The legal and Policy framework and emerging trends of large scale land acquisition in Uganda: Implications for women's land rights

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Rose Nakayi

CBR Working Paper No.109/2015

COVER PAGE PHOTO

A woman in Mubende approaches abarrier of the coffee plantation where her community was evicted

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LIST OF ABBREVIATIONS

ACHPRs	African Charter on Human and People's Rights
CBR	Center For Basic Research
CCO	Certificate of Customary Ownership
CEDAW	Convention of Elimination of All Forms of Discrimination Against Women
DLBs	District Land Boards
ETOs	Extra-Territorial Obligations
FAO	Food Agricultural Organization
GDP	Gross Domestic Product
HCCS	High Court Civil Suit
IDRC	International Development Research Centre
ICESCR	International Covenant on Economic Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IFC	International Finance Corporation
LSLA	Large Scale Land Acquisition
LRD	Land Reform Decree
LCs	Local Councils
LGAF	Land Governance Assessment Framework
NKG	Neumann Kaffee Gruppe
RDC	Resident District Commissioner
UDHR	Universal Declaration of Human Rights
UPDF	Uganda Peoples' Defence Forces

INTRODUCTION

Uganda has not been spared by the current land rush characterized by large-scale land acquisitions (LSLAs). LSLAs involve acquisition of huge chunks of land that are larger than 200 hectares and may amount to land grabs if: (i) they involve human rights violations, (ii) discriminate against women, (iii) do not offer information, and (iv) do not offer an opportunity for informed consent, that is, they are not effected through transparent processes, etc. Ensuring global food security has been fronted as among the key justifications for LSLAs in Africa for purposes of Agricultural investment. It is reported that about 56 million hectares were sought by foreign investors in 2009, and about 70% of the deals signed were in Africa. An understanding that three-quarters of the world's cultivatable land (about 600 million hectares) are in Africa but lay uncultivated/unutilized brought about the focus on

Africa. African nations with vast lands taken over for agricultural investment are victims of LSLAs, since, more often than not, the food production is not necessarily meant for their benefit but western nations.

LSLAs also arise in a context of increased demand for land for development projects such as construction of roads, plantations, dams, etc, leading to evictions. LSLAs may also arise in cases of issuance of mining leases and licenses, grants of public land to investors, etc. LSLAs as conceptualized in the literature may not yet, necessarily, be one of the biggest land problems of Uganda, and neither have they intensively been studied in the Ugandan context.

Uganda's problematic land issues arise from a fabric to multiple tenure systems, interlocking rights on mailo land, weak land governance, and these form fertile ground for evictions from land. The rampant and isolated cases of eviction from land in a sporadic and incremental fashion across the country could have a sum total and consequences akin to those typical to LSLAs; yet they may not technically qualify to be LSLAs. These (relatively small but multiple) land acquisitions, and more than LSLAs understood as a term of art, are Uganda's biggest problem; and they greatly affect a number of women.

The trends cited above need not be ignored for they could be heralding bigger LSLAs for Uganda, especially now that there is a rush for development investment coming with the discovery of oil.

Within the above context, it should be noted that Uganda is agro-based, with 41% of GDP and 85% exports derived from agriculture, while it also employs 80% the workforce. The majority of the workforce in agriculture is composed of women. It is also stated that 42% of the agricultural GDP goes to domestic consumption; indicating the great role that women engaged in this sector play in feeding the nation. Since agriculture definitely takes place on land, LSLAs that do not adhere to set international and national standards of respect for tenure land rights adversely affect everyone, and more so women. What makes the Ugandan case complicated is that LSLAs take place within a complex and incomplete land governance system that is still under construction. The primary land law of Uganda -- the Land Act of 1998 -- has since 1998 undergone

[1]See, Mercedes Stickler, Governance of Large Scale Land Acquisition in Uganda: The Role of the Uganda Investment Authority, September 2012, at 2.

[2]Oxfam Briefing Paper, Our Land Our Lives: Time out on the global land Rush, October 2012, p. 5, Available at http://www.oxfam.org/sites/www.oxfam.org/files/bn-land-lives-freeze-041012-en_1.pdf, (accessed November 18, 2014).

[3]See, Food and Agriculture Organization of the United Nations (FAO) 2009. How to Feed the World in 2050.http://www.fao.org/fileadmin/templates/wsfs/docs/expert_paper/How_to_Feed_the_World_in_2050.pdfFAO. (Accessed November 18, 2014).

[4]Enrico Partiti, Large Scale Land Acquisition in Africa: A contractual Approach, in Land Grabs in a Green African Economy:Implicatios for Trade and Investment Policies, (Eds.) Godwell Nhamo and Caiphas Chekwoti, Institute of South Africa (2014) 78-102 at 79.

[5]Id.

[6]FAO, 2009, Id., at 13.

[7]Tom Balemesa, Law of the Land: Land Grabs Threaten Local Livelihoods in Uganda, Think Africa blog http://thinkafricapress.com/uganda/more-land-stake-land-grabs.

[8]Oxfam Briefing Paper, Supra note 2.

[9]See, the World Bank, Searching for the "Grail": Can Uganda's Land Support its Prosperity Drive? Uganda Economic Update, Sixth Edition, September 2015.

three amendments: in 2004, 2007 and 2010. The robust institutional framework for land management and administration stipulated in the law is not yet fully up and running across the country. Yet, there is also need to align some provisions of the law with the recently launched Land Policy to eliminate contradiction in some areas; this may call for law reform or further amendments to the Land Act.

That notwithstanding, one cannot say with certainty that law and policy are always guiding tools in decision-making around land. This is more so where protection of individual rights as provided for in the law does not augur well with what is considered "public interest" of, say, promotion of national growth through investment or mining. In other instances, political expedience or efforts at assertion of dominant positions of power lead to routes that by-pass what is legally sanctioned. Studies on the legal and policy frameworks are important, but also invaluable is the interrogation of the questions: why the state may not abide by them; and, what initiatives can be made to promote adherence to the law.

The above-described skewed legal and practical terrain within which land rights are determined in Uganda, coupled with a patriarchal society that limits spaces within which women can assert rights to access and ownership of land, leave the women on the fringes. They are the most vulnerable in situations of LSLAs.

LSLAs in Uganda are not something of contemporary times, but have been experienced for as long as Uganda has existed both as a colony under British rule, and as an independent state from 1962. Among the key trends is that they have been perpetrated by either the state for self -- in favour of its policies; state in favour of investors; investors themselves with the help of the state, and, in some other instances, elites. There are also trends of using legal and policy frameworks to perpetuate dispossession, common in the precolonial days. In modern times, the trends extend to use of dominant positions of power for, say, those in the military or government, to dispossess the ordinary person, whose recourse to remedy could be constrained by factors such as poverty. Many of these have taken place within the context of weak governance in general and, in particular, poor land governance. The existence of weak laws and policies that are not yet fully implemented, coupled with intersecting and conflicting rights to land, are other factors that have shaped the environment within which LSLAs have taken place in Uganda.

Coupled with the high demand, land becomes an item rife with contestation and worth haggling over, leading to dispossession of some people by others. Other factors that explain increased evictions in Uganda include: "capitalist transformations at the international level", playing out in Uganda in such a way that they lead to dispossession of the poor to create room for large scale farming for international market. These are the categories where we, at times see the hand of the state. A number of cases of this kind have been reported and they include: the Kiryandongo hydropower project in Kiryandongo District which affected over 400 families; the eviction of masses of people from their land in Mubende District in 2001 in order to give the land to a German coffee company (Neumann Kaffee Gruppe (NKG), under its local subsidiary, to establish the first large-scale coffee plantation in Uganda. From the preceding, it is clear that beyond interrogating the law and policy, one needs to understand the role of the state. In some of the above cases, the state acts outside the law and policy. This raises another pertinent concern as to whether the problem is in the law and policy or elsewhere. If the law and policy are not the problem, how prepared is the state to abide by them, especially in situations where the perceived benefits from promoting some LSLA outweighs the need to abide by law and policy. This paper mainly analyses the national and international legal and policy framework on LSLAs, and highlights some trends in Uganda. It further delves into the extent to which the legal and policy framework empowers women to effectively participate in the process through which LSLAs take place. The participation is premised on the assumption that it is a valuable prerequisite in processes leading up to

[10]International Chamber of Commerce, The world Business Organization, An Investment Guide to Uganda: Opportunities and Conditions, March 2004, at 31, available at http://unctad.org/en/docs/iteiia20043_en.pdf accessed November 17, 2014 (accessed November 20, 2014).
[11] Id.
[12] See, The Sofa Report 2011, Women in Agriculture: Closing the Gender Gap for Development, available at http://wikigender.org/index.php/The_SOFA_Report_2011:_%E2%80%9CWomen_in_agriculture:_Closing_the_gender_gap_for_development%E2%80%9D.
[13]Land Act, Cap 227 Laws of Uganda: Section 64-68 (Committees and the Recorder).
[14]For example, The Uganda National Land Policy, 2014 limits leases to foreigners to 49 years yet the Land Act allows for 99 years.
[15]See, for example, Nelson Wesonga, Owners will lose rights over mineral rich land - Museveni, Daily Monitor, October 2, 2014.
[16]See, for example, Mary Karugaba, Butabika hospital land sold, The New Vision, November 23, 2006: Division of Butabika land among individuals.

legal and policy frameworks that promote accountability and legitimacy in land governance in Uganda. Therefore, the level at which the legal and policy frameworks leave space for women's role in this, forms a pertinent part of the paper.

[17]See, for example, Erias Mukiibi Sserunjogi, Kayunga tenants, landlords clash, Daily Monitor, 5 July 2013.
[18]See, for example, Land Act, supra note 8, section 29; Land (Amendment) Act 2010, section 1 and 2.
[19]Rose Nakayi, quoted in David Lumu, Over 100 mineral companies in Karamoja, The New Vision, May 01, 2014.
[20]Balemesa, supra note 7.
[21]See, http://www.fian.org/what-we-do/case-work/uganda-mubende/

1.0. HISTORICAL ACQUISITIONS: COLONIAL GOVERNMENT LAWS AND POLICIES

Land holding systems in pre-colonial Uganda were for a greater part premised on diverse customary norms and practices prescribing access and use of land. Cross-cutting among majority communities in Uganda was the unwavering right for every member of the community to access land either directly or through an established authority or entity of association. The latter held true for "stratified societies" such as Buganda. In such societies, institutional holding and control of land was largely on the basis of agency for the members of the community. Also important in many of the African settings was the holding of land by the living on agency for the past and future generations. Specifically for Uganda, the prevalent customary modes of holding land could be said to be unknown to the English system. To the British, the customary system required reform to give it currency. A number of legislative and other reforms aimed at the preceding resulted into land changing hands directly and indirectly, in a way that gave some of them characteristics of land grabs such as violation of the human rights. Below is a discussion of some of these.

A. Acquisitions through Declaration of Crown Land

These are categorized at two levels: the indirect and the direct.

The indirect historical acquisitions may not necessarily (always) have resulted into the physical/actual taking of the land from its customary owners or displacement from land. The trend was first set by the British colonial masters who through the 1903 Crown Lands Ordinance converted all customary land into Crown land; by corollary, land was vested in her Majesty the Queen of England. Driven by the belief that customary tenure was not as good as other tenures, the above conversion meant a number of things including: making the de facto occupiers and owners of land mere tenants (in accordance with the law), on land owned by the Crown -- hence technical dispossession.

All customary land, except that which had been alienated otherwise -- say, through the allotments made under the 1900 Buganda Agreement, as private land -- was converted to Crown land. This was more in other areas of Uganda than in Buganda:

… [T]he un-alienated land (Crown Land) was 5,949 sq. miles. When Buyaga and Bugangaizi reverted to Bunyoro, Crown Land in Buganda was further reduced by 667 Sq. miles leaving a balance of 5,282 sq. miles. When Ranching schemes were established in Buruli, Masaka and Singo, crown land was further reduced by 644 Square miles leaving a balance of 4,614 sq. miles. ..

Considering that customary land was most prevalent in the whole of Uganda at the time, the above dispossession (at least in law through the Crown Lands Ordinance) was an indirect large-scale dispossession of people (in law) and acquisition by the Crown government in England.

It should also be noted that, theoretically, the authority to transact in this land was left to the Crown "owner" of the land, who could parcel it out and create other interests on it without necessarily seeking the consent of the occupiers. Among the cited examples of cases in which the above happened involved gazetting of the Bwindi Mgahinga Impenetrable and Echuya forests reserve for environmental conservation, pushing out the indigenous Batwa. Technically, environmental conservation and protection of wildlife imperatives in some of the above cases was of utmost importance than subsistence use of land by the local communities that were the original customary owners, but for the Crown's acquisition.

