to land— (a) where the ordinary residence of a family is situated; (b) where the ordinary residence of the family is situated and from which the family derives sustenance; (c) which is treated as family land according to the norms, culture, customs, traditions or religion of the family. (*Section 38A of the Land Act as amended in 2004*)

2.22 Ordinary Residence

Refers to the place where a person continuously resides and a place which such person intends to make his or her home for an indefinite period. (*Section 38A of the Land Act as amended in 2004*)

2.23 Land from which a family derives sustenance

Means— (a) land which the family farms; or (b) land which the family treats as the principal place which provides the livelihood of the family; or (c) land which the family freely and voluntarily agrees, shall be treated as the family's principal place or source of income for food. (*Section 38A of the Land Act as amended in 2004*)

2.24 Caveat

A document which a person who claims an interest in registered land registers at the Registry of Lands in order to stop any transactions from being carried out in respect to the land. A caveat filed by a spouse on family land is a spousal caveat while a caveat filed by a beneficiary is a beneficiary's caveat.

2.25 Land Grabbing

This means the unlawful and illegal taking away of land belonging to an individual or a group of people.¹⁰ It can be on a large scale by wealthy individuals or public, private and foreign investors and is usually characterized by force and violence against land owners or occupants regardless of whether it is registered land or not registered.

2.26 Evictions

This means removal of a tenant by occupancy or *Kibanja* holder from land by a land owner. An eviction is illegal if the lawful or bonafide occupant or *Kibanja* holder is removed with a threat or use of violence without a court order.¹¹ It is also an illegal eviction where the actions of a land owner make it difficult or unsafe for occupants to stay on the land so they are forced to leave.

2.27 Resettlement

This means movement of individuals or groups of people from one location to another and providing them with land, shelter and other basic needs.¹² It can be on a permanent or temporary basis.

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Land and Equity Movement Uganda (LEMU) (2009), "How does Land Grabbing Happen?" August 2009.

Ministry of Lands, Housing and Urban Development, (2015), "What the Law says on Evictions."

Ministry of Lands, Housing and Urban Development, (2015), "Role of Chief Government Valuer (CGV) of the Republic of Uganda."

2.28 Compensation

This is money paid to a person with an interest in land to make up for the loss suffered when the government takes their land through compulsory acquisition. It must be fair and adequate and should be paid in time, before the land is taken. (MOLHUD, “Guidelines for Compensation, Assessment under Land Acquisition,” June 2017)

2.30 Valuation

This is the process of determining the value of land and structures on it. This is a key process during compulsory acquisition to determine the amount of compensation to be paid to the land owner.

2.29 Ground Rent

This is money paid annually to land owners tenants by occupancy and *Kibanja* holders. The amount paid as ground rent paid by tenants by occupancy and *Kibanja* holders is nominal and determined by District Land Boards with the approval of the Minister. Failure to pay ground rent is the only ground for evicting tenants by land owners.

237. Land ownership.

(1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.

(2) Notwithstanding clause (1) of this article

(a) the Government or a local government may, subject to article 26 of this Constitution, acquire land in the public interest; and the conditions governing such acquisition shall be as prescribed by Parliament;

(b) the Government or a local government as determined by Parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens;

(c) non citizens may acquire leases in land in accordance with the laws prescribed by Parliament, and the laws so prescribed shall define a non citizen for the purposes of this paragraph.

3

LAND OWNERSHIP

Article 237(1) of the Constitution states that land belongs to the citizens of Uganda and Article 26(1) protects the right to own property either individually or in association with others for instance groups of people who hold land communally.

The citizens of Uganda hold land under four (4) tenure systems namely Freehold, Mailo, Leasehold and Customary. (*Article 237 (3) of the 1995 Constitution of Uganda and Section 2 of the Land Act*)

a. Freehold Tenure refers to land held/owned by an individual registered on the certificate of title as the land owner for life. There are no tenants by occupancy and *Kibanja* holders on this land.

An owner of freehold has the following rights:

- i. Using and developing the land;
- ii. Entering into land transactions;
- iii. Taking and using produce from the land; and
- iv. Giving away the land to any person in a will.
(*Section 3 (2) of the Land Act*)

Freehold land is the most popular for most Ugandans. Leasehold and customary land can be converted to freehold land. (*Sections 28 and 29 of the Land Act*)

b. Mailo Tenure is land held by a land owner which has its roots from the 1900 Uganda Agreement and 1928 *Busullu Envujjo* Law. It is mainly in the Buganda region, currently central Uganda. Both the land owner registered on the certificate of title and tenants by occupancy and *Kibanja* holders have interests on this land.

Mailo land owners have the same rights as freehold land owners, but they must respect the rights of lawful and bona fide occupants and *Kibanja* holders to occupy and live on the land. (*Section 3 (4) of the Land Act*)

In matters of compulsory acquisition of mailo land, the land owner, tenants by occupancy and *Kibanja* holders are entitled to adequate and fair compensation.

c. Leasehold Tenure is land which a land owner allows another person to take exclusive possession for a specific period of three years or more in exchange for rent. A lease may be created either under a contract between the parties or by law. The person granted a lease must use the land for the specific purpose as agreed with the land owner. (*Section 3(5) of the Land Act*)

A lease is created by law where;

- i) The person granted the lease dies and his or her successor is registered as the new lessee;
- ii) A non-citizen person or company which acquires land in Uganda because non-citizens cannot own mailo, freehold or customary land;
- iii) A Ugandan who holds land in freehold and mailo tenure loses their citizenship, their land automatically changes to a lease of 99 years.¹³ This is because a non-citizen can only own land in leasehold tenure. (*Section 40 of the Land Act*)

During the process of compulsory acquisition of leasehold land by the government, the law recognizes two interests over the property in question:

- i) The rights of the person granted a lease; and
- ii) The interest of the land owner.¹⁴

Therefore, both these parties are entitled to compensation from the government in the event of compulsory acquisition.

¹³ The Land Act as amended in 2004, Section 40 (6)
¹⁴ Id., Section 3(5)(a) - (c).

d. Customary Tenure is where the land is owned based on the norms and traditions of a given society or community. One can even own land individually under customary tenure as long as it has been handed down from generation to generation using that society's customs.¹⁵

