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UGANDA'S LAND TENURE SYSTEMS AND THEIR IMPACT ON DEVELOPMENT

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ABSTRACT

The article explores the historical, legal, institutional and enforcement structure of Uganda's existing land tenure systems, criticizing their relative impact on economic development, and emphasizing the quintessential role of an effective and efficient tenure system. Improvement of the current system is both directly and indirectly proportional to development. Further traversed are critical economic issues such as credibility of land from various frameworks, which develop into a rich blend of perspectives on the overall impact of the system on development in Uganda. As a major factor of production and a carrier of economic activities, the land resource in Uganda is an indispensable factor in economic development, and, being a prerequisite for both human and economic activities, its governance is therefore essential for development and growth.

1.0 INTRODUCTION

According to the Food and Agriculture Organisation, land tenure is the relationship, whether legally or customarily defined, among people as individuals or groups concerning land. Land tenure as an institution refers to rules invented by societies to regulate behaviour which define how property rights to land are to be allocated within societies. They also define how access is granted to rights of use, control, and transfer of land, as well as associated responsibilities and restraints. In simple terms, land tenure systems

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determine who can use what resources, for how long and under what conditions.¹

There was no umbrella land tenure system for Uganda in the pre-colonial era, because of the varying practices of customary tenure that differed from one ethnic group to another.² In Buganda for instance, the rights of clans over land were comprised of ancestral grounds and not alienable to strangers, while the Kabaka held a paramount title to all land in Buganda. Scholarly researchers have however indicated that whatever the differences, none of the communities in Uganda recognized individual ownership of land.³

The individual only had the right to utilize the land as he/she thought best. He could rent it out, pledge crops on the land (but not the land itself), sell land subject to the approval of the family, dispose of the land according to the customary laws of inheritance and dispose of trees growing on the land, among others.

However, when the British came to Uganda, they introduced a new landholding system that altered the way land was held. They introduced three more types of land ownership; mailo, freehold, and leasehold.⁴ Margaret Rugadya has noted that the colonial administration thought customary land holding was not a good system of land rights ownership. When signing the agreement, she thought that they would be able to introduce freehold as a unified system of landholding in Uganda, as it was in Britain at that time.⁵

The 1995 Constitution of Uganda and the Land Act then introduced a land regime, which not only recognized everyone's right to own land, but also provided for tenures as means of land ownership. The Uganda National Land Policy was also adopted, which recognizes the role of land in development and its ability to transform the Ugandan peasant society into a modern,

¹ Lilian Mono W Oryema; Changing Face of Land Tenure in Uganda: Period before 1900 to date. <<https://www.researchgate.net/publication/307631527>> Accessed 4 February 2022

² Margaret Rugadya; Land use and villagisation 1999 land reform: the Ugandan experience

³ *supra note 1*

⁴ *ibid.*

⁵ *supra note 2*

industrialized, and urbanized society through poverty reduction, wealth creation, and socio-economic transformation. This has however been hindered by issues like the existence of multiple interests over the same land, evictions, fraud, and ineffective dispute resolution mechanisms.

Secure property rights are important. They give confidence to individuals and businesses to invest in land, enable borrowing using land as collateral, enable governments to collect taxes, are essential for urban development and are crucial for private sector development.

This article discusses the origins and incidents of the four land tenure systems in Uganda, their continued impediment on development that would otherwise be through investments, agricultural production and productivity, access to credit, empowering women among others. The paper also discusses the current land regime, makes recommendations regarding secure tenure and then the conclusion.

2.0 LAND TENURE SYSTEMS IN UGANDA

The Constitution of Uganda is to the effect 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.⁶ It provides for four land tenure systems, which are customary, freehold, mailo, and leasehold.⁷ The four tenures are reiterated in the Land Act, together with their respective incidents.⁸

The Ministry of Lands, Housing and Urban Development, claims that 68.6 percent of all households are on customary land, 18.6 percent on freehold, 9.2 percent on mailo and 3.6 percent on leasehold.⁹

2.1 Mailo Land Tenure System

This resulted from allotments made out of the 1900 Buganda Agreement. The system entails the holding of registered land in perpetuity and roots in the

⁶ Article 237(1)

⁷ Article 237(3)

⁸ Section 3 of the Land Act Cap 227

⁹ A 2010 statistical abstract from the Ministry basing itself on the 2002 Uganda Population and Housing Census Analytical Report

allotment of land pursuant to the 1900 Uganda Agreement between Buganda and the British.¹⁰ Under the agreement, the total land of Buganda was divided amongst the Kabaka and other notables in the protectorate including the royal family, high-ranking officials, chiefs and other private notables.¹¹

Peasants or cultivators previously settled on the land were however not recognized, at least until they rioted in 1927 and the Busuulu and Envujju Laws were enacted. Its incidents include the holding of registered land in perpetuity and permitting the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant. It also enables the holder, subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title.¹²

2.2 Freehold Tenure System

This tenure grants absolute right of ownership, which is the greatest interest in land for an indefinite period of time.¹³ In Uganda, this was first introduced in the Kingdoms of Toro and Ankole by agreements with the British and tenancy terms between the tenants on this land. In the same spirit, the British also issued adjudicated freeholds to some people and religious institutions under the Crown Ordinance of 1803.¹⁴ The Land Act is to the effect that freehold involves the holding of registered land in perpetuity or for a period less than perpetuity which maybe fixed by a condition, and enables the holder to exercise, subject to the law, full powers of ownership of land.¹⁵

2.3 Leasehold Tenure System

This was born out of the Crown Lands Declaration Ordinance 1922, where all customary land outside Buganda was declared crown land, and, leasehold

¹⁰ *supra note 1*

¹¹ Article 15 of the Agreement

¹² Section 3(4) of the Land Act.