At independence, the above relatively unquestionable authority of the Crown was inherited by the new,

[22] See, WadadaNabudere, Imperialism and Revolution in Uganda, Onyx Press Ltd (London) and Tanzania Publishing House (Dar es Salaam), 1980.
[23] John T. Mugambwa, Source Book of Uganda's Land Law, Fountain Publishers, 2002, 1-2.
[24] N. AOllennu, Principles of Customary Land Law in Ghana, London, Sweet and Maxwell, 1962.
[25] Instances in which land acquisitions can amount to land grabs have been stipulation in one Oxfam report, see, Oxfam Briefing paper, supra note 2 at 5.
[26] See the Crown Land Ordinance 1903, Laws of Uganda.

independent government of Uganda. It is also indicative of the fact that although customary tenure is prevalent, it was relegated to last tier on the rank of all tenure systems that include mailo, freehold and leasehold.

B. Post-Independence 1962-1975: Development-driven Laws and Land Dispossession.

As seen above, the trajectory in pre-independence Uganda oscillated more towards protection of private property rights and concentration of authority over land, outside that ownership paradigm, in the hands of the colonial government. Clearly, the space within which persons without private/individual property rights could claim accountability was minimal, since they were not fully recognized owners.

The legislative framework on property rights in post-independence Uganda did not change much; save for the players involved. The Colonial government was replaced by the new "independent" state of Uganda as holder of all lands formerly held by the former. This was done through the Public Lands Act 1962 and later (1969); by virtue of which these lands were administered by the Uganda Land Commission. It has been noted by some scholars that this was an era of opportunity by the new class bourgeoisie running the new "state" to entrench their personal benefit in various sectors including land. The dynamics of how land was governed and allocated was not necessarily entirely controlled by the new state; but external players and former colonial masters still maintained a hand. This was more so since a number of new independent states in Africa had to ideologically align themselves to foreign powers -- who would in turn back their grip onto power.

The new neocolonial-type state was therefore run on a template left by the colonial masters that is to a great extent driven by ideas of "our" protection as against "theirs" -- a ridge between the powerful and the poor majority land users.

The constitutional and legal framework at this time was bent more towards the protection of property rights (including land), although (in practical terms) more for purposes of economic development. There was no monolithic verity that all could contribute to economic development and at the same time benefit. In short, protection was more due to persons that had the potential to translate their property rights into economic development for the new independent Uganda. To Nabudere, this period, up till 1969, was driven by the desire to promote the "progressive farmers" to boost the economy. Many of these were not the local subsistence farmers, but elites in the kingdom area (of, say, Buganda) and large-scale Asian bourgeoisie.

C. The Constitution of Uganda 1962

Article 17 guaranteed fundamental rights for all irrespective of race, creed, colour, sex. The provision under Article 17 covered protection of everyone's right to privacy of home and other property; protection from deprivation of property without compensation.

It should be noted, however, that Article 17 contained a limitation to the effect that the guarantees in it were "subject to the respect for the rights and freedoms of others, and for the public interest…" The right to property in the constitution would therefore be overtaken by an interest of a public nature.

The above limitations on the right to property not only covered physical property but extended to interests in property. This is seen under Article 22 of the Constitution of 1962. According to it, there would be no compulsory deprivation of possession, interest or right over property, except if the deprivation is in the public safety among others. Any such compulsory acquisition had to take place according to law, which also made provision for prompt payment of adequate compensation, and access to the courts for a remedy in case of any disgruntlement. The emphasis on legality (according to law) is meant to exclude illegal selfish actions, although this was a time where emphasis on legality was not a sure guarantee of fair actions and outcomes. Laws could be passed to promote actions aimed at depriving some classes of people of their property.

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[27] Rose Nakayi, The Dynamics of Customary Land Rights and Transitional Justice: The Case of Acholi Sub region of Northern Uganda, at 285, Unpublished SJD Dissertation, University of Notre Dame, 2012.

[28] Note, however, that other private rights were allotted through the Ankole and Toro Agreements.

[29] See, A Rebuttal of the Ministerial Statement to Parliament on The 9,000 Square Miles of Land in Buganda [Mailo Akeenda] Delivered by Hon. Dr. E. Khiddu-Makubuya, MP, Attorney General/Minister of Justice and Constitutional Affairs, available at :http://ekitibwakyabuganda.wordpress.com/2009/11/26/status-of-buganda%E2%80%99s-9000-sq-miles-of-land/ (accessed November 10,2014).

[30] Peninnah Zanika, The Impact of (Forest) Nature Conservation on Indigenous Peoples: The Batwa of South Western Uganda - a Case Study of The Mgahinga and Bwindi Impenetrable Forest Conservation Trust, May 2001, 165-194 at 170, available at, http://www.forestpeoples.org/sites/fpp/files/publication/2010/10/ugandaeng.pdf, (accessed November 27, 2010).

D. The Public Lands Act 1969

The customary occupiers of land were to some extent protected under this law, although not preferred to the progressive commercial farmer that may need land for production than subsistence. At the same time, there was a growing trend to convert customary land into leaseholds. By virtue of section 24 (1), customary tenants would occupy any unalienated public land in the rural area without grant. Section 25 provided that customary occupiers would apply to a Controlling Authority for a leasehold interest to be granted to them on the land that they occupied.

Although leaseholds and freeholds were encouraged and preferred during this time, under sections 24 (2) and (3) of the PLA, leases or freeholds out of land occupied by a customary tenant could not be granted to another person without the former's consent. Grant of such leaseholds on land occupied by a customary tenant to another was also subject to supervision by the Minister; s/he had to give a written consent to a Controlling Authority to grant leaseholds or freeholds to land in a rural area that is held under customary tenure.

In addition to consent, compensation to a customary occupier who might be disposessed when land is given away to another on lease was provided for and the Minister had to approve of it. The preservation of consent in the above context means promotion of the peoples' right to participate in decisions on land that might affect them.

E. The Land Reform Decree 1975

The LRD is a landmark that had tremendous implications for access to land in Uganda and land governance in general. It is relevant for both historical and contemporary times. It is the benchmark that the post-1995 era land reforms aimed to replace with more progressive means of land governance.

Just like its predecessor legislations, the LRD aimed at promoting use of land for development. According to its long title, the Decree was, among other things, to promote economic and social development by vesting land in the hands of those that could develop it. To facilitate the easy transfer of land from those that could not develop it to others, the protection granted to customary occupiers on land had to be reduced.

This was by doing away with the consent privilege they had in the PLA, prior to leasing out their land. Further, private persons' grip on land had to be reduced by vesting all land in the country in the custodianship of the Uganda Land Commission to manage it according to the Public Lands Act 1969 as public land, "with modifications as may be necessary to bring that Act into conformity with this Decree".

Any interest in land that was greater than leasehold was abolished; absolute ownership of land under the mailo and freehold titles, were explicitly converted into leases from the Uganda Land Commission as the lessor without a premium, and other interests purchased or derived from the converted leases were converted into subleases. The public bodies and religious institutions' leases were for a period of 199 and those for individuals 99 years.

The Decree under section 3 (1) provided that:
The system of occupying public land under customary tenure may continue and no holder of a customary tenure shall be terminated in his holding except under terms and conditions imposed by the Commission, including the payment of compensation, and approved by the Minister having regard to the zoning scheme, if any, affecting the land so occupied, and accordingly, the Public Lands Act, 1969, shall (…).

Although the above offered some level of protection to the customary occupier of land, the spirit of the Decree in other instances is not wholly in line with it.
By virtue of section 3 (2)
(…) a customary occupation of public land shall, notwithstanding anything contained in any other written law, be only at sufferance and a lease of any such land may be granted by the Commission to any person including the holder of the tenure in accordance with this Decree.

This provision shows that the situation of the customary rights holder was more precarious than that of the mailo and freeholder whose interest was converted into leasehold. This is so much for the reason that a leasehold interest

[31] Herein after "PLA".
[32] Nabudere, supra note 22.
[33]See, Christopher Clapham, Africa and the International System: The Politics of State Survival, 62-65, 163 Cambridge University Press, 1996.
[34]Clapham, Id.
[35]See, Nabudere, supra note 22, at 177.
[36]Nabudere, supra note 22, at 201 and 202.

on customary land could be carved out not necessarily for the customary "owner" occupying the land but someone else, hence denying the customary occupierhis/her right to land. By this the customary occupier was a tenant at "sufferance"; terminable any time with compensation, and on giving him 6 months' notice.

In essence, the Decree would have an implication of promoting European and Asian farmers and a few cronies of the Idi Amin regime, and not the local poor customary occupiers.

[37] 24 (4) PLA.

1.1 THE LAND LAW REFORM ERA: POST-1995 LEGAL AND POLICY INITIATIVES

The legal and policy initiatives of the post-1995 era are characterized by a number of positive strides towards streamlining land governance in Uganda for the good of both the people and also national development. A number of these land governance initiatives touch issues to do with: (i) clarification and delimitation of rights to land access and use; (ii) reconciliation of conflicting interests on land; (iii) processes of dispute settlement on land (decision-making); (iv) regulation and stipulation of institutions mandated to deal with conflicts over land (both formal and informal); their processes/procedural imperatives, outcomes, and how these outcomes are implemented and perceived by the people affected. The legal and policy framework of Uganda post-1995 era has gone a long way to throw more light on the ideals of the above in the Ugandan context. This section analyses the law to trace the extent to which the ideals of good land governance above are embedded in the law. The paper will in general juxtapose the ideals and the realities. Other principles of good land governance such as accountability, transparency, equity, etc, will be pertinent in making the analysis especially with particular focus on women in the context of LSLAs.

A. The Constitution of the Republic of Uganda1995 and the Land Act Cap 227

Legal and policy initiatives post-1995 are hinged on land tenure reform; provide private individuals with rights to land as opposed to the state control of the same. The latter position was predominant in pre-1995 Constitution legal and policy regimes as seen above. The Constitution of Uganda the Republic of Uganda 1995 reinstates all the tenures as conduits through which the land in Uganda "belongs to the people". This is by virtue of Article 237 (1) and (3) of the Constitution, by which the citizens of Uganda can claim rights to land under the reinstated tenures: mailo, customary, leasehold, and freehold. The trend (at least on paper) indicates a desire to protect the citizens' rights to land against the state. It may also protect peoples' land rights against deprivation by non-citizens. The Constitution provides that non-citizens may only acquire leases in accordance with the laws made by parliament. Non-citizens as defined under the Land Act Cap 227 include both persons and companies. Section 40 (7) gives the definition as follows:

(a) a person who is not a citizen of Uganda as defined by the Constitution and the Uganda Citizenship Act; (b) in the case of a corporate body, a corporate body in which the controlling interest lies with noncitizens; (c) in the case of bodies where shares are not applicable, where the body's decision making lies with noncitizens; (d) a company in which the shares are held in trust for noncitizens;(e) a company incorporated in Uganda whose articles of association do not contain a provision restricting transfer or issue of shares to noncitizens.

The Land Act section 40 (4) prohibits non-citizens from holding freehold and mailo land. Note that there is no mention of customary land in the prohibition, although this may not be interpreted to mean that non-citizens can hold customary land. The Land Act echoes the provision of the constitution that non-citizens may only acquire leases; which must not exceed ninety-nine years.

Restriction on non-citizens' acquisition of freehold and mailo land implies that perpetual ownership of land in Uganda is a preserve of the citizens.

Also protected under the Constitution and the Land Act is Public tenure. The Constitution and the Land Act allow for government or local government to hold environmentally

[38]See the long title to the Decree.
[39]Article 1 (1) LRD, 1975. Note that the LRD confirms the position in the PLA 1969, of having the state in charge of land and maintaining it as public land. This seems to have been the trend in a number of regions at the time. To R.G. van Banning, Theo R.G. van Banning, The Human Right to Property 61 (Intersential 2002) at 154-146, Nationalization of property and the collective ownership of properties that are a source of production was a trend in Central and Eastern Europe. Post independent states in Africa opted for nationalization as a way to disempower persons had acquired it arbitrarily and also to enable the state control it and exert its power in the pretext of using it for national development.
[40]See, LRD 1975, Section 2 (1) and (2).
[41]LRD 1975, Section 2 (3).

vital resources in trust for the people as provided for under Article 237 (2) (b). These include natural lakes, rivers, wetlands forest reserves, national parks, land reserved for ecological or touristic purposes, etc. Among the rationales for such provisions is the need to protect the "common good" of every citizen, since it is believed that citizens have a stake in the natural resources. In order to fulfil this, the Land Act section 44 (4) provides that "[t]he government or a local government shall not lease out or otherwise alienate any natural resource referred to in this section". Following provisions of the law, however, the government or local government is permitted under section 44(5) "… to grant concessions or licenses or permits in respect of a natural resource…" such as those mentioned above.