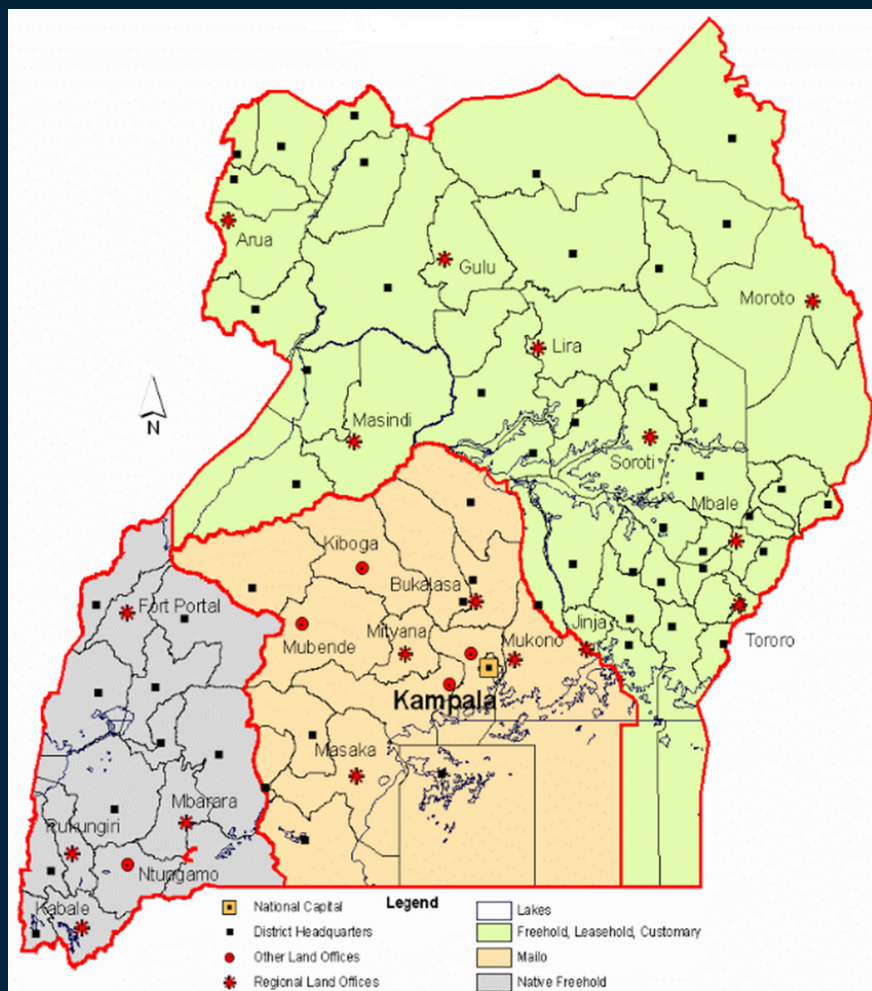
Special protection is accorded to the rights of women, children and persons with a disability to own, occupy or use customary land.
(Section 27 of the Land Act)

In 2015, the government of Uganda introduced Certificates of Customary Ownership (CCOs) for owners of customary land. A customary land owner can apply for a CCO as proof of ownership of the land.

This tenure is the most common form of land holding in Uganda.

Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land.
(Section 4 of the Land Act)

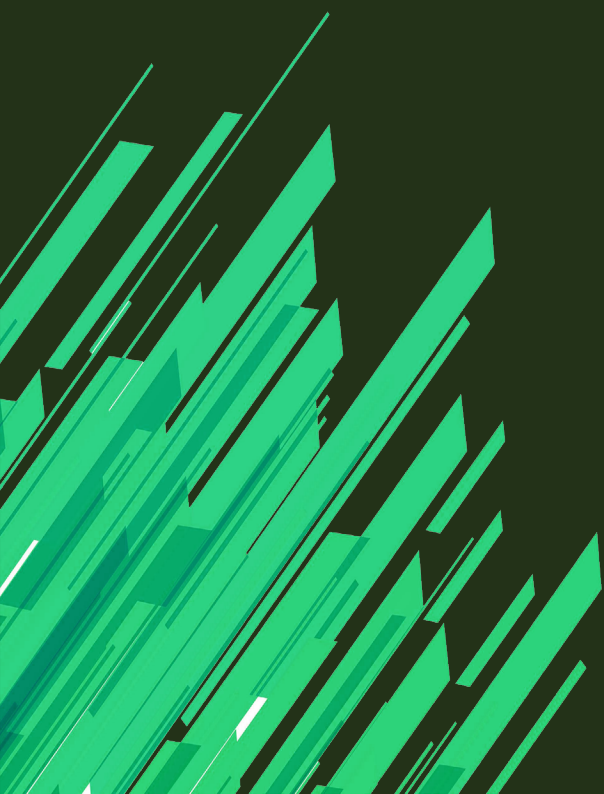
A map of Uganda showing the distribution of the different land tenure systems



Source: Ministry of Land, Housing and Urban Development

For the purpose of subsection (2), the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights.

Section (38A of the Land Act)



4

KEY CONSIDERATIONS FOR LAND TRANSACTIONS

a. Rights and Duties of Tenants by Occupancy and *Kibanja* Holders

1. Tenants by occupancy have a right to occupy land under the laws of Uganda.

2. They have the right to enter transactions with respect to the land they occupy with the consent of the registered land owner, which should not be denied on unreasonable grounds. (*Section 34 of the Land Act*).

3. The law strictly requires tenants by occupancy to give the land owner first option where they wish to sell their interest and vice versa where a land owner wants to sell the land. This must be on a willing buyer willing seller basis. (*Section 35 of the Land Act*).

4. These rights and duties extend to *Kibanja* holders who must also obtain the consent of the registered owner before selling of their *Kibanja*.

5. They must also be given the right of first option to buy the land if the land owner wants to sell the land.¹⁶

6. Where a tenant by occupancy or *Kibanja* holder sells their interest without giving the land owner first option, he or she commits an offence and loses the right to occupy the land. (*Land (Amendment) Act 2010*)

7. A person who buys registered land which has tenants by occupancy must respect and observe their rights.

8. He or she must not evict them except if he or she obtains a court order of eviction for non-payment of the annual nominal ground rent. (*Section 32A of the Land Act as amended in 2010*).

9. Similarly, any person who buys registered land in Buganda must observe the rights of *Kibanja* holders on the land.¹⁷

16 Marko Matovu & Others v. Mohammed Sseviiri & Others Court of Appeal Civil Appeal No. 7 of 1978 and Kampala District Land Board & Another Vs. Venansio Babweyaka and Others Supreme Court Civil Appeal No.2 of 2007.

17 UPTC v Abraham Lutaaya Supreme Court Civil Appeal No. 36 of 1995 cited in Prof. Wavamunno v Sekyanzi High Court Land Division Civil Appeal No. 27 of 2010

10. Tenants by occupancy and *Kibanja* holders can also register a caveat at the Registry of Lands where they have reason to suspect that the registered land owner intends to enter a land transaction which will affect their rights and interests. (*Section 139 of the Registration of Titles Act*).

b. Right of Spouses to Give Consent for Transactions on Family Land

1. Husbands and wives of owners of family land are entitled to occupy this land.
2. They have the right to access to, and live on family land. (*Section 38A of the Land Act*).
3. Spouses therefore must give their consent to all land transactions on family land (*Section 39 of the Land Act*).
4. These transactions include: sale of the land, mortgages or leases on family land and giving away family land.

5. Where a spouse of a land owner does not agree to sale of the land for example, it will be illegal and unlawful.¹⁸

6. Even if a buyer of family land is unaware that the land owner has a spouse, the sale is unlawful but the buyer has the right to claim back money paid to the land owner.

7. A person who suspects that their spouse who owns family land intends to sell the land or enter any other deals on the land, without their permission, can register a caveat at the Registry of Lands. This caveat does not expire.

8. This protection applies to only married couples. Persons who live together as a couple but are not married are not protected.

9. Therefore, spouses must be in a Christian, Civil, Customary, Islamic or Hindu marriage.

10. Where a married couple has separated under the law, they do not benefit from this protection.

c. **Rights of Beneficiaries to Estates of Persons Who Die Without a Will**

1. Where a land owner, tenant by occupancy or *Kibanja* holder dies without a will, his or her interest in the land is inherited by the family.