¹³ Section 3(2) of the Land Act.

¹⁴ Section 24(4) of the Ordinance

¹⁵ *supra Note 11*

titles would be granted out of that land.¹⁶ Leasehold has since independence in 1962, been granted from public land vested in the government (the state). It is a tenure system which makes access to land on contract possible.¹⁷ The above individualization of ownership of the land changed the focus of land use in Uganda from communal grazing and farming, into a means of supporting the industrial revolution in Europe and America, and it was the case, at least until the enactment of the Public Land Act 1969.

Justice Mubiru has noted that under section 11 (1) (a) of the 1962 Act, all "Public Land" (land that had not been demised by way of lease under the provisions of The Crown Lands Ordinance, 1903), was vested in the Uganda Land Commission.¹⁸

Then came the 1975 Land Reform Decree which vested all land in Uganda in the state in trust for the people to facilitate its use for economic and social development. It also declared all land in Uganda public land to be administered by the Uganda Land Commission, and abolished freehold interests in the land, except those where this interest was vested in the State through the Commission. In addition, all mailo ownership, which existed immediately before the enactment of the decree, was converted into leasehold for 199 years for public bodies and 99 years for individuals.¹⁹

Leasehold tenure is either created by contract or by operation of law and the terms and conditions may be regulated by law to the exclusion of any contractual agreement reached between the parties. It also includes a landlord or lessor, granting or deemed to have granted another person, a tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement, and usually but not necessarily in return for a rent.²⁰

¹⁶ A Fit-for-Purpose Approach to Register Customary Land Rights in Uganda Hans-Gerd Becker, Uganda

¹⁷ Land Tenure and Economic Activities in Uganda: A Literature Review. DIIS Working Paper 2012:13. Section 3(5) of the Land Act

¹⁸ Atunya v Okeny HCCA No. 51/2017

¹⁹ *supra note 1*. Section 3 of the and Reform Law Decree.

²⁰ Section 3(5) of the Land Act

2.4 Customary Tenure System

This is a system of land ownership based on customary rules formed from norms and cultures of clans, families or communities of which these rules are applicable to. Customary land tenure is wide spread throughout the country and covers more than half of the country (MoLHUD, 2010). Rights to control, use and ownership of customary land are derived from being a member of a clan, family, tribe or a given community.²¹

It is estimated that approximately 70 percent of all available land in Uganda is administered as customary land.²² In the past, the recognition of customary land rights was only marginally important and also undermined by civil conflicts, demographic and socio-cultural changes. The passing of the 1975 Land Reform Decree, for instance, altered the fundamental legal status of tenants by abolishing the Busuulu and Envujju Laws of 1927, the Ankole Landlord and Tenant Law, and the Toro landlord and Tenant law of 1937.

Customary tenants on public land therefore became tenants at sufferance, had no transferable interest on land, and developments on land could only be transferred after giving notice of three months to the controlling Authority.²³ According to Mugambwa, the implementation of the Decree was not possible because there was the difficulty of identifying on a national or even regional level appropriate development conditions to suit all manner of land and circumstances.

For example, it was impossible to specify the percentage of land that had to be cultivated in a particular period or crops to be planted because there were many variables such as the ecology of the land, weather patterns, and value

²¹ Section 3(1) of the Land Act

²² *supra note 15*

²³ John Mugambwa; A Comparative Analysis of Land Tenure law reform in Uganda and Papua New Guinea. *Journal of South Pacific Law* (2007) 11 (1). Also, the term "tenant at sufferance" refers to a person who initially entered in possession with the consent of the landowner, and remains in possession, after the period for which the consent was given expires, without the consent or dissent of the landowner (Butterworths Australian Property Law Dictionary (1997)).

of the land. Moreover, the cost of enforcing the conditions was likely to be disproportionate to the benefit.²⁴

The other main criticism of the Decree was that it rendered the status of customary tenants vulnerable and caused panic throughout the country with landowners fearing losing their land to the rich and well connected people. This made the Decree's implementation partial, because it was politically unpalatable.²⁵

With all free land converted into leaseholds, there was no tenure security, and evictions from land became rampant. Customary occupants could be evicted at any time, despite the condition of payment of compensation prior, as the decree empowered the government to lease any land occupied by customary tenants to any person (including the occupants) without the consent of the occupants. According to Mugambwa, during its existence, government activities were almost at a standstill and it was not until the mid-1980s when relative peace was reinstated and indeed, the government declared land tenure reform one of its major policy initiatives.²⁶

This was the case until 1995 when Uganda created a legal framework for the registration and recognition of the prevailing customary land tenure. Legislation and policies have also since been put in place promoting official land titles and modernizing land law for customary ownership and land governance.²⁷

3.0 CURRENT TENURE REGIME.

The current land regime is majorly governed by the 1995 Constitution and the Land Act Cap 227. The two collectively abolished the alluvial or radical title to land in Uganda that had been introduced by the 1975 Reform Decree.