From the above, clearly the nomenclature "public tenure" is not used in the law. There is, however, an attempt to protect the interests of the general public (citizens of Uganda) in natural resources governance. Individual citizens do not hold them since that would lead to assertion of exclusive rights to such resources with implications that other citizens may be excluded from taking benefit of them. The presumption, therefore, is that with the public trust in the local government and the government, they can hold in trust for all citizens to partake of simultaneous and equal benefit. It may however be argued that the above may increase the propensity of abuse of the public trust in instances where the government or local government may easily befacilitators of LSLAs by giving away resources such as land to investors, on the assumption that the use for which investors will benefit all.

The case of Advocates Coalition for Development and Environment vs. Attorney General was, among other things, filed to challenge the government's issuance of Kakira Sugar Works Ltd with a 50-year permit to grow sugar cane in Butamira Forest Reserve. This would be tantamount to degazetting of the forest reserve, yet there was no Environment Impact Assessment carried out by Kakira Sugar Works and neither were the views of the local communities that heavily relied on the forest sought before the permit was granted. Justice Apio Aweri reiterated the importance of the cane project to the development of Uganda, but still held the respondents in breach of the law for failing to carry out the necessary environmental impact assessment and consultation. As a result, the permits were null and void. It is interesting to note, though, that restoration orders were not granted against the respondents. This case shows that the pursuit of development and growth, if not well monitored, can lead to deprivation of the public and communities of rights in public resources. Some of the judge's comments in the background portray this, even if in general the final decision in the case is progressive.

There is no doubt that environmental law must be seen within the entire political, social, cultural and economic setting of the country and must be geared towards development vision. In other words, it must act as an aid to socio-economic development rather than a hindrance. The law must be in harmony with the prevailing government efforts and need to attract more foreign and local investment and channel national energies into more production endeavors in industry and sustainable exploitation of natural resources…

From the above, the pursuit of unguided local investment boost through land giveaways can lead to environmental hazards, and deprivation of rights for people that claim lesser rights to the resources from such environmentally sensitive areas.

It should be noted that attempts to give away Mabira Forest for sugar cane growing is another example that has been well captured in the literature and media.
Below is a discussion of pertinent themes as drawn from the Constitution and the Land Act.

1. Compulsory acquisition and compensation

Beyond the protection of the citizens' right to hold land under the stipulated tenures, the Constitution uses the language of "rights" to protect property. The answer to the question whether or not one has property in cases of allegations of deprivation of the right to property (land) is important in determination of breach and remedies for deprivation. What is property therefore becomes a valuable question. Although Article 26 does not define 'property', courts of law have made an effort to define it. The case of Edward Frederick Sempebwa vs. Attorney General dealt with a number of matters including the question whether the Judgment debt/decree in HCCS No. 435 of 1982 was property within the meaning of Articles 8 and 13 of the 1967 Constitution. The court in this case set an interesting precedent that the holder of the Judgment decree is deemed to be in the same position

[42]Nabudere, supra note 22, at 203-4.
[43]See, The Constitution of the Republic of Uganda 1995, article 237(2)(c).

as the holder of property, and could not be deprived of the same without heed to the conditions set in the constitution. From this, property is not only limited to the physical such as land, but may include intangible interests in land and other things.

Article 26 provides that: "Every person has a right to own property either individually or in association with others." This provision closely mirrors the provision on protection of property in the Universal Declaration of Human Rights 1945. Just like the UDHR, this provision protects both individual rights to property and group rights such as those claimed on the basis of communal customary norms. Although Article 26 of the Constitution emphasizes protection from deprivation of property, the protection is not absolute.

Compulsory acquisition of property remains an available option for the government, although it must conform to the requirements set out under article 26 (2):

(a) the taking of possession or acquisition is necessary for public use or in the interest of defense, 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 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.

From the above provision, compulsory acquisition cannot be evoked wantonly, or for justifications outside those stipulated in article 26(2) (a). It must be justified within the above stipulated conditions. The above is nuanced by literature to the effect that there must be "cause" since "…property depends, at least in part, on a legally protected immunity from summary cancellation or involuntary removal of the rights concerned."

Adequate compensation must be paid prior to acquisition/ taking of such property by the government. This position has been reiterated by the courts of law. In Onegi Obel and another vs. the Attorney General and another, the government failed to prove that it was in the public interest to construct a road on the plaintiff's property without heed to the requirements for compensation. Hon. Augustus Kania found a breach of statutory duty on the part of the government in the failure to pay adequate, prompt compensation in the circumstances. Similarly, Julius Okot vs. Attorney General was a complaint to the Uganda Human Rights Commission against the taking of private property in an alleged public interest to establish a military detach. The Commission found the government liable in trespass for failure to promptly pay fair compensation prior to taking of the property in issue. From the above, all individual victims of LSLA are entitled to the protection under article 26 (2).

It should, however, be noted that although the right to compensation is well entrenched in the legal framework of Uganda, it is at times seen as a stumbling block to the government's desire to implement development projects without delay. It is for this reason that President Museveni has, for example, fronted an amendment to the mining laws to remove the requirement for compensation of the poor before takeover of land beneath which there are minerals; in the public interest.

Yet, international human rights law and practice dictates that the poor should not be unreasonably inconvenienced in the "public interest"; they too are members of the public.

The law on compensation in the Ugandan context can lead to multiple interpretations as a result of, for example, absence of clear stipulations on key terms such as "public interest", "public order" and "public safety" as seen in article 26 (2) (a). For the foregoing, scholars such as Oloka-Onyango have made recommendations for constitutional amendment of article 26 to clarify these concepts among others. This would go a long way in capturing trends at definitions as seen in case law, such as Bhatt and Another vs Habib Rajan. In this case, it was emphasized that 'public interest' would have an objective of fulfilling a community-based interest as opposed to that in the interest of the an individual.

In addition, however noble the objective behind compulsory acquisition is, compensation cannot be legally dispensed with. The case of Sheema Cooperative Ranching Society and 31 others vs the Attorney General is authority on

[44]The Land Act, supra note 13, section 40 (8) controlling authority is in non-citizens if they hold majority shares or companies in which decisions are arrived at by a majority that is non-citizen of Uganda.
[45]Land Act, supra note 13, section 40 (3).
[46]See, the Land Act, supra note 13, section 44 (1) and (2).

this and more pertinent principles. The plaintiffs in the case were registered proprietors of a number of leasehold pieces of (ranch) lands forming the subject matter in this case. The Plaintiffs' ranches were compulsorily acquired following a Government policy to restructure ranches in the Government-sponsored ranching schemes in Ankole, Masaka, Singo, Buruli and Masindi. The land was to be used to resettle the landless people, pursuant to a General Presidential Notice (No. 182 of 1990) issued in the Uganda Gazette of 12th October, 1990. It was parcelled out and redistributed without proper compensation to the plaintiff. The court, among other things, held:

On the face of the above objectives, it would be correct to say that the policy of the Government was lawful because it was an issue of public interest. However the law requires that certain procedures ought to be followed before compulsory acquisition can be lawful. In the instant case, it was the contention of the Plaintiffs that before Government came out with the policy; Government had already allowed squatters to settle on parts of their ranches with their cattle. Government inspired the encroachers and even protected them from being evicted by the Plaintiffs. In a nutshell, Government did not follow procedure of acquisition of the suit land. Such a procedure is regulated by the Land Acquisition Act Cap 226.

From the above, even where government actions of deprivation are in the public interest, the principle of legality must be heeded to fulfil the compensation prerequisites as set out in the constitution.

Note, however, that the pre-1995 constitutional dispensation cases are more problematic on the question of prior compensation. The Land Acquisition Act, Cap. 226 existed before the 1995 Constitution, without emphasis on compensation prior to compulsory taking of property. Compulsory acquisition would precede compensation for property to those deprived. This situation has now been legally resolved by the decision in Advocates for Natural Resources & 2 Others Vs. Attorney General, Constitutional Petition No. 40/2013; where it was held that although the Land Acquisition Act existed before the 1995 Constitution, its provisions have to be read in the context of Articles 274 and 26 (2) of the Constitution. They should "be construed with such modifications, adaptations, qualifications… necessary to bring it into conformity with the constitution" by affording land owners prior compensation before their land is compulsorily acquired.

In addition, article 26 of the Constitution referred to above talks about adequacy of compensation. In the above case of Sheema, assessments were made in 2005 while payments commenced in 2009. The court found that: "…compensation which the Plaintiffs allegedly received in the year 2009 – 2010 (on the basis of 2005 assessments) did not reflect the market value of the land at the time it was given, hence it was neither fair and adequate nor prompt". In addition to the above, the court noted that since the plaintiffs had to move away from their ranches, they suffered disturbance and where therefore entitled to disturbance allowance of 30%.

Despite the progressive decisions cited above, to some extent Uganda's legal regime has until recently contained a hiccup in cases where government takes over and occupies land. The Government Proceedings Act provides against bringing actions of ejectment against government. Such a prohibition has a likelihood of curtailing the rights of private persons whose land the government takes over. Courts have in relatively recent cases such as Osotraco (U) Limited vs. Attorney General tried to go around the legally entrenched barriers that are overly protective of government against private property owners. The suit property in the case was occupied by employees of Ministry of Information and Broadcasting.

They refused to give vacant possession to the plaintiffs, who had purchased the property and got registered as proprietors. The case was brought to seek an eviction order from the premises, among other orders. Among the issues was; whether the Plaintiff was entitled to an order for eviction and or vacant possession from the Attorney General (representing government). Interpretation of the Government Proceedings Act became pertinent, especially article 15:

15. (1) In any civil proceeding by or against Government the court shall, subject to the provisions of this Act, have power to make all such orders as it has power make in proceedings between private persons, and otherwise to give such appropriate relief as the case may require: Provided that----- (a) (b) in any proceedings against the Government for the recovery of land or other property the

[50]Constitutional Case No 1/87.
[51]Universal Declaration of Human Rights 1948 (Adopted by the United Nations on December 10th, 1948 here in after "UDHR", Article 17 (1).
[52]Gray and Gray, Elements of Land Law, 5th Edition, at 1387 (Oxford University Press 2008)
[53]HCT – 02 – CV – CS – 0066 – 2002,

court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that the plaintiff is entitled as against the Government to the land or property or to the possession thereof.

The above case gives the rationale for the above provision in the above 1957 law; to protect the Crown (of England – Uganda's then colonial masters) from making orders of eviction against self. A lot has changed since then and in the post-independence period.

The Constitution of Uganda is the supreme law, and any law that is inconsistent with it, is void to the extent of the inconsistency vide article 2 of the Constitution. At the same time Article 273 of the Constitution requires existing law to be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution... S15 of the government proceedings Act had to be construed in light of the constitution of Uganda 1995.

The court found that section 15 (1) (b) above is not in line with the constitution and has to be construed accordingly; it does not apply to the case in issue.

In the circumstance of this case a declaratory order is less than appropriate relief. It is not effective redress... I therefore order the defendant and its servants to give vacant possession of the suit property to the plaintiff, not later than thirty days from the date of pronouncement of this judgment, failing which eviction shall issue.

It should be noted that a mere declaratory judgment (that the plaintiff is the owner of land according to section 15 (1) (b)) would not serve the interest of justice dispensed by courts of law per article 126 of the Constitution of Uganda, a position that was also sanctioned by the Justice Mpagi Bahigeine on appeal in this case.

This case sets a good precedent that actions for recovery of land can now be brought against government, under the new 1995 constitutional order.

It should be noted that the need for compensation is further provided for in other laws such as the Mining Act 2003. Its section 82 (1) stipulates the need to compensate the land owner or lawful occupier of land under which are minerals, "reasonable compensation for any disturbanceof the rights... and any damage done to the surface of the land..." The Land Acquisition Act Cap 226 and the Constitution of Uganda would offer guidance in processes intended to effect the above provision.

Lastly, it should be mentioned that although the Constitution and case law seem to be clear on issues of compensation, at the time of writing (2014), there is no clear policy guideline on how this is supposed to be done in actual terms.