2. The family must have meetings and appoint an Administrator who should apply for Letters of Administration to manage and hold the land of the deceased on behalf of the family members.
(*Section 26 of the Succession Act*)

3. Widows or widowers have the first priority to apply for Letters of Administration to administer the estates of their deceased spouses for the benefit of the family.¹⁹

4. Therefore, a beneficiary of the estate of the deceased (for instance children and spouses of the deceased) has a right to oppose land transactions entered by the Administrator if he or she believes that it affects his or her interests in the land.

5. This can be done by registering a beneficiary's caveat at the Registry of Lands. This caveat does not lapse except with consent of the beneficiary who filed it or a court order.²⁰ (*Sections 139 and 144 of the Registration of Titles Act*)

6. A beneficiary, who is not an Administrator, can bring a case in the courts of law to protect his or her interest in the estate of the deceased or to ensure that the property of the deceased is well managed and distributed.²¹

19 Best Kemigisa vs Mabel Komuntale (1999) KALR 829.

20 Teja Singh vs Singh & ors (1957) EA 654.

d. Customary Land

1. For customary land owned by community members, consent of the community members is required for any land transaction while for land owned by a family, consent of the spouse and children must be obtained.

2. Customary land can also be converted to freehold land where the owners wish to change it. (*Section 9 of the Land Act*)

i) Types of Customary Land

1. *Customary communal land;* where persons or communities share ownership or use of land for common purpose. A particular group of people in a particular area for purposes like grazing, water source, and firewood collection, wild fruits and vegetables, fishing, harvesting honey and white ants, cutting papyrus etc, communally owns the land. In most cases, rights to access this land are inherited.

2. *Customary family land;* is where the head of the family or clan may be said to ‘own’ the land. Its utilization is usually controlled by family head, elders, clan heads or a group in its own well-defined administrative structures. The heads are responsible for protecting the land and ensuring that every family member gets rights to use some part of the land.

Family land is inherited within the family and the management of the land is passed on from parents to children and their family members but kept within the family.

3. *Individual customary land;* is where an individual is said to ‘own’ land because the land was allocated to them, to use or own permanently, or they inherited the land, or purchased the customary land as an individual. This will include the right to allocate portions of the land to the next generation.

e. Documentation of Land Transactions

1. Have an agreement in writing for any transaction (buying, selling, donating or bequeathing) on Land.
2. Ensure that the right persons in law i.e an adult who hold interest in that land sign the agreement.
3. Ensure that you have copies of the original agreement.
4. All parties (buyers and sellers) must sign on all pages of the agreement.
5. For titled land, conduct a search to ascertain the real owners or interest holders in that land.
6. Where an administrator (s) are the right ones registered on the land, ensure that they have valid letters of administration to deal in the land and where there is more than one, all of them sign on the agreement.
7. Where either the buyer or seller of the land is an illiterate, the person writing the agreement for or

on behalf of the illiterate must indicate his or her full name and address as the writer of that document otherwise he or she commits an offence (*Section 3 and 4 of the Illiterates Protection Act Cap 78.*) Courts have strictly observed the same.²²

f. Contents of a Good Land Agreement

1. *Names and signature of parties to the land;* the buyer and the seller has to append their signature and names to the agreement. All parties must sign on each page.
2. *Names and signature of the witnesses;* the persons who can witness and testify to sale has to be present when the sale is being concluded and append their signatures on the agreement. Witnesses must witness on each page.
3. *Land location;* where the land is located, the village, parish, division sub-county, county, and district where applicable.
4. *Land size;* state in both words and figures

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22

Kasaala Growers co-operative society vs Kakooza Jonathan & Anor SCC Application No.19/2010.
Kasaala Growers co-operative society vs Kakooza Jonathan & Anor SCC Application No.19/2010.

5. Describe what is on the Land; this entails what is on the land, e.g. houses, trees, crops, etc. and state whether they form part of the land being sold.
6. Date of the sale.
7. Boundaries and neighbors to the land being sold.
8. State the nature or system under which the land is held whether customary, freehold, or mailo tenure.
9. State the amount of the sale in figures and words or any other means under which the land is being transacted (consideration)
10. Certificate of translation where either or both of the parties are illiterate.
11. Finally, if the land is a gift, indicate it.

Steps to acquiring a land title

FREEHOLD TITLE

STEP 1

Pick a copy of the following Land form 4 from the District Land Office or Area Land Committee or download it directly from the Ministry website and fill it in triplicate in Land Form 4; Application for conversion from customary tenure to freehold tenure/ grant of Freehold Attach 4 passport photos and submit to the ALC after paying the required fees.

STEP 2

Area Land Committee (ALC) receives the application and issues a notice for a public hearing using Land Form 10. ALC visits the site and together with neighbours fill and sign the Demarcation Form 23. The ALC also compiles an inspection report and submits the documents to the District Land Office. The District Land Office prepares a technical report and forwards it to the District Land Board for approval. Thereafter, Form 18, the Freehold Offer is prepared and forwarded to the MZO for preparation of the Land title.

STEP 3

The MZO receives the following: Completed Land forms 8.10.19 and 23; ALC inspection report; District Land Office technical report; Passport Photo's; Forwarding letter requesting for a Freehold title.

STEP 4

In return, the client is issued with a Acknowledgement Note and informed when to come back.

STEP 5

All incoming transaction documents are scanned, reviewed and validated; thereafter judgment is automatically done by the system and forwarded to the Registrar of Titles for passing, signing and sealing. The title is then passed on to the Delivery Clerk for collection by the Client.

LEASEHOLD TITLE

STEP 1

Pick a copy of the following form from the District Land Office or Area Land Committee or download it directly from the Ministry website and fill in Land Form 8; Application for a leasehold. Attach 4 passport photos and submit to the ALC after paying the required fees.

STEP 2

Area Land Committee receives the application and issues a notice for a public hearing using Land Form 10. ALC visits the site and together with neighbours fill and sign the Demarcation Form 23. The ALC also compiles an inspection report and submits the documents to the District Land Office. The District Land Office prepares a technical report and forwards it to the District Land Board for approval. Thereafter, Form 18, the Lease Offer is prepared and forwarded to the MZO for preparation of the Land title.

STEP 3

The MZO receives the following: Completed Land forms 8.10.18 and 23; ALC inspection report; District Land Office technical report; Passport Photo's; Forwarding letter; and Receipt of payment of application fees, premium and Ground rent.

STEP 4

In return, the client is issued with a Acknowledgement Note and informed when to come back.

STEP 5

All incoming transaction documents are scanned, reviewed and validated; thereafter judgment is automatically done by the system and forwarded to the Registrar of Titles for passing, signing and sealing. The title is then passed on to the Delivery Clerk for collection by the Client.

MAILO TITLE

STEP 1

Pick a copy of the following form from the District Land Office or download it directly from the Ministry's website and fill in Transfer and consent form 6. Attach passport photos of buyer and seller on the Transfer and Consent Form and submit to MZO for assessment of 1% stamp duty payable to URA.

STEP 2

Submit to the MZO the embossed transfer form and receipts of payment. In return, the client is issued with a Acknowledgement Note and told when to come back.

STEP 3

All incoming transaction documents are scanned, reviewed and validated; thereafter judgment is automatically done by the system and forwarded to the Registrar of Titles for passing, signing and sealing. The title is then passed on to the Delivery Clerk for collection by the Client.