The present principal constitutional provisions vest land in the citizens of Uganda, recognize and protect private property rights and recognize

²⁴ *ibid*

²⁵ *ibid*

²⁶ *Supra Note 23*

²⁷ *supra Note 14*

customary, mailo, leasehold, and freehold land tenures. Leasehold and customary tenures have to be converted to freehold to guarantee the security of lawful and bona fide occupants. On the latter, the Land Act espouses provisions on the security of tenure of all land users, especially regarding the relationship between registered landowners as well as lawful and bona fide occupants.²⁸

The current land laws' primary objective is to operationalise the land reforms in the 1995 Constitution, the latter having brought about fundamental reforms in ownership, tenure management and control of land in Uganda. At the forefront is Article 237 of the Constitution, which provides that land shall belong to the citizens of Uganda and shall vest in them in accordance with the four tenure systems. This provision is reiterated in section 3 of the Land Act. This position totally reverses the old system where land was vested in the state. The state no longer controls ownership of land in Uganda.²⁹

The current land regime also recognises people's right to hold communal land, form themselves into a communal land association, form a common land management scheme by which the members agree to manage the communal land and to set out their rights and duties. Under the Land Act, 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 in accordance with this Act.³⁰

The regime also provides protection of family land by requiring spousal consent before any transaction on such a land can take place and makes void any customary provisions or practices that may deny women and children their land rights, thereby ensuring that the rights of these vulnerable groups are protected.³¹

At the start of the reform process, it was stated that the most appropriate goals for tenure reform in Uganda were that the land tenure law and practice

²⁸ Sections 29 and 30 of the Land Act

²⁹ *supra note 2*

³⁰ Sections 4,5,6,7 and 8 of the Land Act

³¹ Section 38A and 39 of the Land Act.

contribute to the economic and social development of agriculture. The tenure had to protect the land rights of farmers with no alternative source of income and contribute to the evolution of a uniform, efficient and equitable tenure system for the nation. Whether or not the current reform will achieve these expected results still remains to be seen.³²

4.0 LAND AND DEVELOPMENT.

Here, I interrogate the link between land and development, examining how secure tenure contributes to development. To understand development in this context, reference is made to the Land Policy 2013, whose objective was to transform Uganda's society through the optimal use of land resources into a prosperous and industrialized economy. Its goal was to ensure efficient, equitable and optimal utilization and management of land resources for poverty eradication, wealth creation and socio-economic development.

In agrarian societies, land is not only a means of generating a livelihood, but is also a means of accumulating wealth. In Uganda, it is a basic source of food, employment, a key agricultural input, and a major determinant of access to other production resources. The nature of land tenure therefore has profound implications for the development process of nations.³³

The Land Act, which provides for land reform, therefore has far reaching implications on development, as it aims to do this through functioning land markets, establishing security of tenure, and ensuring sustainable utilization of land to bring about development.³⁴ These aspects will be discussed herein below. Because land is important for both human and economic activities, land governance is essential for development and growth.

Sustainable land governance is strongly and closely linked to economic development. As the carrier of economic activities, the land resource is an indispensable production factor of economic development. It is also the

³² *supra note 2*

³³ John Anthony Okuku; The Land Act (1998) and land tenure reform in Uganda. Africa Development, Vol. XXXI No.1 2006 pp 1-26.

³⁴ *ibid*

ultimate resource, for, without it, life on earth cannot be sustained.³⁵ It is a basic element to every country, since all activities of man take place in it.³⁶

A nation's economic wealth is directly related to the richness of its natural resources.³⁷ This is so because land determines agricultural production, the industrial progress and prosperity of a country, its total production, influences its economic growth, maintains ecological balance, directly or indirectly fulfills the basic needs of the people, and influences trade, among others.³⁸ All primary occupations like agriculture, animal husbandry, poultry farming, fisheries, dairying, and forestry among others are land-oriented.³⁹

Land tenure, meanwhile, determines who can use land, for what and how long, and under what conditions. Tenure arrangements may be based both official laws and policies and on informal customs. If those arrangements are secure, users of land have an incentive to not just implement best practices for their use of it, but also, to invest more.⁴⁰

Secure property rights and efficient land registration institutions are therefore a cornerstone of any modern economy.⁴¹ They give confidence to individuals and businesses to invest in land, allow private companies to borrow using land as collateral and expand job opportunities. They enable governments to collect property taxes necessary to finance the provision of infrastructure and services to citizens.⁴²

With land at the heart of development therefore, secure land tenure is vital to building inclusive, resilient, and sustainable communities that will propel economic and social progress well into the future. The National Land Policy 2013 recognizes the role of land in development and its ability to transform

³⁵ The United Nations Economic Commission for Europe, 1996

³⁶ *supra note 1*

³⁷ Land in Economics: Notes, Characteristics, Functions, Importance and Productivity. at <<https://www.economicdiscussion.net>> Accessed 13 December 2021

³⁸ *ibid*

³⁹ *supra note 34*

³⁹ *ibid*

⁴⁰ *supra note 14*

⁴¹ <<https://blogs.worldbank.org/voices/7->> Accessed 5 December 2021

⁴² *supra note 14*

the Ugandan peasant society into a modern, industrialized, and urbanized society.