2. Security of tenure and overlapping interests in land

A number of countries in Africa including Uganda have been preoccupied with promoting tenure security for a number of reasons. Secure tenures are normally preferred. It is also believed that the more formalized (in Eurocentric terms) the tenure is, the higher the levels of security and motivation to the land holders to use their land in a productive manner. Individualized (formal) certificates of title to land have been fronted as an invaluable tool to security of tenure. There have been efforts in the laws of Uganda aimed at promoting security of tenure, as will be discussed below. These will show the peculiarities in Uganda's land tenure context that have the potential to hamper reaching the goal of secure tenure for land owners. Yet, in practical terms, there is a connection between the kind of tenure/title one claims to land, and ease of claiming remedies in case of deprivation of that land.

(i) Mailo land tenure; the dilemma of lawful and bona fide occupants

Land governance in instances of LSLAs would require identification of persons with genuine claims to land that is taken away in pursuit of projects of LSLAs. It is these genuine owners or rights claimants that would be entitled

[54] Id.
[55] Complaint No. UHRC/G/144/2000.
[56] Wesonga, supra note 15.
[57] Wesonga, supra note 15.
[58] See, Food and Agricultural Organization of the United Nations (FAO) Land Tenure Studies 10: Compulsory Acquisition of land and Compensation (2008); Rose Nakayi, Public interest vs Individual Rights, The New Vision, October 1, 2014.
[59] Joe Oloka-Onyango, Reviewing Chapter Four of the 1995 Constitution: Towards the Progressive Reform of Human Rights and Democratic Freedoms in Uganda, study commissioned by Human Rights Network-Uganda (HURINET), February, 2013, available at, http://www.hurinet.or.ug/Reviewing%20Chapter%20Four%20of%20the%20Constituion.pdf, (accessed November 28, 2014).
[60] [1958] 1 EA 536 (HCT).
[61] High Court Civil Suit No. 103 of 2010.

to be consulted, engaged in all processes leading up to LSLAs and also benefit from compensation and other rights or remedies in case of disgruntlement. Historical and other circumstances in Uganda have, however led to complicated land governance scenarios resulting from multiple and overlapping interests in land which are all legally recognized although with varying degrees of hierarchy. With such complicated and intersecting webs of land rights, the women's case becomes more complicated since they rarely own certified rights to land. The complicated governance conundrums are not more evident elsewhere than in the cases of the rights of / relationship between the registered owners of mailo land and lawful and bona fide occupants on their land.

Section 31 (2) of the Land Act provides, among other things, that a tenant by occupancy is a tenant of the registered owner of land, whose security of tenure is guaranteed under section 31 (2), subject to some conditions such as payment of rent. Tenants by occupancy may be "lawful occupants" or "bona fide occupants". According to the Land Act section 29(1)

A "lawful occupant" means-

(a) a person occupying land by virtue of the repealed-

i. Busuulu and Envujjo Law of 1928,

ii. Toro Landlord and Tenant Law of 1937,

iii. Ankole Landlord and Tenant Law of 1937;

(b) a person who entered the land with the consent of the registered owner, and includes a purchaser;…(etc)

Section 29 (2)

'Bonafide occupant' means a person who before the coming into force of the Constitution-

(a) had occupied and utilized or developed any land unchallenged by the registered owner or agent of the registered owner for twelve years or more; or

(b) had been settled on land by the Government or an agent of the Government, which may include a local authority[…]

The legal protection of both certificate holders and lesser interest holders such as lawful and bona fide occupants is important, but leads to a number of consequences that might not necessarily have been foreseen These may include unnecessary limitations to free transferability of land by both those that hold the mailo title to it and the lawful or bona fide occupant. The mailo title holder, in a sense, cannot transfer the land to someone else in contravention of the law requiring giving the first option to purchase to the lawful or bona fide occupant. In case s/he does not have the capacity to purchase the land, the mailo owner cannot under the law evict him/her and sell to someone else. Termination of tenancy is only allowable for non-payment of rent for a period over two years pursuant to acquisition of a court order allowing the eviction. The 2010 Land Amendment Act makes it a criminal offence to evict a lawful and bona fide occupant without a court order. As mentioned earlier, the overlapping interests lock the land up and deter its transferability by either party.

Courts of law have come up to interpret the law and protect the lawful and bona fide occupants, adding nuance to the riddle. An example of such cases is Kampala District Land Board and Chemical Distributors vs. National Housing and Construction Corporation. Kampala District Land Board granted a lease of the suit land to Chemical Distributors. National Housing and Construction Corporation objected to the grant since it had occupied the suit land since 1970, using it as a playground for the children of the residents in its neighbouring estate, among others. The National Housing and Construction Corporation filed a suit challenging the lease of the property as unlawful. Benjamin Odoki (Chief Justice, as he then was), held to the effect that the respondent was entitled to enjoy occupancy of the land in accordance with Article 237 (8) of the Constitution and the Land Act section 31 (1). More so, this was registered land on which the respondent had enjoyed occupation and possession for over 12 years before the reign of the 1995 Constitution, unchallenged by Kampala City Council.

The Land Act also allows the tenants by occupancy to create other interests not greater than theirs in the land that they occupy. According to section 34 (1), they can; "… assign, sublet, pledge, create third party rights in, subdivide and undertake any other lawful transaction in respect of the occupancy." At the same time, their tenancy can be inherited. Note however that a tenant by occupancy who wishes to assign rights is obliged to seek the consent of the registered owner to authorize such transaction(s). If the tenant wishes to sell, the first option to purchase his or her interest must be given to the registered owner. A tenant by occupancy does not pass

[62] Cap 77 of the Laws of Uganda.

on recognizable rights to land if s/he is in breach of the set conditions above. Similarly, the registered owner who wishes to sell must give the first option to purchase his/her interest to the tenant by occupancy.

The above can be a safeguard that promotes consultation of persons claiming interests in land before land is sold, or transferred to another person. If implemented, it has the potential to secure rights to land. It should, however, be noted that some tenants by occupancy cannot afford the land at its increased current market value. The landlords therefore ignore the requirement to offer them the first option to purchase and instead sel the land to others that evict the tenants by occupancy. In such casesthe above provisions have instead, indirectly promoted evictions, to the detriment of the tenants by occupancy. There are documented cases of landlords selling their land to the rich with the potential to evict the tenants by occupancy -- in violation of the law; but as a better option compared to seeking consent or giving the tenants by occupancy an option to purchase. The gap between the law and the practice therefore means that the tenures of the lawful and bona fide occupants that are secured in the law -- are insecure in practice.

(ii) The dilemma of the customary tenure in the context of LSLA

Customary tenure is lawful under the Constitution Article 237 (3) (a) and the Land Act section 3 (1) (a) through (h). The key characteristics of customary tenure as described in the Land Act section 3 include: it applies to a specific group of people; applies rules accepted as authoritative to those people; regulated according to customary rules; allows for communal ownership, family ownership, institutional ownership and individual ownership of land in perpetuity; applies customary rules that do not inhibit the enjoyment to rights for women, children and persons with disability.

Informal land governance through customary ethos (tenure) is most predominant in Uganda. Customary tenure accounts for between 75-80% of the land in Uganda and only 15-20% of land is formally registered. These statistics indirectly show that there are higher chances of having LSLA on customary land than on other kinds of land of a leasehold, freehold or mailo tenure nature.

Recognition and allocation of rights to land under customary tenure is not uniform across the country; rights are instead allocated and sanctioned or recognized following the customs of a given community. Although these differ from community to community, and at times clan to clan and further from sub-clan to sub land and even family to family, there are some cross-cutting modes and allocation/acquisition of rights to customary land. In a number of communities, people acquire rights to customary land through: purchase, inheritance, borrowing/renting land, gift inter-vivos, etc.

The above do not differ much from the modes of allocation and recognition of rights to land in other tenure systems. The highly informal governance structures and over-reliance on custom in all matters relating to land held under customary tenure is what presents challenges. First, much of the customary land is not registered. Ownership can be ascertained through customary procedures and processes. Within the capitalized environment around the customary, highly formalized /legalized procedures, proof of ownership of customary land in the absence of registration becomes cumbersome. It involves over reliance on oral evidence from elders or members of the community.

Such circumstances present loopholes that may be exploited in cases of LSLAs to the detriment of the genuine landowners, who may not be in position to prove their customary interests.

As further seen in the literature and practice, customary tenure has not been valued; and is considered antithetical to development. It has been argued that the more informal a country's tenure system, the less the possibilities to produce capital for growth and development. Yet, there are some studies that also show that indigenous tenure systems such as the customary will not always be adversarial to agricultural advancement; they many times benefit the farmers. That notwithstanding, the customary

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http://webcache.googleusercontent.com/search?q=cache:Hl1Z_OeJhY4J:docs.mak.ac.ug/sites/default/files/Literature,%2520Gender%2520and%2520Land%2520Surveys%2520in%2520Uganda,%25202007.pdf+7%25+ugandan+women+hold+titled+land&cd=1&hl=en&ct=clnk; (accessed November 12, 2014).

[69] See, the Land (Amendment) Act, 2004, section 31 (3).

[70] See, Diana Hunt, The unintended consequences of Land Rights Reform: The case of the 1998 Uganda Land Act, Development Policy Review, Vol. 22 173-191 (2004).

[71] See, Section 32 A, Land (Amendment) Act 2010

has been marginalized in the Ugandan tenure context, although it is still persisting. Among its greatest threats in contemporary times is the demand for land for agricultural investment.

The case of Hon. Ocula Michael & others vs. Amuru District Land Board, Major General Oketa Julius, Christine Atimango and Amuru Sugar Works Ltd offers evidence for much of the above. The case offers perspective on LSLAs that take place in post-conflict situations with high demand for land for post-conflict development for the perceived benefit of the public. It is also indicative of the fact that many times, dealing with LSLAs is tantamount to dealing with the state, as their relatively discrete promoter. The above case is a contention between the alleged customary owners and Amuru Sugar Works Limited and others, desirous of carrying out an investment in cane growing for post-conflict development. The applicants in this case claim to be the customary owners of the suit land challenging the authority of the Amuru District Land Board to allocate it to the respondents without their consent. That doing so was in breach of their constitutional rights as customary owners. Contrary to this, Amuru District Land Board asserted that the land in question was public land over which it had authority; it could allocate it without violating any constitutional rights of the applicants.

The applicants lost the case and at the time of writing (October 2014), this case is not yet decided in the Constitutional Court where it was referred for constitutional interpretation. As noted earlier, proof of ownership of land is important in the determination of who has authority to give land to investors in LSLAs. In the Ocula case, the applicants failed to prove their customary claims of ownership to the land, meaning that the Amuru District Land Board had the authority to pass it on as "public land" to the respondents including Amuru Sugar Works that needed it for investment in cane growing. Nakayi has argued that this specific case is telling of the galore of challenges that are involved in attempts to prove rights of ownership over customary land, in highly technical, procedural and evidence-driven settings of courts of law. The absence of exact value equivalents in terms of nature of institutions, evidence required, procedural requirements between the customary space (norms and institutions) and the courts of judicature constructed on more west-centric foundations, implies that at times results from such courts handling customary cases might be couched in foreign terms, and not the customary ones. The outcomes of such court processes may also be shaped by the constrained space for the customary in those courts, as a result of application of foreign rules and procedures to it, by authorities not necessarily ablest with the specific details of the customary.

Further, the absence of uncontested evidence to the effect that one cannot find valid customary claims to land delineated as "public land" in Uganda today means that claimants of such rights to public land are very susceptible to loss of land through LSL giveaways of public land.

In addition to the above problematic aspects, challenges are presented in a number of customary norms of various communities in Uganda which tend to be discriminatory to specific categories of people such as women, children, disabled persons, and the elderly. Discrimination against these groups can lead to exclusion from say compensation in case of dispossession of land, or failure to take into consideration the views of such groups in making decisions about customary land. Such discrimination that takes place in practice is contrary to the Constitution of Uganda's provision on equality and non-discrimination as seen in Article 21 and section 27 of the Land Act in favour of women, children and persons with disability.

Once allocated, the rights over customary land are sanctioned by the elders who are many times considered to be the custodians of custom. In other instances, they are sanctioned by the community or both -- elders and community. Elders are not always democratically elected; they assume these responsibilities by virtue of being born in a given lineage with privilege. This raises question whether their exercise of power can be seen as "by the people for the people" in a democratic sense, or for their interests.

The above has mainly presented the general picture in the customary tenure governance.