Ministry of Lands, Housing & Urban Development (MLHUD)
 Plot 13-15 Parliament Avenue
 P. O. Box 7096, Kampala
 Tel: +256 791 622 191
 Email: dennisfo@mlhud.go.ug, desinlisi@nlc.go.ug
 www.mlhud.go.ug
Please direct all complaints relating to service delivery of land administration and management to: complaints@nlc.go.ug

Source: Ministry of Lands, Housing and Urban Development



5

SURFACE RIGHTS ON LAND WITH NATURAL RESOURCES

Surface Rights on Land With Natural Resources

- For land with natural resources, the rights of owners and tenants by occupancy are limited to the surface of the land.
- This includes buildings, crops and trees among others on the surface of the land.

A person or persons that holds such land can claim for compensation for their rights to the surface of the land in cases of compulsory acquisition by the Government.

A Table Matrix Showing Various Statutes with Provisions that deal with Access to Land with Mineral Deposits and Other Natural Resources and Compensation for Surface Rights

Statute	Purpose of the Law	Provision	Meaning	Rights affected	Challenge
The 1995 Constitution of Uganda	This law states that all natural resources belong to the people and shall be held by the State	Article 244 (1) of the Constitution provides that the Government has control of all minerals and petroleum in, on or under, any land or waters in Uganda on behalf of the people of Uganda.	Where land is discovered to have minerals or petroleum, it ceases to belong to the land owner. Ownership moves to the people of Uganda and is held and controlled by the Government.	The right to own property.	

Statute	Purpose of the Law	Provision	Meaning	Rights affected	Challenge
The Petroleum (Exploration, Development and Production) Act, 2013	<p>This Act governs the exploration of petroleum in Uganda and processes which must be taken before, during and after.</p> <p>This includes the rights of land owners when a third party is given a petroleum licence over their land.</p>	<p>Section 136 – Right to surface activities</p> <p>Section 137 – Right to sub-surface activities</p>	<p>A land owner can graze and cultivate on the surface of land.</p> <p>A land owner can build a structure on the land with the consent of either the licensee or the Minister.</p> <p>The land owner is free to move on the land and do simple activities that do not fundamentally affect the land.</p>	<p>The right to own property</p> <p>The right to enjoy quiet possession of the one's property</p> <p>Right to freedom of movement.</p>	<p>This is an ideal provision since the reality on the ground is that once a license is granted, the land owner is looked at as a trespasser.</p> <p>The challenge is that all movements are likely to be seen as interfering with mining activities.</p>
The Mining Act, 2003	<p>To regulate mining, mineral development and acquisition of mineral rights.</p>	<p>Section 79 (Reasonable exercise of mineral rights)</p> <p>Section 80 – Right to graze stock and cultivate</p>	<p>Mineral rights co- exist alongside other rights.</p> <p>The owner of the land can graze and cultivate on the land while mining is ongoing. However, an</p>	<p>Ownership rights.</p> <p>Exploration and mining rights.</p>	<p>-The owner or occupier of the land is liable for any loss or damage.</p> <p>-This right is</p>

<p>The Petroleum (Exploration, Development and Production) Act, 2013</p>	<p>To regulate petroleum exploration, development and production and to regulate the licensing and participation of commercial entities in petroleum activities among others.</p>	<p>Section 136 – Right to surface activities</p>	<p>A land owner in an exploration or development area still has the right to graze stock upon or to cultivate the surface of the land insofar as the grazing or cultivation does not affect the petroleum processes</p>	<p>arrangement has to be made with the mining licensee.</p>	<p>The rights to graze stock, cultivate the land and to erect a structure on the licensed land without consent of the licensee.</p>	<p>The consent by the licensee to the land owner to exercise all these surface rights is hardly ever obtained and the land owner is looked at as a trespasser.</p>	<p>not automatic, the miner can easily terminate it.</p>
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Statute	Purpose of the Law	Provision	Meaning	Rights affected	Challenge
<p>The National Environment Management Act, Cap 153</p>	<p>To provide for sustainable management of the environment among others.</p>	<p>Section 3(1), (2) & (3) Every person has a right to a healthy Environment.</p>	<p>The duty to maintain a clean and healthy environment includes informing authorities of the activities that may affect this environment. Under Section 3(3) any person can bring an action in court in public interest against a person whose activities or omissions that affect the environment</p>	<p>Right to a clean and healthy environment.</p>	<p>Not many people have taken up actions against companies for pollutions in their communities especially because of reliance on Corporate Social responsibilities from those companies.</p>
		<p>Section 19 Project brief and environmental impact Assessment</p>	<p>A project developer is mandated to carry out and submit a project brief and an environmental impact Assessment. This helps to show the impact on the environment the project will cause.</p>	<p>Right to a clean and healthy environment.</p>	<p>The challenge is that it is the developer who pays the experts to carry out and issue a report of the Environment</p>

<p>The Roads Act, Cap 358</p>	<p>To provide for establishments of Road reserves and for the maintenance of roads</p>	<p>Section 2 Declaration of a Road reserve</p>	<p>The minister may by statutory instrument declare an area bounded by an imaginary line, 50 feet from the center line of the road to be a road reserve. Under Section 3, road reserves shall be kept clear and no one is allowed to either plant or build anything in the road reserve.</p>	<p>Right to own property (Land)</p>	<p>tal impact Assessment and most likely he or she will influence the results. The challenge is that many times the authorities exceed these 50 feet and center and usually take up people's land without compensating them.</p>
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Statute	Purpose of the Law	Provision	Meaning	Rights affected	Challenge
The Access to Roads Act, Cap 350	To provide for the procedure by which a private land owner who has no reasonable means of access to a public highway may apply for leave to construct an access road to a public highway	Section 2 Application for leave to construct an access road.	The land owner who seeks to construct an access road through another person's land applies first to that landowner and once negotiations fail, he or she applies to the Magistrates court for an access road. Note; Under Section 6, this access road shall not exceed 20 feet.	Right to own property (land) Right to own property (land) of the land owner where the access road is to be constructed. Right to quiet possession of the land of the land owner through whose land an access road is to be constructed.	The challenge was that land tribunals were in- operative until the matters were referred to Magistrate courts. There is no compensation made to the land owner whose land is taken to construct an access road.


Practice direction No. 1 of 2006 confers the powers that were given to the Land tribunals, to the Grade 1 and Chief Magistrates courts.



One of the 26 Crater Lakes in Fort Portal which the local government gave to a company Ferdult for fish stocking and commercial fish farming depriving the community access and a threat to their livelihood. (Twerwaneho Listeners Club & Others vs Ferdult Engineering Services Ltd & Another, HCT-01-MC - 0062 of 2016)

ARTICLE 26 (2)

No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied

- (a) The taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
 - (b) The compulsory taking of possession or acquisition of property is made under a law which makes provision for
 - (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
 - (ii) a right of access to a court of law by any person who has an interest or right over the property.
- 

6

LAND ACQUISITION

Land Acquisition

The Government can acquire land compulsorily on the grounds of public interest. The land owners must be paid fair and adequate compensation before the Government can take possession of the property. (*The Constitution of Uganda, Articles 26(2) and 237(2)*)

The Land Acquisition Act provides the procedure of land acquisition in Uganda. Land owners who are aggrieved can go to the courts of law for an appropriate remedy.

a. Public Interest Defined

In order for the government to acquire private land through compulsory acquisition, it must prove that it is doing so on the grounds of “public interest.”