The policy is to the effect that this can be done through poverty reduction, wealth creation, and socio-economic transformation. This has however been hindered by the existence of multiple interests over the same land, tribal land disputes, evictions, land grabbing, fraud, undue utilization, land fragmentation, environmental degradation, and ineffective dispute resolution mechanisms among others.⁴³

Note that commercial dealings and population growth has intensified demand for formal recognition of land claims especially those transacted through market mechanisms, for example, tenancies purchased in urban areas or for land purchased in rural areas.⁴⁴ There is also evidence that tenure insecurity does have an impact on land use. For instance, compared with weak or insufficient property rights, tenure security increases credit use through greater incentives for investment, improved creditworthiness of projects, and enhanced collateral value of land.

It increases land transactions, facilitating land transfers from less efficient to more efficient users by increasing the certainty of contracts and lowering enforcement costs, reduces the incidence of land disputes through clearer definition and protection of rights, and raises productivity through increased agricultural investment.⁴⁵ It is therefore apparent that land tenure impacts investment, credit availability, poverty rates, land values, and agricultural productivity, which are all linked to economic performance.

When land tenure and property rights are secure, individuals can make investments, secure credit, sell land, and make longer-term decisions about agricultural practices. On the other hand, in developing countries (like

⁴³ Land reform: A source unending conflict in Uganda. Uganda sustainability Bulletin, A Publication of Uganda Coalition for Sustainable Development

⁴⁴ Leatherdale and Palmer, 1999

⁴⁵ Michael Roth and Dwight Haase; Land Tenure Security and Agricultural Performance in Southern Africa. June 1998

Uganda) where land tenure is insecure, people lack opportunities to invest in or profit from the land, and their transactions are not protected by the State.⁴⁶ Below, the author discusses how secure tenure encourages or can encourage development by improving agricultural productivity, encouraging investments among others.

4.1 Economic Growth.

There is an argument underpinning the theory on the formalization of land rights is that land can contribute to investment and increased productivity through several interrelated mechanisms. That security of tenure conferred by formal rights can make people more willing to invest in their land enabling them to access credit and also facilitate and even encourage transfers of land through land markets. Land can therefore have an impact on economic growth through agricultural productivity, and through its use as collateral for credit, through investments in land and non-land enterprises and through land markets.⁴⁷

In rural areas, secure land tenure could lead to economic growth by allowing farmers to invest in better seeds or tools, see returns on those investments, making it easier to gain credit to finance investments in agriculture or other entrepreneurial activity. It may also free farmers to choose whether they want to use their land for agriculture, or lease it to someone else and pursue an alternate livelihood. This attracts the external investment necessary for broad-based economic growth.

In addition to the above, when governments seek to stimulate economic growth through foreign investment in large land areas, the lack of secure tenure presents a problem for the existing individuals or community holders who occupy that land but are unrecognized as rightful holders of property. These people are at risk of displacement and being denied fair, prompt, and adequate compensation for resources and livelihoods lost, which affects their investment in the land, agricultural productivity, and the land market.

⁴⁶ Economic Growth Depends on Secure Land Tenure. at <<https://www.land-links.org>> Accessed 14 December 2021

⁴⁷ Platteau, J.-P. 2000.

In recognition of this, the United States Agency for International Development supports the United Nations-negotiated Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security and forthcoming Principles for Responsible Agricultural Investment. This is aimed at improving the security of property rights for all, facilitating the development of more economic opportunities for small, medium and large-scale producers, and contributing to food security and economic growth.

From the foregoing, it is clear secure tenure will stimulate economic growth and development through increased agricultural productivity, investments and a more competitive and rewarding land market.

4.2 Access to Credit

Finance/credit has been recognised as an important driver of economic growth (Claessens 2006). Access to financial services can be defined as broad financial inclusion or broad access to financial services in a specified location.⁴⁸ Several theoretical arguments are commonly advanced concerning the links between land ownership, land markets, security, and production incentives.⁴⁹

It is argued that the presence of an efficient land market results in a more efficient allocation of land between producers which stimulates production. Secure land rights stimulate the credit market through the use of land as collateral, and, security of land rights is linked to increased incentives to invest in land and land-based production.⁵⁰

Availability of credit in Uganda has tended to be relatively narrow, and uptake among rural households is not high. The formal credit system operates based on land as collateral, with a preference for urban and titled land that is more easily disposed of in cases of default. While financial services in Uganda have developed, the majority of smallholders “do not or cannot access the services

⁴⁸ *ibid*

⁴⁹ *Ibid*

⁵⁰ Institutions, Social Norms and Economic Development, Jean Philippe Platteau, 2000.

they need to compete in the market and to improve their livelihoods.”⁵¹ Therefore, with majority of the land in the country untitled, coupled with insecure tenure, access to credit is limited, as the land cannot then act as security, thwarting attempts to invest in the land that would otherwise, lead to development.⁵²

4.3 Agriculture

Secure land rights are an important pillar in agriculture.⁵³ Agriculture is the backbone of Uganda's economy and the most important source of income and livelihood for the predominantly rural Ugandan population. In just 2020, agriculture contributed around 23.93 percent to Uganda's Gross Domestic Product,⁵⁴ while according to the International Trade Administration, in the fiscal year 2020/2021, agriculture accounted for 31 percent of Uganda's total export earnings.