[72] Civil Appeal No. 2 of 2004, (unreported).
[73]See, The Land Act, supra note 13, section 34 (2).
[74]Land Act, supra note13, section 34 (3).
[75]Land Act, supra note 13, section 35.
[76]New Vision, Museveni Gives Orders on Land Evictions, a reprint of a Statement issued by Yoweri Museveni on Land Grabbing in Uganda, 25 February 2013, p. 6; Cyprian Musoke, Museveni speaks out on land, The New Vision, 23 May 2013, p. 3.
[77]See, Erias Mukiibi Sserunjogi, Kayunga tenants, landlords clash, Daily Monitor, 5 July 2013.

Another case that merits discussion is that of Baleke Kayira Peter and others vs. Attorney General of Uganda. A relatively big part of the case is about allegations of professional misconduct of Messrs. Nangwala and Rezida who acted as counsels for both Uganda Investment Authority (sued through the Attorney General of Uganda) and Kaweri Coffee Plantations Limited (hereinafter "German Investors" (the second respondent).The preceding was a result of an alleged failure of the lawyers to advise the German investor that the first respondents' freehold title was flawed or heavily encumbered by the applicants and the others they represented in this case. The author will not delve into the details of the perceived negligence in the case, but other matters to do with eviction and compensation, among others.

The brief facts of this case are that the land in issue was freehold land registered as Buwekula Block 99; Plot No.1, in the names of the third party to this case Engineer Emmanuel Bukko Kayira. It was alleged that the plaintiffs were customary tenants numbering 401, living on four villages of the said land: Kitemba, Luwunga, Kijunga and Kiryamakobe. The freehold title of this land was transferred to the Uganda Investment Authority, who in turn granted the German investor a lease of the same, since foreigners such as the German investors cannot own freehold land per Uganda's laws. The Uganda Investment Authority was authorized to assist foreign investors in many ways including acquisition of land for the investment. In order to give vacant possession of the land to the German investor, evictions were carried out between 17-21 of August 2001 by UPDF soldiers and the Resident District Commissioner of Mubende district(representative of the president). In the process, houses were destroyed, crops and other properties burned. This was in the absence of relocation or compensation plan for the evictees as promised. In this suit, the evictees sought damages for wrongful eviction.

This case highlights the likely challenges of victims of LSLAs in situations where their claims to land are customary and not registered. It also offers insights into how state power can play out against the poor people it is supposed to protect, in cases where the poor people assert claims to land that are inconsistent with the government's dominant agendas such as pursuit of economic growth and infrastructure development of the country through investment. There have been a number of instances in Uganda where the president and others in power have supported the protection of the rights of unregistered land claimants such as lawful and bona fide occupants. These agendas resulted into the 2010 amendment to the Land Act, and also the creation of the Land Committee by Presidential Directive, headed by Minister Aida Nantaba to protect the poor tenants.

What happened in the above Baleke Kayira case (evictions allegedly by the UPDF and the Resident District Commissioner) is indicative of the fact that the poor may only be protected against other persons, and not against the state interests. In this case, Justice Choudry did not find any cogent evidence to support the allegation that the eviction by the UPDF and the Resident District Commissioner was organized by the government; he indeed praises His Excellency the President of Uganda for supporting initiatives aimed at protecting the poor tenants on land. In as much as the technical rules of procedure call for good evidence to prove an assertion which was not done in this case, the circumstances of the case indicate otherwise. It is not plausible that the president's representative (RDC) and uniformed army officers would carry out an eviction while on "a frolic of their own" on the 17th & 18th August 2001, and His Excellency launched the Kaweri Coffee Project on August 24th. Despite the fact that there was no formal instruction to evict (in writing) to the uniformed men produced as evidence for government's involvement in the eviction, from the circumstances, it is most likely that the first respondent and (maybe) the second respondent were all desirous of ensuring that the project is launched soonest; thereby indirectly sanctioning the quickest means of having the customary occupants off the land by whatever means.

The above adds nuance to the fact that where their interests are not in line with those of the powerful, eviction of the poor can be facilitated by force/militaristic options such as involvement of the Uganda Peoples' Defence Forces (UPDF) to effect evictions to avail land

[78] See, Peter Veit, Women and Customary Land in Uganda, Focus on Land in Africa- Placing Land Rights at the heart of Development. A brief, April 2011 at 7.
[79]Land Act, supra note 13, section 3 (1) (c).
[80]Paul Julius Layoo, An Analysis of the Effectiveness of the Legal Framework in curbing land grabbing in Uganda: The Case of Amuru District, Unpublished LLM Dissertation, Makerere University School of Law, November 2014, at 61-65.
[81]Id.,
[82]Rose Nakayi, The Role of Local Council Courts and Traditional Institutions in Resolving land Disputes in Post-Conflict Northern Uganda, Malawi Law Journal Volume 7,(2013) 119-137 at 122.
[83]Maggi Carfield, Land Justice in Uganda: Preserving Peace, Promoting Integration, in Working with Customary Justice Systems: Post-Conflict and Fragile States (International Development Law Organization –IDLO 2011)127-144 at 128.

to the German investor. The answer to the question in whose defence did the UPDF act in this case, comes with an off-the-cuff answer; the German coffee investor's interest. In human rights terms, this case is indicative of the breach of the state's duty to respect, protect and fulfil the rights of the poor in peculiar cases that stand in the way to investment.

The above case is also indicative of the fact that adverse consequences of LSLAs can be exacerbated or brought about by players other than the state. Neoliberal capitalist agendas of players such as advocates evoked in the self-interest can result into catastrophic outcomes for the poor on land. In this case, misconduct is cited on the part of Messrs Nangwala and Rezida, who acted for both the first and second respondents. To the Hon Justice Choudry:
.. Messrs. Nangwala and Rezida deliberately withheld information in breach of their fiduciary duty and this deliberate omission was a dishonest conduct. Nangwala and Rezida had forsaken their loyalty to the Lessor and Lessee in the grant of the lease, when to their knowledge the title was lumbered with encumbrances. Both advocates were in breach of their fiduciary duty…

From the circumstances of the case as reported, it seems the advocates were only interested in finalizing the leasing agreement and not necessarily interested in what would happen to the customary claimants on the land. It is alleged further that the advocates did not purchase the land for relocation of the evictees, yet monies for the same had been advanced to them. It should be mentioned that the judge ordered the advocates to pay exorbitant sums of monies and also recommended that a misconduct case be filed against them before the Law Council of Uganda. Since the case is on appeal, we cannot be conclusive on a number of contentious matters that arose in it at that level.

This case takes place within a unique context, following a situation where Messrs. Nangwala and Rezida had previously appeared as lawyers for the Uganda Law Society in a 2012 case challenging the appointment of Justice Choudry to the Bench. The judgment in the Baleke Kayiira case is therefore seen as more vindictive to the lawyers than it adds value to legal jurisprudence in cases of evictions or LSLA.

Besides the above, victims of unfair LSLA deserve quick justice to atone to the suffering met as a result. The Baleke Kayiira case discussed above portrays a common situation in Uganda where advocates use delaying tactics in cases that seem to be against their clients' interests. This prolongs the period of suffering for such victims. This case was filed on 15th August 2002 and was only heard on 26th March 2012. It was adjourned over ten times, and the only substantive proceedings that took place amidst adjournments between 2002 and 2012 was an application to challenge the action of the applications to file the case as representatives of all evictees, and a scheduling conference. Even after the case was decided, the evictees have not been able to get what they are entitled to, since the decision is on appeal; the Court of Appeal halted execution of the judgment pending appeal. It is also one of those unique cases where the burden falls on the advocates of the Investment Authority and not necessarily the respondents. This reneges on the evictees' right to fair and timely compensation. It comes against the backdrop that at the time of writing, Uganda does not have a Compensation Policy/Guidelines. It however came to the author's attention during a recent workshop that the Ministry of Justice is in the process of working on Compensation Guidelines.

In addition to the above, other subjects that are controversial and have generated debate, making them worth of specific analysis are below:

(iii) Certification of interests in land

This is through processes leading to issuance of Certificates of Customary ownership.

As mentioned above, customary land has, in the history of Uganda predominantly been unregistered; and therefore

[84]See, Klaus Deininger, Land Policies for Growth and Poverty Reduction: Key Issues and Challenges Ahead (2004), UN, FIG, PC IDEA Inter-regional Special Forum on the Building of Land Information Policies in the Americas- available at , https://www.fig.net/pub/mexico/papers_eng/ts2_deininger_eng.pdf), (accessed November 27, 2014); Stickler, supra note 1 at 11.

[85]Hernando de Soto, The Mystery of Capital: Why Capitalism Triumphs in The West And Fails Everywhere Else, Basic Books, 2000.

[86]Bruce, J.W, Do indigenous tenure systems constrain Agricultural Development? In Land in African Agrarian Systems, Madison, WI: University of Wisconsin Press (T.J. Bassett and D.E Crummey, eds., 1993) at 35-36.

[87]Rose Nakayi, Neglected yet not discarded? An analysis of the state of customary land rights in Post-conflict societies: Insights from Acholiland, Paper presented at the International Conference on Governance and Post conflict Reconstruction in Northern Uganda (Gulu, 7-8 November 2013).

[88]Hct-02-Cv-Ma- No. 126 OF 2008, herein after referred to as "the Ocula" case.

[89]Rose Nakayi, The Challenge of Proving Customary Tenure in Courts Of Law in Uganda: A Review of The Case of Hon. Ocula Michael & others Versus Amuru District Land Board, Major General Oketa Julius, Christine Atimango and Amuru Sugar Works Ltd. Hct-02-Cv-Ma- No. 126 OF 2008, 451-478 East African Journal of Peace and Human Rights, Vol 19. N0. 2 (2013).

no central registry for documents of evidence of title to it. There were however attempts to survey and register land in some parts of the country, at some point in the history of the country. This was in some places such as Bugisu and Ankole on pilot schemes following recommendations of the East African Royal Commission. These were not wholly successful. Yet, the belief was that non-registration of customary land was a stumbling block to increased marketability of land and promotion of production as opposed to subsistence uses of land.

For land registered under the Registration of Titles Act Cap 230, and according to section 37(1), the register book contains records of certificates of title and of all dealings in a given piece of land. Land registries are normally public, and convenient central places that people can go to ascertain title to land; and by corollary who is entitled to pass rights/title to that land. Legislative reforms in Uganda made provision for certification of customary land such that it can catch up with the other tenures in that arena.

Efforts aimed at introducing certificates of customary tenure and conversion of customary land into freehold are embedded in the Constitution of Uganda 1995. Article 237 (4) gives owners of land under the customary system an option to acquire certificates of ownership to their land, and another option to convert their interest into freehold. All this has to follow procedures that Parliament was to lay down. These were later laid down in the Land Act of 1998. Specifically, section 4 (1) provides that:

"Any person, family, or community holding land under customary tenure on former public land may acquire a certificate of customary ownership (CCO) in respect of that land."

Under the Land Act, applications for certificates of customary ownership are made to the Land Committees that are established under section 5, thereof. The procedure is relatively long and involves the preceding Committees and Land Boards which play a diversity of roles. In brief, according to section 5 of the Land Act, the Committee does the following, among other things, on receipt of an application: (i) verify and mark boundaries (ii) Demarcate rights of way and other easements over the land (iii) Adjudicate and decide in accordance with customary law any question or matter concerning the land referred to it by any person having interest in the land to which the application is made (iv) Where one, or more persons exercised rights to the land under customary law, such rights should be recognized as owner ship of that land and those persons shall each be entitled to be issued a certificate in accordance with the shares held and the nature of their ownership (v) Record third party interests on the land (vi) Safeguard the interests and rights of women, absent persons, minors and persons with or under disability in relation to the land to which the application refers. Send the record/ report to the Board with recommendations on whether to grant or not a CCO and also (vii) advise the Board on issues of customary law affecting the land. The Board may or may not issue the CCO and an aggrieved party has a right to appeal to the Land Tribunal.

