

Implications of land tenure laws for ensuring the sustainable management of forested landscapes alongside planned oil palm expansion in Buvuma



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Summary

This paper examines land tenure, laws and regulations, acquisition and management, implications for sustainable management of forested landscapes amidst expanding commercial agriculture. The study draws lessons from the experience of large-scale oil palm development in Bugala island, Kalangala district, and uses these to highlight issues related to land use changes and land use planning that should be considered or applied in Buvuma island, where large scale oil palm development is foreseen. The predominant land tenure systems in Buvuma island

are mailo, freehold and leasehold, with almost no customary tenure. However, historical injustices created by mailo land tenure need to be streamlined, along with lawful and bona fide occupancy needs for tenants to avoid unnecessary land conflicts amidst expanding commercial agriculture.

Land tenure

Uganda's land tenure has been provided for by the Constitution and other laws. Article 237(3) states that "Land in Uganda shall be owned in accordance with the following land tenure systems: customary; freehold; mailo; and leasehold", buttressed in Section 2 of the Land Act (Cap. 227) which states that "Subject to Article 237 of the constitution, all land in Uganda shall vest in the citizens of Uganda and shall be owned in accordance with the following land tenure system: (a) customary; (b) freehold; (c) mailo; and (d) leasehold.", and the Land Act goes on to explain the meaning of each.

- Customary tenure – a system of land tenure regulated by customary rules, which are limited in their operation to a particular description or class of persons...
- Freehold land tenure – holding of registered land in perpetuity subject to statutory and common law...
- Mailo land tenure – the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1900 Uganda Agreement and subject to statutory qualifications...
- Leasehold land tenure – the holding of land for a given period from a specified date of commencement, on such terms and conditions as may be agreed upon by the lessor and lessee...

Most land in Buvuma is under mailo tenure, followed by freehold from public lands, and leasehold, with customary land almost non-existent (Oloka-Onyango, 2017). In Buvuma and Buganda islands, the 1900 Agreement that created mailo created a landless class of squatters on what was originally their land, referred to as "lawful and bona fide occupants" of mailo, freehold or leasehold land who shall enjoy security of occupancy. In a bid to harmonize relationships between lawful and bona fide occupants and landlords of mailo, freehold and leasehold land on which the former enjoyed security of tenure, the government was required to enact a law to "regulate the relationship between the lawful and bona fide occupants of land referred to in clause (8) of this article and the registered owners of that land"; and to "provide for the acquisition of registrable interest in the land by the occupant."

In July 1998, parliament passed the Land Act, "...to provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other related or incidental matters." As mandated under Article 237 of the Constitution, the Land Act has defined lawful and bona fide occupants as a "lawful occupant", or "bona fide occupant". It is key to note, that "a person

on land on the basis of a license from the registered owner shall not be taken to be a lawful or bona fide occupant under this section." Similarly, "any person who has purchased or otherwise acquired the interest of the person qualified to be a bona fide occupant under this section shall be taken to be a bona fide occupant for the purposes of this Act." Just like lawful and bona fide occupants, a tenant by occupancy on a registered land shall enjoy security of occupancy on the land, may be issued with a certificate of occupancy, and also has the option of purchase. This is the common land tenure arrangement in Buvuma district where large scale oil palm development is foreseen.

Laws and regulations

Several laws and regulations govern land tenures in Uganda, mainly determined by the land tenure itself, the nature of the land, and the land use. Natural resource law is another relevant branch that primarily concerns the planning, rational exploitation, use, control and protection of various natural resources, focusing on the regulation of forestry, wildlife, mineral, oil and gas, marine and fisheries resources. In the context of Buvuma island and oil palm, natural resource management play a crucial role, and related law also handle contemporary legal issues in ownership, trusteeship, sustainable use and regulation of natural resources. Legal and policy frameworks for managing natural resources such as forests, wetlands, water, fisheries are largely regulated by law, and the Constitution and Land Act offer guidance. Parliament shall, by law, provide for measures intended (a) to protect and preserve the environment from abuse, pollution and degradation; (b) to manage the environment for sustainable development; and (c) to promote environmental awareness.

The above follows constitutional requirements which state that the "government may, under laws made by Parliament and policies made from time to time, regulate the use of land." In a bid to operationalize national law, Parliament passed the National Environment Act in 1995. Laws since passed under this include Environmental Impact Assessment Regulations (1998), National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations (1999), National Environment (Waste Management) Regulations (1999), and National Environment Regulations Wetlands, Riverbanks and Lakeshores Management, (2000). All of the above were intended to balance competing interests on land use (Kasimbazi, 2012). Lastly, the Land Act states that "a person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law." Land use in

Uganda is regulated by a number of laws and regulations, some of which are analysed in more detail below.

Acquisition and management

The Constitution, the Land Act and other laws and regulations, regulate acquisition and management of land. The 1965 Land Acquisition Act makes “provision for the compulsory acquisition of land for public purposes and for matters incidental thereto and connected.” The Constitution states that land in Uganda belongs to the citizens of Uganda, and shall vest in them in accordance with the land tenure systems provided for in the Constitution. Then, notwithstanding clause (1) of this article, the government may, subject to Article 26, acquire land in the public interest; though conditions governing such acquisition shall be as prescribed by Parliament, and (b) government as determined by Parliament shall hold it in trust for the people and to protect natural lakes, rivers, wetlands, forest and game reserves, national parks, and any land reserved for ecological and touristic purposes for the common good of all citizens (Constitution of Uganda, 1995, Article 237). The acquisition of land in Buvuma has also been distorted by land dealers and brokers who tend to work for profit (Serunkuma and Batte Lule, 2017). Land injustice remains not only a challenge in Buvuma with the introduction of oil palm but is also a nationwide challenge (Ojok and Ameny, 2017). Land grabbing and injustice usually pits the poor against the rich individuals or companies (Kabura and Tuhaise, 2017).