According to the International Labor Organization, employment in agriculture in Uganda was reported at 72.44 percent in 2020,⁵⁵ though the Uganda Bureau of Statistics puts the figure at 70 percent of Uganda's total working population.⁵⁶

However, the International Trade Administration reports that Uganda's Agriculture sector growth is impaired by among others; a shortage of agricultural credit, the lack of all-weather feeder roads in rural areas, a complicated and inefficient land tenure system. Moreover, because of the significance of agriculture to rural livelihoods, the land is the most important asset for many Ugandan households,⁵⁷ with the average land holdings estimated at 2.2 hectares per household. Still there are inter and intra-

51 MAAIF 2010: 39

52 *supra note 15.*

53 <<https://twitter.com/intent/tweet?text>> Accessed 13 December 2021.

54 <<https://www.statista.com>> Accessed 13 December 2021.

55 <<https://tradingeconomics.com>.> Accessed 11th December 2021

56 <<https://www.trade.gov/country-commercial-guides/uganda-agricultural-sector>.> Accessed 16 December 2021.

57 Agriculture: A Driver of growth and poverty reduction. The World Bank. Accessed at <<https://www.worldbank.org>> Accessed 26 April 2022.

regional inequalities in this distribution, though, evidence suggests much of this land is not cultivated.⁵⁸

Additionally, there is evidence that agriculture can contribute to poverty reduction beyond a direct effect on farmers' incomes.⁵⁹ Agricultural development can stimulate economic development outside of the agricultural sector, and lead to higher job and growth creation. Increased productivity of agriculture meanwhile raises farm incomes and food supply, reduces food prices, and provides greater employment opportunities in both rural and urban areas⁶⁰. Higher incomes can also increase the consumer demand for goods and services produced by sectors other than agriculture.

Such linkages between growth in the agricultural sector and the wider economy can then enable developing countries to diversify to other sectors where growth is higher and wages are better. In Uganda's first Poverty Eradication Action Plan (PEAP) in 1996 – 1997, access to land and sustainable use of land was recognized as critical issues for enabling the poor to increase their incomes. The strategies included in the plan recognized tenure security particularly that of smallholders, women, and tenant farmers, as a key objective of government policy towards land.

The plan based its strategy on the argument that tenure insecurity was a barrier to increased production by smallholders. In addition, the lack of acceptability of rural land as collateral by the banking system was believed to be a problem. Second, there is proof that as agricultural productivity increases, other sectors also develop and countries are less dependent on agriculture for their economy.

Agricultural growth, therefore, contributes to wider growth and poverty reduction. It is no secret that with secure land rights, farmers and others are more likely to develop their property, plant crops with longer time horizons, or use the land as collateral for bank loans to improve their standard of

⁵⁸ McKinnon and Reinikka, 2000.

⁵⁹ <<https://www.soas.ac.uk/cedep-demos/>> Accessed 15 December 2021.

⁶⁰ The Current Aid Framework: Agriculture & Rural Development Investments; Agriculture and its contribution to poverty reduction. Accessed at <<https://www.soas.ac.uk>> Accessed 27 April 2022.

living.⁶¹ It is estimated that roughly 2.5 billion people around the globe survive on less than 2 dollars a day, and about three-quarters of them live in rural areas and are dependent on the land they cultivate to survive. Yet, around 1 billion of them do not have secure rights to the land they till.⁶²

Land reform has been established as having potential impacts on all the four PEAP goals of creating an enabling environment for rapid and sustainable economic growth, good governance, direct income-enhancing actions, and direct enhancement of the quality of life of the poor. This, and more, justify why, the World Bank, with current commitments of approximately 1.5 billion dollars, has supported more than 50 countries over the last 25 years to improve land tenure security. This has been through policy and legal support, institutional and capacity development, and financing efforts for land titling and digitalizing land registration systems, in addition to analytical products and technical assistance to many countries.⁶³

Agricultural productivity can therefore be seen as a first step or engine of growth leading to greater income for a country.⁶⁴ It is interesting to note that historically, no poor countries have reduced poverty solely through agriculture, but almost none have achieved it without increasing agricultural productivity in the first instance. Agricultural growth is an essential complement to growth in other sectors.⁶⁵

From the above, it is clear that most of Uganda's households depend directly or indirectly on agriculture creating a link between land and economic activity and justifying land tenure effects on agricultural productivity and investment and the need for secure tenures.

⁶¹ Why #landmatters for economic development; Deborah Horan. <<https://www.devex.com/news/>> Accessed 13 December 2021

⁶² *ibid*

⁶³ <<https://blogs.worldbank.org/>> Accessed 20th December 2021

⁶⁴ Seven reasons for land and property rights to be at the top of the global agenda <<https://landportal.org/node/81137>> Accessed 7 January 2022

⁶⁵ Department for International Development 2005

4.4 Private Sector Development.

Secure property rights and access to land are crucial for private sector development and job creation. The private sector needs land to build factories, commercial buildings, and residential properties, which of course fuel development.⁶⁶ According to a World Bank report that assessed private sector performance in the Middle East and North Africa, the top constraints to the region's private sector include the lack of access to land as well as issues related to land titling and registration.⁶⁷

Additionally, companies often use land or property titles as collateral to finance operational costs and to expand existing businesses or open new ones, thus creating more jobs, a further testament to the relevance and importance of secure tenure.⁶⁸

4.5 Empowering Women.

Secure property rights are important in empowering women. The World Bank Group's gender strategy highlights access to assets as one of the three main pillars for women's empowerment.⁶⁹ Unfortunately, a host of women around the world are still denied their land rights by inefficient legal frameworks that do not fully support women's equal access to property ownership or use of land titles as collateral without a male guardian,⁷⁰ and men not registering their properties as joint property, resulting in women often losing their home or land in the case of a divorce or the death of the husband.