The Land Act goes ahead to stipulate the incidents of a CCO once issued -- under section 8. Under the other tenures such as Mailo and Freehold, a certificate of title once issued is conclusive evidence of title to land, and is indefeasible; except in a few circumstances that may include fraudulent dealings leading to the registration of the registered proprietor. In such tenures, possession of a certificate of title is evidence of absolute ownership of land, and absolute right to transfer it or create other interests in it. On the other hand, the CCO as read from the incidents in section 8 does not confer that high level of leverage to its holder. Section 8 (1)-

A certificate of customary ownership shall be taken to confirm and is conclusive evidence of the customary rights and interests specified in it, and the land to which the certificate refers shall continue to be occupied, used, and regulated and any transactions in respect of the land undertaken and any third party rights over the land exercised in accordance with customary law."(emphasis added)

From the above, and read together with section 8 (2) of the Land Act, a CCO does not confer to its holder absolute rights -- free from all customary claims on the land that is described in it. The holder of such a certificate would still

[90] Id., 13-16.
[91] Nakayi, supra note 89.
[92] For details see, Nakayi supra note 89.
[93]Nakayi, supra note 89.
[94]Asiimwe, supra note 68, at 174.
[95]Nakayi, supra note 82, at 122, 131.

be bound to respect the customary land rights of some categories such as women on as guaranteed in custom. All that the certificate is meant to offer is evidence of customary rights or interests in land, a right of the holder to, among other things, lease, grant usufructuary rights over it to another, mortgage or pledge, dispose by will, sale/transfer. All this is subject to restrictions or conditions set in the CCO and subject to other third party claims on the land that customary law recognizes. It is also important to note that third party interests have to be protected, although in practical terms may usually become insignificant when land has to be given away.

In light of LSLAs, a holder of a CCO may not lawfully avail land for investor acquisition in disregard of other valid customary claims to land such as those of women; that may be seen as less than those of the certificate holder. It is also important to note that at the time of writing (July 2014) institutions that are mandated to receive and process CCOs are not in place across the country. These include the Land Committees and the Recorder. Under the Land Act Cap 227, section 68 (2)- The office of the Recorder provided for in the Land Act is in essence tasked to keep the records of transactions in customary land for which certificates of customary ownership are issued.

(iv) Conversion of customary land into freehold

Provisions on conversion of customary land into freehold without a reverse procedure is indicative of an intention to take the customary to wane. This is more so since historical and contemporary efforts have always favoured other tenures over the customary. This is compounded in the Constitution of Uganda and Land Act, providing for the possibility to convert customary land into freehold. Particularly, section 9 says: "A person, family, community or association holding land under customary tenure or former public land may convert the customary land into freehold tenure."

The conversion of customary land in itself might not be a problem, but there is insufficient empirical evidence to show that the solutions to the land governance loopholes in the customary tenure can be cured by converting it into freehold. Rather, there is overwhelming evidence of the so many governance glitches and insecurity of tenure of freehold land, and mailo. Corruption, forgery of land titles and land grabbing have characterized these tenures, thereby not putting them in an enviable position for the customary to emulate, and even be converted into any of them. There is a potential for the provision to promote land grabbing if no proper mechanisms are put in place to ensure that it is the customary "owners" that convert their land into freehold. If land is grabbed and a freehold certificate is issued to a grabber, the customary owner(s are destined to lose, due to the overwhelming protection that the Registration of Titles Act Cap 230 gives to a freehold certificate holder. Note, however, that if the conversion processes were well guided and women's customary rights to land were converted into freehold titles in their names, there is a high possibility that they would be better protected in cases of LSLA. Their freehold titles would bestow upon them distinctive property rights, not regulated by custom.

B. The Uganda National Land Policy

The policy was launched 2014 and contains a number of policy statements and strategies aimed at achieving them. Below is a discussion of the pertinent issues in the Policy for this paper:

i. Protection of women

The Policy applauds the Constitution and the Land Act Cap 227 for making provision for the protection of the rights of women on land. It however notes that women have not fully benefited from these protections for a number of reasons including: (i) the prevalence of customary practices that are discriminatory against women and barring them from enjoying land rights, (ii) women's inability to afford land available on the market, (iii) limited coverage of protection for family land in the Land Act to spouses and not widows, divorcees (iv) discriminatory succession laws that have been impugned by a court case but not yet amended.

Under Policy Statement No.65 (a) and (b), the government makes a promise to promote children and women's right to own and inherit land, and also to ensure that men and women enjoy equal rights to land at all stages; before, during and after marriage. Various strategies

[96]Baleke Kayira Peter, Sebwato Patrick, Mugerwa Antonio, Nanjaye Lusi, Kansiime Godfrey vs. Attorney General of Uganda, Kaweri Coffee Plantations Ltd. Engineer Emanuel Bukko Kayira (Landlord), Civil suit No179 of 2002 before Mr. Justice Anup Singh Choudry. (Herein after "Baleke Kayira case").
[97]Baleke Kayira case, Id., Paragraphs 17-26.
[98]See, Land Act, supra note 13, section 40 (4).
[99]The Uganda Investment Code Act, Cap 92, section 15 (2).
[100]Id., paras 32-36.
[101]See, Ivan Okuda and Fred Muzaale, Museveni wants two weeks to fix Kayunga land wrangles, Daily Monitor, 5 July 2013.

are suggested for purposes of achieving the above and these include: regulation of customary law and practices through say; sensitization of women on issues to do with discrimination, review of customary rules on land, restoration of traditional authority in land administration. Further, in an effort to get rid of gender inequity and inequality in the field of succession and statutory law, the government pledges to come up with matrimonial property law, allow for co-ownership of family and matrimonial land and also amend the Succession Law.

Equally important is Strategy No. 68 in which the government plans to ensure that women are fully integrated in decision-making structures on access and use of land by: ensuring that gender is mainstreamed in development planning; international conventions against discrimination are domesticated; involving the Equal Opportunities Commission in the implementation of the Land Policy; and also, encouraging faith-based organizations to support women and children's rights.

The above policy statements and strategies are grand, although some raise a number of questions. The inclusion of the co-ownership clause in the Land Act was and has remained a very politically and socially charged issue, riddled with contestation. Therefore, one wonders whether it will be achieved soon in a situation where we have not seen a political transition and therefore a shift in the numbers of members of parliament in the dominant party without clout to influence outcomes.

It is further questionable whether domestication of international conventions that outlaw discrimination against women will make a difference, especially in the absence of evidence that it was the lack of it that brought about laxity in the implementation of provisions of international conventions that Uganda was a party to even before the Policy. Uganda has, for example, been a party to the CEDAW even before the Policy but it has been home for discrimination against women.

To add to the foregoing, The Equal Opportunities Commission has been in existence before the National Land Policy. Indeed, there are a number of progressive provisions in the Constitution and the Land Act that the Commission would work with to promote the rights of women on land, but it has not fully done so. What difference is the stipulation in the Land Policy going to make in bringing the Equal Opportunities Commission on Board? More is required beyond just bringing the Commission on Board to fight the women's cause and ratifying international conventions.

ii. Land resource for development

LSLAs at times take place in a milieu where the land is needed as a resource to promote investment for growth and development. The National Land Policy dedicated space to address some of the pertinent issues concerning this. It recognizes that availing land for investment can have adverse effects on food security, small-scale farmers, and could also increase land conflict. It is therefore imperative to devise, "Mechanisms to deliver the right balance between improving livelihoods, protecting vulnerable groups, and raising opportunities for investment and development …"

Further, under Policy Statement 87 (a) and (b), the government pledges to promote investments that are in line with national development objectives, laws and procedures, "appropriate evaluation, due process and due diligence", and also put in place "measures to mitigate the negative impacts of investment so as to deliver equitable and sustainable development."

The Policy stipulates a number of strategies aimed at achieving the above, and key among them: the promotion of long-term benefit sharing among investors and locals in place of once-in-a-lifetime compensation schemes; and Protect the land rights, including rights of citizens in the face of investments with measures for, but not limited to; (i) Clear procedures and standards for local consultation; (ii) Mechanisms for appeal and arbitration (iii) Facilitation of access to land by vulnerable groups, small-scale land owners and land users in the face of large-scale farming interests; and (iv) Protection against degradation of natural resources and sensitive eco-systems.

If implemented, the above Policy pronouncement will go a long way in the protection of the poor in the face of LSLA for investments. They would also align Uganda's practice

[102] Referred to generally as 'committee on illegal land evictions', set up 2012/13; see Nantaba land committee awaits new mandate, 21 October 2013, http://www.newvision.co.ug/news/648624-nantaba-land-committee-awaits-new-mandate.html (accessed June 3rd 2014).
[103] Baleke Kayira case, supra note 96, Paras 51, 46-49.
[104] Baleke Kayira case, supra note 96, Para 40.
[105] Social and Economic Action Center and the Center for Economic and Social Rights vs. Nigeria - African Commission on Human and Peoples' Rights, Comm. No. 155/96 (2001), Here in after "the SERAC case."

with recognized international best practices such as the need for consultation.

iii. Limitation of "ownership" rights for non-citizens

In a bid to protect and promote land rights for all, the National Land Policy, among other things, delimits the kind of rights non-citizens can claim on land. They can only claim leaseholds for not more than 49 years. Among the strategies stipulated for this is to "…convert all rights and interests in land granted to non-citizens to leaseholds of not more than 49 years with an option to renew." The restriction of rights of non-citizens over land to leaseholds is not a new invention of the National Land Policy, but has existed in the laws of Uganda. By virtue of the constitution Article 237 (2) (c) and the Land Act section 40 (3), non-citizens are allowed to hold land on leasehold terms not exceeding 99 years. It should, however, be mentioned that the retrospective application of strategy 97 (vii) to existing leases of more than 49 years might prove problematic. This is more so since pre--existing legal framework did not have the 49 year restriction on the length of leases that, say, foreign direct investors can take out. They are allowed to take put to 99 years. All hope should not be lost on the above. The National Development Plan envisages harmonization of legislations on land as a key strategy in achieving the objective of creating a pro-poor policy and legal framework governing the land sector.

C. Investment-related Laws

Uganda is among those countries in Africa with improving growth rates by the year due to domestic and foreign investments.

Uganda's foreign investment is said to be largely in soft drinks and breweries for the locals, although there is also investment in cement, plastics, food processing, footwear, etc. Among the difficulties that direct foreign investors have been facing in Uganda is accessing land and also utilities. In an effort to tackle this problem, Uganda Investment Authority came up with a land bank; comprising of available land for investment from both the private persons and government; such as the Namanve Industrial Park. The preceding was done around the year 2000. It is therefore recommended that if Uganda is to make forward strides in investment, land tenure reform is imperative, together with efforts to avail land for commercial development.

The Uganda investment Authority is established under the Investment Code, to execute a number of functions including: promote and supervise investment, provide information to investors and also secure their licenses. In as much as victims of some investments can go for a long time without compensation for loss of, say, land, the Investment Code contains strong protections for investors. Section 27(1) protects foreign investors' property from compulsory acquisition "except in accordance with the constitution of Uganda". Where compulsory acquisition takes place, the foreign investor is entitled to:

"Compensation in respect of the fair market value of the enterprise specified in the enterprise or an interest or right over property forming that enterprise shall be paid within a period not exceeding twelve months from the date of taking possession or acquisition."
[Emphasis added]

The stipulation of an exact period within which compensating has to be paid to an investor as above clears any uncertainties that might arise in disputes about when is reasonable time within which to pay compensation. In this regard, it is easier for the foreign investor to determine breach (after the 12 months) and take appropriate legal action than a displaced Ugandan from land.

It should further be noted that the Land Acquisition Act deals with compensation in cases where the government takes over land from private people. There is no law regulating compensation for people from whom investors directly take land.

D. The Mining Laws and Access to Information Act

The Mining Act and the Access to information Act are, among the other pertinent laws, in the assessment of the quality of governance in LSLAs in Uganda. This has more recently been the case due to the increased mining in some parts of Uganda such as Karamoja, with a number of

[106]Baleke Kayira case, supra note 96.
[107]Baleke Kayira case, supra note 96, Para 93.
[108]See, Uganda Law Society Statement on, The Judgment Delivered By Justice Choudry in Hccs 179 of 2002 Baleke Kayira Peter & 400 Others V. Attorney General and 2 Others, March 29, 2013, available at,http://www.uls.or.ug/uploads/ULS%20Statement%20on%20Hon.%20Justice%20Choudry's%20Judgment-20130329-191041.pdf, accessed July 18, 2015.
[109]Id.
[110]See, Baleke Kayira case, supra note 96, Paragraphs 30 & 31.
[111]Centre for Basic Research Workshop, April 30, 2014.

human rights implications, and also (for information), the discovery of oil in the Albertine Graben.