Public interest may arise where:

- i. acquisition is necessary for public use;
- ii. acquisition in the interest of defence;

- iii. acquisition for public safety;
- iv. acquisition for public order;
- v. acquisition for public morality and
- vi. acquisition for public health. (*Article 26(2) (a) of the 1995 Constitution*)

Land acquisition is in public interest if it is in the general interest of the community, not the particular interest of individuals.²⁴

b. Compensation

Before the government takes possession of private land it has acquired, it must pay timely, fair and adequate compensation to all persons with an interest in the land (*Article 26 (2) (b) (i) of the 1995 Constitution*).

The compensation must be assessed at the actual market value of the land at the time of acquisition.²⁵ Market value of the land means the price which a willing seller might be expected to obtain from a willing purchaser at the particular time.²⁶

²⁴ B.P. Bhatt and Another Vs. Habib Rajani (1958) EA 536.
²⁵ Abdullah & Others Vs. Collector for City Council of Kampala (1958) EA 779.
²⁶ Puran Chand Vs. Collector under the Land Acquisition Act of 1894 (1957) EA 125.

c. Principles of Land Acquisition

i. *Principle of Equivalence*
 Compensation should be fair, adequate and timely and must be paid before the land is taken. The affected person must not be left in a worse off financial position after the acquisition than he or she was before.

ii. *Principle of Severance*
 This principle is used when the government exercises its power to take part of private property for public use. If the value of the remaining property depreciates because of the intended use by the government of the land taken, the owner is entitled to compensation called severance damage.

iii. *Principle of Injurious Affection;*-
 This principle applies where a land owner suffers injury to the remaining land when part of his or her land is acquired. This loss or damage must be non-physical and does not include any sentimental value such as;

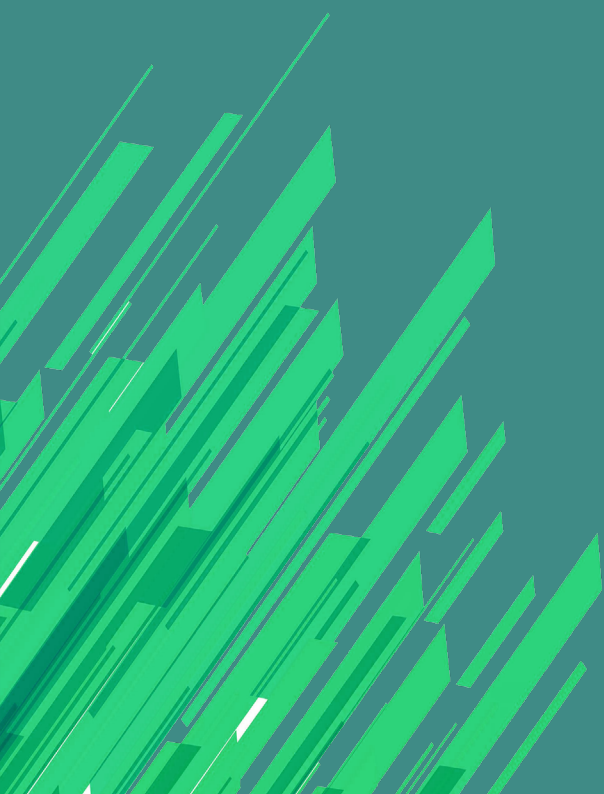
- (i) Direct, Physical interference or complete obstruction and
- (ii) Loss of view or loss of privacy.

d. Compensation for Compulsory Land Acquisition under Laws of Uganda

One needs to ask the following key questions about compensation in land matters.

1. **What must be done prior to compensation?**
2. **Who can be compensated?**
3. **At what value must one be compensated?**
4. **Can one refuse the compensation offered?**
5. **What are the complaint procedures in case of unfair compensation?**

“Economic and social rights, including the rights to food, housing, water, health, work and an adequate standard of living, are directly affected by land management decisions. These decisions can either ensure the enjoyment of these rights or lead to the weakening of social safety nets, and thereby hamper the realization of these rights.”
E/2014/86



7

LINKAGES BETWEEN LAND AS A PROPERTY RIGHT AND OTHER HUMAN RIGHTS

Linkages between land as a property right and other human rights

The right to own property is recognised in the 1995 Constitution of Uganda under Articles 26 and 8A and Objective XIV of the National Objectives and Directive Principles of State Policy (NODPSP).

Uganda has also ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and African Charter on Human and Peoples' Rights (ACHPR) which affirm this right, stating that it may only be encroached upon in public interest according to the law.²⁷

The Covenant on Economic, Social and Cultural Rights General Comment No.4 on the right to adequate housing explains the linkages between the right to land as property to other human rights. The right to land can not be looked at in isolation as a stand-alone right.

Violation of this right through forced evictions can result in the infringement of the rights to adequate housing, health, clean and safe water and food because they are all integrally linked.²⁸

For instance, upon eviction, in addition to loss of the land and shelter, the victim would lose their means of production and livelihood, an adequate location which affects their access to the available employment options, health facilities, educational institutions and clean and safe water in the neighborhood and consequently, their right to an adequate standard of living, dignity and security.²⁹

The linkages between all these rights can ultimately be a major threat to the enjoyment of the right to life.

Overall, the respect, protection and fulfillment of the right to own property and adequate housing is therefore of utmost importance given the dire implications of its violations. The linkages between all these rights can ultimately be a major threat to the enjoyment of the right to life.

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Article 11, ICESCR and Articles 14 and 21 (2), ACHPR.

28

UN Committee on Economic, Social and Cultural Rights, General Comment No.4 on the right to adequate housing, Paragraph 8.

29

Ibid.

A Table Matrix Showing Various Statutes with Provisions on Compensation for Land

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
The 1995 Constitution of Uganda (As Amended)	Article. 26 (Right to own property either individually or in association with others.)	Individual owner OR Community. The citizens are the primary owners of land.	Individual owner OR Community. The land owner or a holder of an interest in land		
	Article.237(1)- Land belongs to the Ugandan citizens				
	Article 237(2)	The Central or Local Government can own land in public interest and in trust for the people.	The holder of an interest in land, proprietary or otherwise.		