In some cultures, women do not inherit land or properties, despite having legal rights to do so – they are often forced by male relatives to waive their rights.⁷¹ Women in Uganda provide 80 percent of farm labor, yet own a paltry 7 percent of the land.⁷² Therefore, the stake of Uganda's female farmers in

⁶⁶ J. Bosworth: Integrating land issues into the broader development agenda: Uganda. <<https://www.fao.org/3/y5026e/y5026e0f.htm>> Accessed 26 April 2022

⁶⁷ Laura Tuck and Wael Zakout: 7 Reasons for land property rights to be at the top of the world agenda. <<https://blogs.worldbank.org>> Accessed 5 December 2021

⁶⁸ *supra note 63*

⁶⁹ <<https://documents.worldbank.org>> Accessed 19 December 2021

⁷⁰ *supra note 64*

⁷¹ <<https://blogs.worldbank.org/>> Accessed 19 December 2021

⁷² The Current Aid Framework: Agriculture & Rural Development Investments; Agriculture and its contribution to poverty reduction. <<https://www.soas.ac.uk>> Accessed 27 April 2022.

this critical productive asset is severely limited and the manner of accessing land for women perpetuates social and economic inequality.⁷³

Besides the difficulties of divorced and widowed women in retaining access to marital land, a growing body of evidence points to the fact that married women are denied the opportunity to plant perennial cash crops or tree crops, and withdraw their labor from cash-crop production on fields they do not control.⁷⁴

There are direct links between women's land tenure insecurity and household food insecurity. At the household level for example, there are growing indications that gender divisions of labor and control of income tend to undermine food security where the expansion of cash crops is at the expense of food crop cultivation.⁷⁵ The gender distribution of land rights has been linked to this phenomenon, specifically because where women own land or have a stronger stake in decision-making on the family farm, they also have a higher degree of control over production and income from cash crops.⁷⁶

This therefore means low incentives to produce, exacerbates poverty and food insecurity as women who provide 80 percent of farm labor in the country own and control a paltry 7 percent of the land. With that, there is no way we can transform the poor society into an industrialized and modernized economy, create wealth and achieve socio-economic development.

5.0 CURRENT LAND SYSTEM SHORTCOMINGS

Globally, a measly 30 percent of the global population has legally registered rights to their land and homes.⁷⁷ Without land tenure systems that work, economies risk missing the foundation for sustainable growth, threatening the livelihoods of the poor and vulnerable the most.⁷⁸ According to the World

⁷³ *ibid*

⁷⁴ *ibid*

⁷⁵ Ovonji-Odida *et al.*, 2000

⁷⁶ *ibid*

⁷⁷ <<https://twitter.com/intent/tweet?text=>> Accessed 2 February 2022

⁷⁸ Why #landmatters for economic development; Deborah Horan. <<https://www.devex.com>> Accessed 13 December 2021

Bank, it is simply not possible to end poverty and boost shared prosperity without making serious progress on land and property rights.⁷⁹

In Uganda, around 5 - 10 percent of households access land predominantly through borrowing or renting.⁸⁰ According to Bosworth,⁸¹ such households are often among the poorest and supplement their incomes by casual labor, and, for those renting land, rental rates frequently represent a substantial proportion of the value of crop produced and this may contribute to poverty.⁸² Nevertheless, in areas where land is in short supply, the availability of rental land provides an opportunity for some households to access land, and can be an important part of the strategy for increasing income, acquiring assets and eradicating poverty.⁸³

Land tenure insecurity therefore represents one of the major challenges that people in developing countries like Uganda face. The majority, who are small-scale farmers, especially women, work on land that they do not own, exacerbating their poverty, lack of political power, and equal recognition of basic rights.⁸⁴ Insecure land tenure rights in Uganda, for instance, make farmers shun long-term investments on land which could otherwise help them manage resources sustainably.

In this section, discussed is how Uganda's land tenure systems have affected land rights, investment, productivity, and development.

5.1 Customary Land Rights

Article 237 (4) (a) of the Constitution and Section 3 of the Land Act recognize customary tenure as one of the forms of holding land in Uganda. The majority of Ugandans hold land under customary tenure and, this provision, therefore, guarantees the security of land ownership. Further, they can even acquire a certificate of customary ownership of the land they occupy, which they can

⁷⁹ <supra note 38>

⁸⁰ <<https://www.fao.org>> Accessed 19 December 2021

⁸¹ supra note 69

⁸² Ibid

⁸³ Ibid

⁸⁴ World farmers' organisation land tenure challenges & practices <<https://www.wfo-oma.org>> Accessed 9 December 2021

convert into a freehold title. This certificate has also been accorded value under the Land Act enabling it to be transferred, mortgaged, or pledged, enabling holders to have access to credit.

Around 75 percent of Uganda's population is believed to occupy land under customary tenure, either on an individual or a communal basis.⁸⁵ In as much as the Constitution recognizes customary land tenure as one of the modes of land ownership in Uganda, the subsequent enabling legal regime, in particular the Land Act did not capture the aspirations of the Constitution.⁸⁶

According to the land policy 2013, customary tenure continues to be regarded and treated as inferior in practice to other forms of registered property rights, thereby denying it an opportunity for greater and deeper transformation.⁸⁷ It is assessed as lesser regarding dispute resolution and mediation compared to the statutory system and weighed as less to other tenures that have titles for proof of ownership in courts of law in the administration of justice.