Under Article 244(1) of the Constitution, minerals and petroleum that are found under any land are the property of the government of Uganda to hold on behalf of all Ugandans. Section 3 of the Mining Act provides in similar terms, that the minerals are property of the government. Yet, under article 237 of the Constitution, all land in Uganda belongs to the people to hold as freehold, customary, mailo or leaseholds. This creates a situation of contention where any land claimed by individuals or communities under any of the above tenures contains minerals (or petroleum), that are "property of the government" to exploit for the benefit of all Ugandans. Indeed, the constitution requires that such mineral ores and petroleum should be exploited, "taking into account the interest of the individual landowners, local governments and the Government". Taking care of the interest of the people resonates compensation for any losses suffered in the process. Indeed, section 82 (1) of the Mining Act requires that the owner or lawful occupier of land with minerals should make a demand for payment (from the holder of the mineral rights) for reasonable compensation "for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder's operation…" such claims for compensation have to be made within a period of one year and have to be at the market value of the land. Further, land owners or lawful occupiers can claim royalties under section 98 (2). The above would be the law applicable to the communities in Karamoja. Karamoja region has the potential to produce another land crisis in Uganda, as a result of many factors. First, the reduced viability of traditional modes of survival such as semi-nomadism, pastoralism and agro-pastoralism as a result extreme weather changes; second, more government inclination towards wildlife conservation that has led to gazetting of lands for that purpose; third, existence of many mineral ores that are available for investor exploitation.

Customary tenure is predominant in Karamoja. There are reports of the challenges that have been faced in the mining industry thus far, leading to violations of rights of the Karimajong affected by the mining industry. These include lack of information to, for example, negotiate for royalties, contamination of water sources and a heightened fear of land grabs. This is an indication that the legal framework stipulated above has not been implemented.

It should be noted that claim for royalties and actualization of some rights of persons on land with petroleum and mineral ores calls for having sufficient information. Indeed, the Access to Information Act 2005 puts in place the framework within which persons can access information or records of the state from any public body; with an exception of situations in which such information would prejudice national security and sovereignty. The Act is meant to promote "efficient, effective, transparent and accountable government", among others. It should however be noted that many of the would-be beneficiaries of the Act do not know about it. It is also reported that 50% of those that seek information mainly about resource allocation and local government affairs get their requests rejected. Further, according to research conducted by Human Rights Network-Uganda, there are still a number of provisions in some of Uganda's laws that are inconsistent with the right to access information; thereby defeating the Access to Information Act.

E. Land Governance Institutions: Some Pertinent Issues

Uganda has a robust structure of judicial, quasi-judicial and other institutions with mandate to perform certain functions within the land governance realm. As stipulated in Chapter 8 of the constitution, these include the Court of Judicature right from the Magistrates Courts, High Court, Court of Appeal (Constitutional Court) and Supreme Court. These have mandate to handle land matters that are brought before them. Beyond mere provisions for these institutions in the laws of Uganda, there are number of challenges associated with the outcomes of accountability processes through the above institutions. First, they are not so easily accessible to the rural poor; a number of people cannot (financially) afford the expenses that come with filing a case in the above courts; the technical rules of procedure are too complicated to an ordinary person and these might keep him/or her out; there are allegations of widespread corruption within the court system that makes the public lose trust in it.

[112] John Mugambwa, A comparative analysis of land tenure Law Reform in Uganda and Papua New Guinea, Journal of South Pacific Law (2007) 11 (1) at 42.
[113] Mugambwa, Id.
[114] Andrew James Wood,Developing the East African: The East African Royal Commission, 1953-1955, and its critics (Unpublished doctoral dissertation, Department of History Rice University Houston Texas, 1997) at 1.
[115] Land Act, supra note 13, sections 4, 5, and 6.

In addition to the above, the statute books also provide for Local Council Courts. Although these courts are accessible to the poor, their mandate as stipulated in the Local Council Courts statute is limited. At the time of writing this section (July 2014), the LCs are not legally operational in the country, since elections have not taken place. They were also subject to a court challenge as seen in the case of Rubaramira Ruranga vs. Attorney General and another.

Also, over the years, there has been looming uncertainty about whether or not Local Council Courts have mandate to handle land matters. The case of Mutonyi Margaret Wakyala and others versus Tito Wakyala and others, decided that, LCIs are courts of first instance on land matters, and appeals from them go to LCII and III in that order.

There have been a number of challenges associated with the operation of Local Council Court. Although by law women are supposed to be represented on these committees, they are male-dominated and this at times entrenches patriarchal approaches against women that may appear as parties to cases before these courts. Other reported common shortfalls of these courts include: proceeding without quorum, corruption, disregard to principles of natural justice, etc.

Beside the above institutions are Land administration institutions that may be instrumental in matters of LSLAs. Key among these are the District Land Boards (DLBs). They are established in every district and their role/mandate is set out in Articles 240 and 241 of the Constitution of Uganda and the Land Act cap 227. According to those laws, DLBs mandate includes: to hold and allocate land in the district which is not owned by any person or authority; facilitate the registration and transfer of interests in land. Besides the above, they also take part in processes of certification of customary land rights and conversions of customary land into freehold; by assessing the record of application from the lower bodies such as the LCs and Land Committees.

District Land Tribunals are provided for in the Land Act sections 74-79 to determine disputes relating to land. Their establishment at the District level would theoretically make them accessible to the local communities. Due to financial and technical reasons, District Land Tribunals no longer legally exist. When their statutory mandate lapsed, it was transferred to Magistrates' courts vide a Practice Direction No.1 of 2006. The practice Directive provides that following the expiry of contracts of chairpersons and members of the District Land Tribunals, magistrates' courts presided over by a Magistrate Grade 1 and above shall continue to have jurisdiction in land matters in accordance with section 95(7) of the Land Act. According to the case of Sarah Nakku vs. Commissioner for Land Registration HCCA No. 064/2010, this Practice Direction was made to enable magistrates' courts to exercise jurisdiction in land matters until new chairpersons and members of District Land Tribunals are appointed.

For disputes arising in customary tenure, it is worth mentioning that under the Land Act Section 88 (1), mediation as a means of settling them is provided for. In this sense, the elders are the instrumental players -- mediators. The fact that these apply custom to a great extent shows that women would be disadvantaged, since in a number of communities, customary norms value men as the land owners and women, more often than not, mere land users. Some research has, however, painted a unique picture for regions such as Acholi, Lango and Teso, where customary tenure is said to be favourable to women.

It should also be noted that it is atypical for women to be in decision-making positions in such mediation fora since the icon of an elder in many societies is a man and not a woman. The women would further be disadvantaged in these processes since there are no clear guidelines that these bodies use to facilitate the mediations, and there is no supervision of their work by any other body to ensure that they heed to principles of natural justice in their work. The above discussion has shown that the lower levels of land adjudication and governance bodies such as LCs and traditional authority are most accessible to the poor. There is also evidence that these bodies do not have a steadfast good record in terms of transparency and accountability in handling cases of land. The poor, if dispossessed of their land would therefore be at a disadvantage. Also writing

[116]Land Act, supra note 13, Section 7.

[117]See, Registration of Titles Act, Cap 230, Laws of Uganda, Section 59, and 64.

[118]See, for example, the case of Kampala Bottlers Limited vs. Damanico (U) Limited, CA No.22 of 1992 (unreported).

[119]See, Viet, supra note 77 at 2-3.

in terms of LSLAs, the perpetrators of such acquisitions are normally big parties such as government, foreign companies, and logically they would not be compelled to appear in cases filed before these lower bodies.

Turning to the point of women, the law makes an effort to provide for quotas for women on the various bodies. Provision for such quotas and actual sitting of these women on the committees is not sufficient if they do not take part in the deliberations of such Committees and decision-making. Indeed, it has been reported that in many instances women only fill the legally provided space for them, but rarely do they represent the women's views through active participation. The participation of women as decision-makers is therefore marginal.

The discussion in the above sections shows that the laws of Uganda have for most part not provided people with sufficient protection against land grabs/evictions. Further, although it provides for a relatively robust institutional framework of both judicial and quasi-judicial institutions, these have not entrenched the culture of ensuring accountability for land grabs or large-scale acquisitions. Below is a discussion of the international framework on the same

[120]See, Hunt, supra note 70.
[121]See,Land Reform Decree 1975 section 3 (1); making customary occupiers "tenants at sufferance" susceptible to eviction any time.
[122]Constitution, supra note 43, Article 237 (4) (b); Land Act, supra note 13, section 9.
[123]Joan Akello, Land fraud threat, The Independent, 09 August 2013.
[124]Sarah Kulata Basangwa, Commissioner Land Registration Before Anticorruption Court, http://www.igg.go.ug/updates/news/sarah-kulata-basangwa-commissioner-land-registration-before-anticorruption-court/ (accessed May 26, 2014).
[125]See, Sections 59 and 64.

1.11. INTERNATIONAL LEGAL, POLICY AND OTHER REGIMES TOUCHING ON LSLA

This section looks at Uganda's obligations under the international legal and other regimes that govern LSLA and issues of transparency and accountability. Not all are binding; they range from binding agreements, non-binding but persuasive soft law instruments as will be seen below.

A. The International Human Rights Law Regime

LSLAs may have implications for Uganda's international human rights obligations. Uganda is a party to a number of international human rights instruments. A typology of obligations to respect, protect and fulfil arises for Uganda under these instruments. The obligation to respect is to the effect that states should not violate people's rights where the rights exist; to protect calls upon states to take steps to prevent violation of human rights by it and third parties; and to fulfil makes it incumbent upon the state to facilitate people to enjoy their rights. Promoting LSLAs may inhibit the state's ability to carry out its obligations under international human rights regimes in numerous ways.

The right to food, for example, is guaranteed under article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), 1966. The article obligates the state to "ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger". If a population in Uganda that depended on their land to provide food for themselves is denied land in instances where it is given away in a LSLA project, the right to food is by implication violated. Access to land is invaluable in the quest for the right to food for women and others.

LSLAs may also lead the state into violating its peoples' right to self-determination. This right is guaranteed under the ICESCR and ICCPR, articles 1 and 2. The right means that people should be at liberty to dispose of their natural wealth and they should not be deprived of their basic means of subsistence. Interpreting this right in a case brought under the African Charter on Human and People's Rights (ACHPRs), the African Commission pointed out that this right imposes an obligation on governments to protected people in their jurisdiction against deprivation of that right by investors; local or international. Uganda is a party to the ACHPRs.

Further, LSLAs may also have implications for the right to development. Although a much contested right, it is provided for under: the Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly in its resolution 41/128 and the African Charter on Human and Peoples' Rights. Under article 1.1 of the Declaration on the right to Development says:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

As is usually stated, states promote LSLAs in the name of promoting investment and development. That notwithstanding, the right development would still require states to ensure active participation of the people or communities likely to be affected by any such projects. The Declaration on the Right to Development, adopted in 1986 by the United Nations General Assembly in its

[126]Uganda National Land Policy, supra note 14, strategy No.63.
[127]See, Uganda National Land Policy, supra note 14, strategy, No. 64; also see, Law Advocacy for Women in Uganda vs. Attorney General, Constitutional Petitions Nos. 13/05 & 05/06 [2007] UGCC 1 (5 April 2007) Uganda's Constitutional Court.
[128]Uganda National Land Policy, supra note 14, Strategies 66 (i) - (v).
129Uganda National Land Policy, supra note 14, Strategy 67 (i) - (iii).
[130]Uganda National Land Policy, supra note 14, Strategy 68.
[131]See, Asiimwe, supra note 68.

resolution 41/128; article 2 (3) calls upon states to make national development policies that aim at improving the wellbeing of people on the basis of their participation in development and fair distribution of benefits. In addition, under Article 8 the states are called upon to take effective measures aimed at ensuring women's active participation in development. The state is further required to fight social injustice through reforms. In short, active participation and partaking of the profit from any project are very pertinent for the fulfilment of the right to development under international human rights law. Women as key stakeholders have to participate, and the state needs to put in place a legal, policy or administrative framework to allow for the participation and benefit for women in a manner that is inclusive.

B. Basic Principles and Guidelines on

Development-based Evictions and Displacement

These Principles and Guidelines on Development-based evictions are intended to offer a guiding framework on human rights, mainly within the context of evictions that are linked to development. In the guidelines, the term "forced eviction" is used to apply to:

"… acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection."

Such forced evictions are carried in the name of implementing development projects such as those related to mining and the extractive industry, large-scale energy projects, constructing of dams and other land acquisitions for ordering of cities, upgrade of slums, etc. According to the Principles and Guidelines on Development-based evictions, these become problematic in instances where there are tenure insecurities and also lead to a number of human rights violations.