<p>The Land Acquisition Act.</p>	<p>Section. 5(1) all persons claiming an interest in land have a right to claim for compensation. Section 3 (3) A copy of the declaration is served to the person to be compensated i.e the Registered owner, the controlling authority or the occupier.</p>	<p>The persons owning an interest in the land is notified. Notice is served to owners of interests in the land for them to follow up compensation.</p>	<p>Land owners Land owners and persons holding different interests in the land</p>	<p>Current market value of the land. Current market value.</p>	<p>One can appeal against the award by way of objection to the High court. (s.13) Appeal to court by way of objection</p>
<p>The Mining Act, 2003</p>	<p>Section 81 - A holder of a mining lease who acquires exclusive possession may compensate the land owner or lawful occupier of the land in accordance with the terms and duration of the lease.</p>	<p>The owner or lawful occupier of the land is compensated in accordance with the terms of the lease.</p>	<p>The owner or lawful occupier of the land</p>	<p>The market value of the land upon which damage has occurred</p>	<p>Complain to the arbitrator if one is not compensated or is dissatisfied with the value of the compensation. [Section 82(2)]</p>

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
	Section 82 Compensation for disturbance rights.	The holder of a mineral right compensates the land owner or occupier for such things as trees, crops and buildings damaged.	The land owner or lawful occupier. NOTE: The holder of state grant land shall not be compensated.	The market value less the value of developments or improvements by the holder of a mineral right	Refer the matter for arbitration before an arbitrator. The claim for compensation is only enforceable if it is presented within a period of one year from the date on which the act occurred.
	Section 98 share in the royalties.	The land owner or occupier gets a share of the gross value of minerals based on the prevailing market price of minerals.	Government, local Governments, owners and lawful occupiers all have a share in the royalties. [Section 98 (2)]	The share is as per the second schedule to the Act.	Refer the matter for arbitration

<p>The Investment Code Act, Cap 92</p>	<p>Section. 61 Inquiry into disputes.</p>	<p>Section 82 - The Commissioner or authorized officer can also make inquiries into disputes relating to compensation under small scale mining.</p>	<p>Persons engaged in small scale mining.</p>	<p>Compensation at market value.</p>	<p>Refer the matter for arbitration</p>
<p>The Investment Code Act, Cap 92</p>	<p>Section. 27 - Protection in case of compulsory acquisition.</p>	<p>A licensed business enterprise must be compensated for any interests on the land in case of compulsory land acquisition</p>	<p>An investor with a licensed business enterprise.</p>	<p>Compensation at current market value. Compensation is only paid within a period of 12 months from the date of taking possession.</p>	<p>Section 25 - Amicable settlement through negotiations. Refer the matter for arbitration, national and international. Apply to the High court in case you are dissatisfied with the arbitration.</p>

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Com-plaint procedure
Uganda National Land Policy	Vesting wetlands in the state in trust for Ugandan Citizens without compensating land owners	The challenge is that it defeats the Right to ownership of property especially for the registered land owners	The different interest owners in respect of the land where the wetlands are.	Market value.	Magistrates Courts
	Paragraph 3.3 (10) Power of compulsory acquisition.	The power to compulsorily acquire land is vested in the Central Government and local.	The land owner	Market value	Market value
	Paragraph 3.3(12) Strategies by the state to handle compensation during compulsory land acquisition through amendments	The State will consider; a) Land should revert to the owners in case of failure of compulsory Land acquisition. b) Limit the central government's powers.	The land owner	At Market Value	Magistrates Courts

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
	other vulnerable groups.	The land policy also provides that there should be adequate compensation and resettlement of the vulnerable groups like persons infected with HIV/ AIDS or persons affected by it.	Vulnerable communities/ groups.		
	Paragraph 4.14 (82) The Kibaale Land question.	In order to find an everlasting solution in the lost counties of Buyaga and Bugangaizi, The government was to compensate the absentee landlords to redistribute land to the locals	The absentee landlords		
	Paragraph 4.16 (88) Access to land and investment	Government shall compensate land owners for loss of land rights in respect to any land acquired for investment and in addition provide benefit sharing agreements with the land owners.	Land owners.	At market value.	

					At market value	
				The pastoral communities		
		Government shall compensate Pastoral communities displaced by government from their ancestral lands and ensure that such pastoral lands are controlled as common property under customary tenure.		The vulnerable groups include persons who are terminally ill, internally displaced persons and persons affected by HIV/ AIDS. All the above may make desperate transfer of their lands and remain land less.		
	Paragraph 49 (61) Land rights of pastoral communities		Paragraph 4.12 (75) Land rights of other vulnerable groups.			

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
	Paragraph 4.16 (88) (iv) Access to land for investment	<p>Government can acquire land for investors after due process and due diligence.</p> <p>A long term benefit sharing arrangement is preferred to the one off compensation for loss of land.</p>		Adequate compensation	Government is to put in place structures and mechanisms for claiming compensation.
The Land Act, Cap 227.	Section.29 meaning of Lawful and Bonafide occupants	An individual can be a bonafide occupant if he or she was settled on the land by an agent of Government. [S.29(2)(b)]	The land owner or a person who holds interest in the land given away by the Government agent	Compensation was supposed to be done by the year 2000 at the then market value.	
	Section 37 Termination of occupancy	Once the land owner wishes to terminate occupancy, the occupant should be compensated	The tenant by occupancy [Section 37(4)(c)]	The value for the developments on the land.	Complain to Magistrates Courts

	<p>Section 41(4) How the Land fund shall be utilized.</p>	<p>Resources under the land fund shall be used to help tenants by occupancy to acquire registrable interests.</p>	<p>Persons holding different registrable interests</p>	<p>Market value Section 41(6) (b) principles of compensation Fair market value assessed at willing buyer willing seller basis. Compensation is made before land is acquired. Section.41 (6) (e) pay disturbance allowance not exceeding 15% for land under customary law.</p>	<p>Magistrates Courts Which has power to determine disputes relating to the</p>
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Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
	Section 59 - Functions of the District 1 Land Board	To compile a list of compensation rates. To compile and maintain compensation rates of crops and buildings of a nonpermanent nature.	The land owners and owners of the crops and buildings.	Market value	Magistrates Courts
	Section.76 Jurisdiction of District Land Tribunals.	This points out what role and powers the District land Board and also to determine disputes relating to the amount of compensation	The land owners and owners of the crops and buildings	Market value	Magistrates Courts
The Petroleum (Exploration, Development and Production) Act, 2013	Section 139 - A licensee shall pay compensation to the land owner for Disturbance Rights.	Compensation for any disturbance of the Land owner's rights and for any damage done to the surface of the land due to petroleum activities,	The land owner	Fair and adequate Compensation	Section 139(2) The claim for inadequate compensation is made to the chief

					<p>Government Valuer within 4 years.</p>
	<p>Section 129 Pollution damage caused due to mining activities</p>	<p>Compensation is paid to any person within Ugandan Jurisdiction affected by pollution from any licensed facility.</p>	<p>Any injured or affected person</p>	<p>Fair and adequate compensation</p>	<p>Sections 132 – A person may claim for compensation from a licensee from a competent court or in case of failure by the licensee to pay the decremental sum, such person, may claim for compensation directly from the person who caused the pollution.</p>

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
The Water Act, Cap 152	Section 18. Compensation must be paid to the person affected by the construction works.	Under Section 18(5 (C)) the director may grant permission to any person for construction of works and may require that person to make compensation to any other person.	The person who will be affected by the construction works	Market value	The aggrieved person may complain to the minister under section 18(5(d)) in case the compensation is contrary to article 26 of the Constitution.
	Section 22 (1). Compensation in respect to Suspension or variation of a water permit.	Section 22(2) the director may impose conditions for any permit that has either been varied, suspended or granted including requiring compensation of a permit holder to another permit holder	A permit holder affected by the varied permit belonging to another.	The value of the land and property affected the varied permit.	Complain to the minister.