It must be converted to freehold before it attains the totality of the bundle of rights inherent in all other registered tenures that are held in perpetuity, and is disparaged and sabotaged in preference of other forms of registered tenures, denying it the opportunity to progressively evolve.⁸⁸ According to Action 4 Justice, because under customary land tenure land is not registered, there are a number of problems that arise with it.

These include land grabbing, because the customary land owner cannot easily prove their ownership, difficulty in establishing interest over the land, difficulty in establishing which of the multiple interests take precedence over the other, high chances of encroachment among others.⁸⁹ Customary tenure limits development because the land is not documented and hence not

⁸⁵ Oates and Ecaat, 1999. Supra Note 21

⁸⁶ Piloting the protection of rights to customary land ownership in Acholi land. Existing Tenure Options for Protection of Customary Land Owners. A legal opinion submitted to Trócaire and joint Acholi sub-region leaders' forum (JASLF)

⁸⁷ Steven Lawry; Customary Land Tenure. <https://dai-global-developments.com/articles/customary-land-tenure> Accessed 27 December 2021

⁸⁸ The Uganda National land Policy, February 2013, page 17

⁸⁹ Land Rights in Uganda; Land Disputes- Problems with ownership and Rights. Accessed at <https://uganda.action4justice.org/> Accessed 12 March 2022

available for planning. More so, some customs such as those prohibiting sale of land outside the clan do not promote the maximum utility of land inhibiting development.⁹⁰ Customary tenure does not encourage record keeping, which makes the resolution of disputes and the approval of any development plans difficult or impossible.

So, despite the constitutional and legislative guarantee, customary land tenure and customary land owners still suffer from inadequate legal protection, a situation that is analogous to that in the colonial and the immediate post-independence era and inhibits development.

5.2 Tenants on Registered Land

Previously, being engaged in a semi-feudal customary relationship with the chiefs, were tenants vulnerable to expulsion by the landowner without any legal protection. It is estimated that currently, this applies to around 19 percent of the population, occupying around 14 percent of the land area.⁹¹ The 1995 Constitution and the Land Act however currently guarantees security of tenure to tenants on registered land, commonly referred to as lawful or bona fide occupants.

The tenants can acquire certificates of occupancy on the land they occupy, and if they so wish, can negotiate with the registered owner to be able to acquire a freehold title.⁹² They are to pay the registered owner of the land a ground rent, and failure to do this for two consecutive years may lead the tenant to lose their security if they do not have sufficient reasons for defaulting.

The registered owner cannot ask the tenants for anything except the amount provided for the certificate of occupancy, and the certificate can also be mortgaged, pledged, or transferred. The tenant also has a right to pass on their tenancy in a will.⁹³ The Land Act of 1998 made clear the tension between

⁹⁰ Brian Makabayi and Moses Musinguzi; To What Extent Have the Existing Land Tenure Systems Affected Urban Land Development?

⁹¹ *supra note 63*

⁹² Section 29 of the Land Act

⁹³ Sections 34 and 35 of the Land Act

the landlord (who is the ultimate owner of the land) and the tenant (who is the current user of the land).

These conflicting rights make it hard for landlords to develop their land even when they are financially able, which weakens the powers of the landlords over their land, and of course, hard for tenants because they are not ultimate owners of the land.⁹⁴

The issue of willing buyer-willing seller coined in the Act further complicates the transfer of land from one person to another. Where the landlord might wish to buy the tenant off the land, the tenant must be willing to sell their rights to use the land and vice-versa. Moreover, tenants have failed to develop land, out of fear that the landlords will one day evict them; likewise, landlords cannot develop the land because they cannot evict the tenants.

This standoff has inhibited land markets in urban areas where purchasers have trouble purchasing secure property holdings. This land use deadlock has also inhibited land development, investment and productivity, delaying the country's transformation into a modernised economy.

5.3 Squatters.

Lawful and bona fide occupants or tenants enjoy security of occupancy and in return, pay annual ground rent to the Landowner. They may acquire a Certificate of Occupancy by applying for it through the Landlord, and with the permission of the landlord, may sublet or subdivide the land they occupy.⁹⁵ On the other hand, squatters are illegal occupants and are not protected by any law.

In urban areas, particularly Kampala, informal trading and inheritance of land has created a complex web under which "squatters" claim rights to land. Similar situations exist in leasehold properties, with sublease rights being traded for substantial fees. Whereas the law does not recognize squatters, they have oftentimes received backing from the President in the face of evictions, and more often than not, stood in the way of any possible

⁹⁴ Sections 35, 36, and 37 of the Land Act

⁹⁵ Sections 31, 33, 34, 35 and 36

developments on the land. An example is in Masindi where a land conflict involving squatters affected the completion of many government projects including roads.⁹⁶

5.4 Legislation

Uganda's legislation relating to registration, surveying, and land acquisition is outdated and not suited to the current needs of landowners and users. The requirements for obtaining certificates of title, for instance, have made the process of acquiring registered title, registering subsequent transactions and transfers difficult and costly, with the addition of bureaucratic inefficiency.