Land in Uganda belongs to its citizens, thus, any acquisition whether by the government or a private entity must comply with the requirements of Article 26. (1) Every person has a right to own property either individually or in association with others. (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, by (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.

Article 26 of the Constitution is buttressed by Section 42 of the Land Act that states that “Government or local government may acquire land in accordance with article 26 and 237(2) of the Constitution”. But this has been the subject of intense media debate after the introduction of the Constitution (Amendment) Bill, 2017 that proposes

to insert a new clause in Article 26 to allow national or local government to forcefully take possession, via court compensation (Uganda Law Society, 2017). The proposed amendment was criticized as being unconstitutional by constitutional law experts (Oloka-Onyango, 2017), though it remains clear that any land acquisition by government or private entities must meet requirements of Article 26 of the Constitution. But in the case of *Advocates for Natural Resources Governance and Development & Anor v. Attorney General*, the Constitutional Court declared Section 7 of the Land Acquisition Act unconstitutional and inconsistent with Article 26(2) of the Constitution.

In *Sheema Cooperative Ranching Society and 31 Others v. Attorney General*, the High Court held that the government did not follow the (proper) procedure of compulsory acquisition of the suit land laid down in the law and, as such, the acquisition was unlawful. In *Bataringaya v. Attorney General*, the defendant’s compulsory acquisition of the plaintiff’s land was found to be inherently unlawful insofar as it was done without prior adequate compensation as required by Article 26 of the Constitution. And lastly, in *Onegi Obel & Anor vs. Attorney General & Gulu District Land Board*, the High Court emphasised the importance of following due process as given in the Constitution and the Land Act before government can take over land for public works. The courts of law have played a pivotal role in ensuring there is adequate compensation for compulsory acquisition of land in Uganda at least by way of redress (Nakayi and Twesiime-Kiryia, 2017).

The Land Acquisition Act does not provide for prior payment of compensation before government compulsorily acquires or takes possession of any person’s property (Resty, 2015), and must be seen in conjunction with Article 2(2) of the Constitution which states that “If any other law or any custom is inconsistent with any of the provisions of this constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.”

Similarly, in interpreting laws such as the 1965 Land Acquisition Act which pre-date the 1995 Constitution, they must follow Article 2(2) and Article 274, which stated that existing law shall be construed with such modifications, adaptations, qualification and exceptions as necessary to bring it into conformity with the Constitution. Second, ‘existing law’ means that written and unwritten law existed before the Constitution, including enacted Acts, Statutes or statutory instruments made before that date, and all entities in charge of acquiring land for oil palm plantations in Buvuma must heed the above laws. In addition, understanding the effects of oil palm expansion on Bugala for land use planning is very relevant for Buvuma island

where a similar project is soon to be rolled out. Oil palm has replaced tropical forests leading to deforestation and a reduction to biodiversity (Vijay et al., 2016). And in Buvuma where large-scale oil palm development is foreseen, land-use change is one of the greatest threats to biodiversity.

A summary of legal instruments, subsidiary legislation and cases

Legal instruments

- Ankole Landlord and Tenant Law of 1937
- Busuulu and Envujjo Law of 1928
- Constitution of the Republic of Uganda, 1995 (Amended)
- Forests Act, Cap 147
- Land Acquisition Act 1965, Cap 226
- Land Act, Cap 227
- Mining Act, No. 9 of 2003
- National Environment Act, 1995, Cap 153
- National Forestry and Tree Planting Act, No. 8, 2003
- Toro Landlord and Tenant Law of 1937
- Uganda Wildlife Act, 1996 Cap 2000
- Water Act, Cap 152

Subsidiary legislation

- Environmental Impact Assessment Regulations, 1998.
- National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations, 1999.
- National Environment (Waste Management) Regulations, 1999.
- National Environment Regulations Wetlands, Riverbanks and Lakeshores Management, 2000.
- National Forestry and Tree Planting Regulations, 2003.

Cases

- Advocates for Natural Resources Governance and Development and Anor v. Attorney General, Const. Petition No. 40/2013.
- Bataringaya v. Attorney General, High Court Civil Suit No. 250/2011.
- Sheema Cooperative Ranching Society and 31 Others v. Attorney General, High Court Civil Suit No. 103/2010.
- Onegi Obel and Anor v. Attorney General and Gulu District Land Board, High Court Civil Suit No. 0066/2002.

Conclusions

Based on experiences in Kalangala, the introduction and expansion of oil palm growing in Buvuma district is likely to lead to widespread evictions. Furthermore, research findings point to the fact that oil palm expansion on Bugala has already had an effect on Buvuma district where large-scale oil palm development is foreseen but not yet initiated. The question of tenure security on land in Buvuma and Buganda under the mailo tenure system is largely historical and a creation of the colonial era (West, 1964), and there is an urgent need to harmonize Uganda's land laws with investment needs, and the government's own Vision 2020 (Mugambwa, 2002). Uganda's land tenure, laws and regulations regarding land acquisition and management have multiple implications for the sustainable management of forested landscapes amidst expanding commercial agriculture. Uganda has the laws and regulations to address the key issues, but implementation in Bugala appears to have failed thus far, but the lesson learnt should be used to help Buvuma. Land owners and land users in Buvuma must be made aware of the national laws and regulations relating to land use and access in Uganda, and seemingly unconstitutional land laws such as the Land Acquisition Act need to be re-interpreted in line with the Constitution, and ultimately, may require amending.

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