	<p>Section 84. Compensation in respect to power to acquire land.</p>	<p>The minister or authority may acquire an interest in Land or any structures after payment of compensation as per the Land Acquisition Act and section 91 Water Act.</p>	<p>Under section 91, compensation is paid to all with an interest in the land or damaged property.</p>	<p>Market value</p>	<p>Section 91(6) appeal to the minister who shall consider the appeal within 30 days from the date of receipt of the notice of appeal and under section 93 court may order the offender to compensate the authority as court may think fit.</p>
<p>The Electricity Act, 1999</p>	<p>Section 68(3) A licensee shall do as little damage to the land and the environment and shall pay compensation to the land owner.</p>	<p>The licensee shall pay fair and adequate compensation to all interested persons for any damage or loss sustained while he or she is carrying out installations as a user over another's land.</p>	<p>The Land owner and owners of the damaged property affected by the installations.</p>	<p>Market value.</p>	<p>Section 71(2) lodge the complaint to the authority within one year from the date of the incident leading to the claim. <i>Section 71(3) Appeal</i></p>

Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
The Surveys Act Cap 232	Section 23(1) Compensation for trees, fences, bushes and standing crops.	This compensation is made to while clearing boundary lines under Section 22 and 29 where the Government is the beneficiary. If the application for survey is moved by a private person, that person pays compensation to the owner of the affected land.	The owner of the Land or other property affected by the Survey.	Market Value.	to the Electricity Disputes tribunal within 30 days after the decision is made. Under Section 23(2), a person dissatisfied with the compensation can either appeal to Magistrate Grade 1 or Chief Magistrate.

<p>The National Forestry and Tree Planting Act No. 8 of 2003.</p>	<p>Section 85 Power of court to order for Compensation.</p>	<p>The court has power to make an order as to compensation which is paid by the person who commits offences under section 81 of the act which include unauthorized cutting of trees and defacing forest boundaries.</p>	<p>The state(Central or Local Government)</p>	<p>Under section 85(a), the value is up to 5 times the value of the produce in case the damage was to for cultivation. Under <i>section 85(b)</i> 10 times the value of the fees or royalties lost had the in respect to the un authorized Act.</p>	<p>The relevant court.</p>
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Statute	Provision	Explanation	Person to be Compensated	Value of compensation	Complaint procedure
The Physical Planning Act, 2010	Section 55(4) Compensation to persons affected by the right of entry.	The owner or occupier of the land affected by the right of entry by the authorized persons from the urban authorities is compensated for any damage caused. This compensation is subject to obstruction of the authorized officials which constitutes an offence.	The owner or occupier of the affected Land.	Market Value.	Under section 48, the aggrieved person appeals first to the Physical planning Committees, then to the Board then finally to the High court. All these appeals must be within 30 days from the date the decision is made at every stage.

Compensation is key and must be paid to persons with an interest in the land before the government takes possession, both physical and legal.

Supreme Court Constitutional Appeal No. 2 of 2014



8

SELECTED CASES & COURT DECISIONS ON COMPENSATION FOR LAND ACQUISITION

Case	Ruling/ Decision/ Comment
<p>Uganda National Roads Authority (UNRA) v Irumba Asumani and Magelah Peter Supreme Court Constitutional Appeal No. 2 of 2014</p>	<p><i>Brief Facts:</i> The Government acquired land compulsorily for purposes of upgrading the Hoima-Kaiso-Tonya Road. UNRA took possession of the land prior to compensating the deprived persons. This case challenged Section 7 of the Land Acquisition Act, 1965, which allowed the Government to take possession of such land without payment of prior compensation.</p> <p><i>Holding:</i> The Supreme Court of Uganda stated that Section 7(1) of Land Acquisition Act which permitted the government to take possession of private land before compensation is inconsistent with Article 26 (2) (b) of the Constitution. Compensation is key and must be paid to persons with an interest in the land before the government takes possession, both physical and legal.</p>
<p>Buran Chandmary v The Collector under the Indian Land Acquisition Act (1894) 1957 EACA 125</p>	<p><i>Holding:</i> The market value of land is the basis on which compensation must be assessed. Market value of land is the price which a willing vendor might be expected to obtain from a willing purchaser. A willing purchaser is one who although may be a speculator is not a wild or unreasonable speculator</p>

<p>Inter freightForwarders (U) Ltd v East African Development Bank Supreme Court Civil Appeal No. 33 of 1992</p>	<p><i> Holding:</i> Assessing property at the current market value leads to reasonable, fair and just compensation to deprived persons.</p>
<p>Sheema Cooperative Ranching Society & 31 Others v the Attorney General High Court Civil Suit No.103 of 2010</p>	<p><i> Brief Facts:</i> The Claimants were the registered owners of land in the Ankole - Masaka Ranching Scheme. The Government compulsorily acquired their land following a policy to restructure the ranches for the purpose of resettling landless people. Persons were resettled on the land without payment of fair and adequate compensation to the land owners.</p> <p><i> Holding:</i> Fair, timely and adequate compensation must be paid to persons with an interest in the land at market value upon compulsory acquisition.</p> <p>Certain procedures must be followed before compulsory acquisition can be lawful. The Government did not do so in this case. Also, the process of compensation was not transparent since the persons affected did not know what was taking place. They were not approached to give their views and the award given for compensation was not disclosed.</p>

<p>Uganda Electricity Boars (UEB) v Launde Stephen Sanya Court of Appeal Civil Appeal No.1 of 2000</p>	<p><i>Brief Facts:</i> UEB, a Government Corporation, entered private land, destroyed trees, crops and building materials and placed its survey marks and high voltage power lines without the consent of the land owners.</p> <p><i>Holding:</i> The Court held that UEB contravened Article 26(1) (2) and Article 237 of the Constitution by entering and taking possession of private land without acquiring it and paying compensation to the affected parties. UEB should have first notified the owners of the land before taking over the land which they did not do.</p>
<p>Esso Standard (U) Ltd v Samu Amanu Opio Supreme Court Civil Appeal No.3 of 1993</p>	<p><i>Holding:</i> In situations where there are fluctuations of currency, such fluctuations need to be taken into consideration in an effort to arrive at what is adequate fair compensation.</p>



9

MECHANISMS TO REPORT VIOLATIONS AND ABUSES OF LAND RIGHTS

a. Filing Claims in Courts of Law

- Any person whose interests and rights to land discussed above have been affected can bring a claim in the courts of law to obtain remedies.

- The Court to report to depends on the value of the land:

- Grade One Magistrates Court:* Land whose value is UGX. 20,000,000/= (Twenty Million Uganda Shillings) and below;

- Chief Magistrates Court:* Land whose value is UGX. 50,000,000/= (Fifty Million Uganda Shillings) and below; and

- High Court:* Land whose value exceeds UGX. 50,000,000/= (Fifty Million Uganda Shillings).

b. Time period for Land Claims in Courts of Law

- It is very important to note that for land matters, affected parties whose rights have been violated have a period of twelve (12) years within which to bring a case to court. (*Section 5 of the Limitation Act*)

- The only exception is in cases of fraud (time begins to run when the fraud is discovered by the claimant) and if the claimant can prove that they faced a disability and were unable to bring the matter within this period, in which case, an extension of six (6) years is permitted.

c. Filing Claims with Quasi-judicial bodies

- The 1995 Constitution of Uganda establishes quasi-judicial bodies including the Uganda Human Rights Commission (UHRC) and the Equal Opportunities Commission (EOC) which are empowered to receive and determine complaints of violation of human rights.