The 1993 Constitutional Commission reported that many people had given up trying to obtain titles to their land because of corruption in the land office. Underfunding and underinvestment, together with lack of qualified personnel in some areas also hamper efficiency further, particularly due to the poor condition of records and maps and lack of equipment.

From the foregoing, it is clear this may undermine the whole notion of development through privately owned land.

5.5 Dispute Resolution.

The inefficiencies and inequities of the judicial system regarding land are of greater importance as the numbers of disputes multiply every other day in response to the increasing commercialization of land in some areas and the problems in the land registry. The majority of land disputes take forever to be resolved due to inaccessible judicial mechanisms brought about by few judicial officers, the high cost of litigation, the complexity of the process, and physical barriers like distance that keep away litigants.

The situation is worsened by the ever-growing case backlog resulting from countless adjournments which ties pieces of land in courts barring any possible developmental activities.

⁹⁶ Land wrangles threaten food security, government projects in Bunyoro <<https://reliefweb.int/report>> Accessed 23 May 2022

6.0 RECOMMENDATIONS.

The link between secure land rights and economic development became more and more recognized in the international development community, so much so that there is the inclusion of land rights as a goal in the post-2015 development agenda.⁹⁷ In the premises, these recommendations are made:

6.1 Opportunities for the Resource-Poor

There is a need for land reform, which will provide opportunities for the resource-poor to access land via redistribution, resettlement, or rental and lease markets; and, increase and sustain productivity. The country's national development arguments for the land-reform process are still couched in terms of increasing the ability of the poor to raise their incomes.

Of importance are policy and legal framework, sustainability of land use, land tenure and protection of land rights, land administration and land information, decentralization, and sector efficiency and self-sufficiency.⁹⁸ There is therefore need to reform land tenure, including legal and regulatory reforms that might need consolidation, and/or harmonizing the existing laws, and institutional capacity building to reduce on the bureaucracy associated with land transactions.

6.2 The need to Recognize "Secondary Rights" to Land Tenure

Here, recognition does not merely mean that everyone holds a legal title to his or her land or home. The United States Agency for International Development endorses the principle of "secure enough" tenure, in which there is a continuum of rights that can be strengthened through a variety of affordable and sustainable approaches.

These approaches may include the respect of customary or indigenous rights to an area in addition to legal recognition, certificates that secure the rights to use or manage resources, a community-managed titling process, or more formal strategies such as land titling or creating public land registries.

Tiernan Mennen: Know your SDGs: Land matters for sustainable Development. Accessed at <<https://chemonics.com/blog>>

⁹⁸ <<https://www.fao.org/>> Accessed 26th December 2021

6.3 Publicity and Sensitization

Sometimes, locals are unaware of new laws or regulations that strengthen their claims to the land. State and non-state actors can therefore work to ensure that people know their rights. When Kenya passed land reforms, for instance, Landesa informed not only villagers in rural areas, but also government officials and judges. In Burkina Faso, Madagascar, Mozambique, and elsewhere, MCC helped the government reform land tenure laws and inform the public of changes to their land rights.

Sensitizing citizens makes them aware of their rights, aware of the laws and policies that relate to land, creating responsive and accountable institutions. That is what ends up driving economic growth in the end.

6.4 Supporting Projects that Encourage Long-Term Investment

There is evidence to show that when land owners feel secure in their land rights, they might grow crops that require a longer time to bear fruit. This often leads to greater crop diversification and other measures that improve agricultural output over time and lead to greater long-term economic development. In Ethiopia, for instance, donor projects to plant trees following droughts in the 1980s largely failed, because the ownership of the trees was not well defined, so farmers were not interested in maintaining them.

By contrast, for farmers in the Sahel, where farmers have secure access to communal lands, had successfully maintained an estimated 200 million new trees in the last 20 years, leading to richer soil and less wind erosion. In Niger and Burkina Faso, farmers dug in hardened soil to plant manure that would soften the ground, eventually restoring some 500,000 hectares of barren and degraded land.

If they didn't have secure rights, they wouldn't have been motivated to invest all their labor and energy in it. Land tenure is a very complex and political issue but very vital for the future.

7.0 CONCLUSION.

Today, land transfers are one of the most contested issues in Uganda. In the wake of development strategies in the country, the power to control and to use land in Uganda is seen as an impetus to investors for both agricultural and industrial development. A good land tenure system, at least for Uganda, ought to support agricultural development through the function of the land market, which permits those who have rights in land to voluntarily sell their land, and for progressive framers to gain access to land. A good land tenure system ought to protect people's rights in the land and especially those who have no other way to earn a reasonable living or to survive.

Both the 1995 Constitution and the Land Act have gone a long way in providing security of tenure to all land users including customary, bonafide and lawful tenants, resolving the impasse between registered land owners and tenants by occupancy and recognising customary tenure as legal tenure equal to other tenures. They have provided an institutional framework for the control and management of land under a decentralised system.

However, there are still informal developments or lack thereof in Uganda. This is attributed to inefficient land access processes caused by poorly administered land rights, a handful of land use planning and development regulations ill-suited to the local tenure situation, and institutional incapacity. It can also be accredited to ignorance of the law, political interference, institutional and administrative weaknesses among others.

Hence, there is the need for a suitable land tenure, preferably uniform, coupled with a good judicial system, affordable and accessible legal services, and a trustworthy land administration system for effective land tenure, to drive Uganda to development.

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