- The UHRC and EOC handles complaints related to land such as unlawful and forced evictions and deprivation of property across the country.

d. Local Council Courts

1. Every Village, Parish, Town, Division and Sub-county has a Local Council Court. These Courts have the power to handle land matters for land located within their area of operation. (*Section 9 and 10 of the Local Council Courts Act*).

2. However, they can only deal with land disputes where the value of the land is UGX 2,000,000/= (Two Million Uganda Shillings) and below except customary land where there is no limit on the value of land. (*Section 10 of the Local Council Courts Act*).

3. The first court in which to report a land complaint is the Village Local Council Court. These Courts can grant reliefs such as reconciliation, declaration, compensation and damages to the affected persons. (*Section 13 of the Local Council Courts Act*).

4. Note that LC III courts are not court of first instance in handling land matters. See several cases including that of *Ruranga Vs. Electoral Commission* and *Ag, Nalongo Burashe Vs. Kejittibwa Magdalena C.A. No. 89 2011*

e. District Land Boards and Area Land Committees

1. District Land Boards hold and allocate public land or land which is not owned by any individual or authority in their respective districts. (*Article 240 and 241 of the 1995 Constitution of Uganda*).

2. They are also required to compile, maintain and review a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing on the land in their districts. (*Section 59 of the Land Act*)

3. Area Land Committees work closely with the District Land Boards.

4. Every Sub-county, gazetted urban area and division (for cities) has a Committee which advises the Boards on matters relating to land including ascertaining rights in land.

f. Alternative Dispute Resolution (ADR) Mechanisms

What are ADRs?

These are dispute resolution mechanisms that are alternative to the formal court based litigation approach.

Types of ADR

1. **Mediation;** generally referred to as an interest based process. Mediation is a structured negotiation, introducing a third party who assist the persons to settle their dispute.

2. **Negotiation;** This refers to the process of working out an agreement by direct communication between the parties.

3. **Reconciliation;** often used interchangeably and indiscriminately with mediation. An independent party assist the parties to settle their differences or the parties themselves after realizing their mistakes take initiative to apologize and create peace between or among them.

4. **Arbitration;** an adjudicatory rights based approach where one or more arbitrators hear adversarial presentations by each side in the case the issue a decision based on the facts and applicable laws.

5. **Counselling and advise;** where a person not party to the dispute talks to the aggrieved person and gives alternatives which can settle the matter in a peaceful way.

Advantages of ADR Mechanisms

1. Saves money because it is cost effective.

2. Saves time; its completion is determined by the parties and the time they allocate to completing it.

3. It is user friendly and offers more control to disputant to reach amicable settlement.

4. Parties have a choice on who to settle the dispute.

5. Its process is flexible since it's not subject to any written rules of procedure.

6. It fosters reconciliation, peace and harmony

7. Decision are reached at by the parties who are guided by the mediator

NB. ADR does not apply to criminal cases for example cases that involve forgeries of Land titles and other documents of Land ownership.



A picture taken in 2016 of children in a makeshift classroom in Rwamutonga IDP camp, after over 250 families were violently evicted off their land to make way for the construction of an Oil Waste Treatment Plant in Hoima District.

“The obligation of States to refrain from, and protect against, forced evictions from home(s) and land arises from several international legal instruments that protect the human right to adequate housing and other related human rights.”

BASIC PRINCIPLES AND GUIDELINES ON
DEVELOPMENT- BASED EVICTIONS AND
DISPLACEMENT - A/HRC/4/18



10

FORCED EVICTIONS

a. **Forced Evictions Defined**

The permanent or temporary removal of individuals, families and/ or communities from the homes and/ or land which they occupy against the will, without the provision of, and access to, appropriate forms of legal or other protection. (General comment number 7)

However evictions carried out by force in accordance with the law and in conformity with International Covenants on Human Rights do not amount to forced evictions.

b. **International Guidelines for Forced Evictions**

Due to the relationship between the right to land as a property right and other rights described above, forced evictions are considered an extreme violation of human rights.³⁰ There are various contexts in which forced evictions may occur including decongestion of a heavily populated urban area through forced population transfers, development purposes for instance for infrastructure projects, land acquisition for urban renewal and renovation among others.³¹

Although the national laws of Uganda do not provide a comprehensive guidance on forced evictions, there are some guidelines at an international level under the Covenant on Economic, Social and Cultural Rights General Comment 7 on the right to adequate housing: forced evictions. They include:

- i. **All evictions must be carried out in a manner acceptable by law which is compatible with International Human Rights Standards and in accordance with principles of reasonableness and proportionality depending on the particular circumstances.³²**
- ii. **Prior to carrying out any evictions, especially those involving large groups, all feasible alternatives must be explored in consultation with the affected persons, with a view to avoiding or minimizing, the need to use force.³³**
- iii. **Legal remedies or procedures should be provided to those who are affected by eviction orders. All the affected individuals have a right to adequate compensation for any affected property, both personal and real.³⁴**

30 UN Committee on Economic, Social and Cultural Rights, General Comment No. 7 on the right to adequate housing: forced evictions, Paragraph 2.

31 Ibid. at paragraph 7.

32 Ibid. at paragraph 11 and 14.

33 Ibid. at paragraph 13.

iv. Evictions should not result in individuals, families or communities being rendered homeless or vulnerable to the violation of other human rights. Where affected persons are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land is available.³⁵

c. Procedural protections which should be applied in forced evictions include.³⁶

i. An opportunity should be given for genuine consultation with those affected;

ii. Adequate and reasonable notice should be given for all affected persons prior to the scheduled date of eviction;

iii. Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, should be made available in reasonable time to all affected persons;

iv. Government officials or their representatives should be present during evictions, especially in cases where groups of people are involved;

v. All persons carrying out the eviction must be properly identified;

vi. Evictions should not to take place in particularly bad weather or at night unless the affected persons consent otherwise; and

vii. Affected persons should be provided with legal remedies, and where possible, legal aid to seek redress from courts of law.

“Forced evictions intensify inequality, social conflict, segregation and “ghettorization,” and invariably affect the poorest, most socially and economically vulnerable and marginalized sectors of society, especially women, children, minorities and indigenous peoples.”

-A/HRC/4/18

34 Ibid. at paragraph 11 and 13.

35 Ibid. at paragraph 16.

36 Paragraph 15 of the Covenant on Economic, Social and Cultural Rights General Comment 7 on the right to adequate housing: forced evictions.

About UCCA

The Uganda Consortium on Corporate Accountability (UCCA) is a Civil Society Consortium on corporate accountability aimed at enhancing accountability by corporations, states, international finance institutions and development partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs).

Currently, the UCCA has a founding membership of four organizations specializing in different areas of rights protection, including the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD).

Other UCCA members are Twerwanaho Listeners Club (TLC), Karamoja Development Forum (KDF), the Southern and Eastern Africa Trade Information and Negotiation Institute (SEATINI), the Centre for Economic Social and Cultural Rights in Africa (CESCRA), Buliisa Initiative for Rural Development Organisation (BIRUDO), Navigators for Development Association (NAVODA), Ecological Christian Organisation (ECO), World Voices Uganda (WVU), Rural Initiative for Community Empowerment West Nile (RICE WN), Teso Karamoja Women Initiative for Peace (TEKWIP), Action Aid International Uganda and International Accountability Project (IAP).

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