For that matter, the Principles and Guidelines on Development-based evictions set out to stipulate obligations for states in such cases, and these include to ensure that such forced evictions do not take place in a manner that leads to violations to international human rights and humanitarian law, and that they make an effort to respect general principles of international public law and their other international obligations. So the states take a primary responsibility to protect people from such evictions and the other rights that could be threatened by them, including the right to a home, security of tenure, food, privacy etc. It is a stipulated state obligation to ensure that in any context of forced evictions, men and women enjoy equal rights to protection from forced eviction and enjoyment of rights such as housing and security of tenure.

The Principles and Guidelines on Development-based evictions do not necessarily outlaw forced evictions, but set the parameters within which such evictions should take place without necessarily violating the right of the people. The states are therefore called upon to ensure that such evictions only take place in "exceptional circumstances and must be:"

"…a) authorized by law; (b) carried out in accordance with international human rights law; (c) undertaken solely for the purpose of promoting the general welfare; (d) reasonable and proportional; (e) regulated so as to ensure full and fair compensation and rehabilitation; and (f) carried out in accordance with the present guidelines. The protection provided by these procedural requirements applies to all vulnerable persons and affected groups, irrespective of whether they hold title to home and property under domestic law."

This paper has shown that LSLAs are at times carried out on the pretext of development /public good. Indeed, it is not in all cases that they abide by the law, and many times they lead to forced evictions within the context of these Principles and Guidelines on Development-based evictions. The stipulation in the above extract that protection is for all irrespective of whether they hold title to land and

[132]Hereinafter "CEDAW", Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19. Uganda ratified the CEDAW on July 22, 1985.

[133]Established under the Constitution article 32 (3) and (4) and had to be set up within one year after the coming into force of the constitution (Amendment) Act, 2005. Note however that the Equal opportunities Commission Act, 2007 providing for the detail of the Commission was passed in 2007; although still before the Uganda National Land Policy.

[134]Uganda National Land Policy, supra note 14, No.86.

[135]Id.

[136]Uganda National Land Policy, supra note 14, strategy No. 88 (iv).

property in domestic law cannot be underestimated for women. They oftentimes claim rights that are not easily verifiable in domestic law, or even recognized.

Further, the states have to prohibit evictions that are not in line with international human rights obligations through passing pertinent laws and policies. The Principles and Guidelines on Development-based evictions go ahead to stipulate state obligation from the prevention of forced evictions, steps that must be taken prior to evictions such as issuance of appropriate notices, information sharing, legal representation of the affected, exploration of alternatives to evictions etc. It goes beyond to cater for steps that have to be taken during eviction, after eviction and the remedial approaches that states should take that may include compensation, restitution and return, post-eviction monitoring processes. All these are meant to be safeguards against violations of human rights in processes of evictions.

Beyond stipulating obligations for states, the Principles and Guidelines on Development-based evictions stipulate obligations for the international community. International institutions and bodies are expected to pay particular attention to the obligation against forced eviction and, at the same time, transnational cooperation should respect the prohibition against forced eviction in the process of engaging in their work.

The Principles and Guidelines on Development-based evictions offer a compressive package of protective safeguards starting with the pre-eviction to the post-eviction which, if followed, would reduce the negative consequences of forced evictions connected to LSLAs. Note, however, that they are not binding on states. At the same time, the human rights violations that arise in cases of evictions related to LSLAs do not necessarily take place in the context of lack of guidelines, principles or laws to guide them. There are a sufficient amount of these. This therefore means that the problem is not necessarily solved by stipulation of laws, guidelines and principles, without necessarily tackling state impunity and overemphasis on development agendas over protection of rights for the people.

C. The Maastricht Principles on Extra-Territorial Obligations (ETOs) of States in the area of Economic, Social and Cultural Rights

Although not necessarily of a binding nature, these principles are pertinent in the area of LSLAs. The principles were development in 2011 in Maastricht, and the experts that put them together made reference to Uganda's Mubende case involving evictions by the German Company Neumann Kaffee Gruppe. Among the highlights of these principles is the affirmation: (i) that states have a duty to cooperate and render assistance for each other in ensuring that economic, social and cultural rights that are embedded in international human rights law are enjoyed; and (ii) that in international law, a state may be held accountable for violations of human rights that take place outside its geographical territory- as long as it is a result of an omission or commission. By corollary, off shower investments by multinational corporations that might be characterized as LSLAs leading to forced evictions, environmental degradation, abuse of labour rights may be imputed on the state in which such companies originate (or are incorporated).

D. Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

These are soft law Guiding Principles providing for obligations of states to offer remedies in cases of gross violations of international Human Rights Law. States are expected to act by, among other things:

(b)Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;

(c) Making available adequate, effective, prompt and appropriate remedies, including reparation,….;

On the whole, states have an obligation to ensure that all victims of gross violations of international human rights law have effective judicial remedies and access to Justice within their domestic jurisdictions but in accordance with International Law.

[137] United Nations Conference on Trade and Development, Investment Policy Review-Uganda, 2000, at 3, available at; http://unctad.org/en/docs/iteiipmisc17_en.pdf, (accessed November 17, 2014) (here in after "UNCTAD 2000").

[138]Uganda National Land Policy, supra note 14, statement 96 (b).

[139]Uganda National Land Policy, supra note 14, Strategy 97 (vii).

[140]International Chamber of Commerce, The world Business Organization, supra note10, at 51 and 65.

[141]National Development Plan for the period 2010/11 to 2014/15, 421 Objective 1, strategy 2 Page 163, available at, http://opm.go.ug/assets/media/resources/30/National%20Development%20Plan%202010:11%20-%202014:15.pdf (accessed November 27, 2014).

[142]UNCTAD 2000, supra note 137.

E. Initiatives Under the World Bank and other International Standards

The World Bank has of recent heightened concern about LSLAs for the potential they have to erode land rights of the world's poor especially in Africa. Yet, LSLAs could be a conduit through which agricultural investments could be boosted; to produce food for the burgeoning world population that is estimated to grow by two billion by the year 2050, calling for a 70% increase in food produced. The Bank therefore believes that LSLA have to be carefully monitored and regulated in addition to improving land governance systems that would promote respect for land rights for all in a number of countries in Africa. It should be noted, however, that the actions of the World Bank have drawn mixed reactions, with some accusing it of double standards in promoting LSLA for development, but at the same time expressing fear of their likely catastrophic consequences.

Most pertinent among the World Bank's efforts at improving governance of land is the Land Governance Assessment Framework (LGAF). It is intended to help various stakeholders at benchmarking governance, identifying priority areas for reform and also be used in taking forward focused policy dialogue. The framework is built around five indicators: legal and institutional framework, land use planning, management and taxation, management of public land, public provision of land information, dispute resolution and management. It is a one-stop centre for governments to get information on how they are faring on the various aspects of land rights protection in the various tenures as protected in the laws. It is believed that using the framework to advocate for reform in the land sector would go a long way in promoting the role of that sector in economic development. It could also have implications for the protection of small-scale farmers against the larger foreign investors in the agricultural sector.

Believing that the LGAF will in itself, without any clearly targeted efforts, deliver vulnerable small-scale farmers in the face of the land rush by powerful investors is foolhardy for a number of reasons: first, the LGAF is a mere performance indicator for governments and not a binding law. One cannot therefore assume that the moment it shows poor performance, the governments will act on it to satisfactory standards. Second, the LGAF's contribution to the protection of the poor land owners has to be accompanied by willingness of the potential/ land grabbers in the name of investment to respect the rights of the land owners, or act in accordance with set international and other national legal standards for equitable land acquisitions. Third, other players that have from time to time financed the investors involved in LSLAs ought to cooperate by setting conditions meant to protect against unfair land acquisitions by those they fund and demand for accountability. Such institutions include the International Finance Corporation (IFC). There are records of a number of complaints filed concerning projectsfunded by the IFC. In addition, complaints have been filed against the World Bank by communities, complaining of violations of their rights in investment projects funded by the Bank in a number of countries including Uganda.

The LGAF for Uganda makes a number of findings, and on indicator 11 concerning transfer of public land to cater for private interests, it notes among other things that these transfers have not necessarily been "for public interest" (example of an attempt to give away part of Mabira Forest); not done through transparent procedures (sharing of Butabika Hospital land among individuals); the lack of a law or guidelines to guide giveaways by the Uganda Land Commission.

Uganda's LGAF also identified a loophole in the processes of transfer of huge pieces of land to investors, and therefore makes a recommendation that there is need to streamline the processes through which LSLAs take place and, more so, within the wider context of investment. Another area where gaps were identified is in the valuation processes; in which case it is recommended that valuation laws and systems need to be revamped to put them in tune with new developments such as LSLAs for investment and the mineral industry.

Specifically on the status of women and land ownership in Uganda, the LGAF confirms that majority of women's

[143]UNCTAD 2000, supra note 137.
[144]UNCTAD 2000, supra note 137.
[145]International Chamber of Commerce, The world Business Organization, supra note 10.
[146]Id.,
[147]Id., at 17 and 18.
[148]The Investment Code, Cap 92, Section 2.
[149]The Investment Code, Cap 92, Section 6.
[150]See, Kaweri Coffee Plantations Ltd., Engineer Emanuel Bukko Kayira (Landlord), Civil suit No179 of 2002.
[151]See the Land Acquisition Act, cap 226.

rights are anchored within the customary sphere. The country, however, lacks accurate/up-to-date statistics on how many women hold title to their land; the usually cited 7% is out of date. Yet, the registration system is not set in such a way as to report on the data entered in a gender disaggregated manner. With this, the current position as estimated in the LGAF that women own 20% of the registered land in Uganda is neither detectable nor is it reflected in the official systems.

F. Voluntary Guidelines for Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

This is seen as a grand initiative that is supported by the World Bank, among other stakeholders, for its potential to make a contribution to improved land governance.

The Guidelines are by the United Nations Food and Agricultural Organization. These are intended to act as a guide in processes of improving tenure governance, fisheries and forests for a number of purposes including ensuring food security. The Guidelines set a number of safeguards to guide states in dealing with land tenure governance and these include: respect for tenure rights as stipulated in national and international law; consultations with all affected persons including indigenous peoples; respect for rights of both men and women; prevent forceful evictions that are not in line with their national and international laws. In addition to the above, the principles call upon states to recognize the indispensable value of land to indigenous communities and those with customary tenure. Any state action on such land should be in line with their obligations as stipulated in national and international law. Specifically, the state should, "…provide technical and legal assistance to affected communities to participate in the development of tenure policies, laws and projects in non-discriminatory and gender-sensitive ways."

Further, Principle No.12 deals with the detail about investments. According to this, … states should promote and support responsible investments in land, fisheries and forests that support broader social, economic and environmental objectives under a variety of farming schemes." …"Responsible investments should do no harm, safeguard against dispossession of legitimate tenure rights holders and environmental damage, and should respect human rights.

In addition, states are called upon to support those investments by small-scale farmers, ensure transparency and participation in dealings on land, forests and fisheries, and also put in place safeguards for land rights holders from the negative consequences of large-scale land transactions.

Equally important are the principles in support of restitution in cases where legitimate tenure rights holders lose their interests. The principles primarily support restitution of the original property or rights, and in the event that that is not possible, "prompt and just compensation in the form of money and/or alternative parcels or holdings, ensuring equitable treatment of affected people.

The FAO Guidelines are mindful of the fact that men and women are not affected by dispossession in the same manner. In this regard, they make provision for gender sensitivity in dealing with situations of dispossession.

States should develop gender-sensitive policies and laws that provide for clear, transparent processes for restitution. Information on restitution procedures should be widely disseminated in applicable languages. Claimants should be provided with adequate assistance, including through legal and paralegal aid, throughout the process. States should ensure that restitution claims are promptly processed. Where necessary, successful claimants should be provided with support services so that they can enjoy their tenure rights and fulfil their duties. Progress of implementation should be widely publicized.

Besides the above, it is a fact that there are land uses that may not necessarily be monetized. Such may include the spiritual value of land to, say, an indigenous community. To address this, the Principles incorporated guides on valuation, and encouraged states to "strive

[152]The Mining Act, 2003.
[153](o) f 2005.
[154]Human Rights Watch, How Can We Survive Here? The Impact of Mining on Human Rights in Karamoja, Uganda, February 3, 2014 (here after "HRW Report").
[155]See, Lawrence Bategeka, et al,Oil Discovery in Uganda: Managing Expectations, at 2, Economic Policy Research Center and Makerere University, available at http://mak.ac.ug/documents/EPRCUDICPaper.pdf, (accessed November 29, 2014).
[156]See the Constitution of the Republic of Uganda article 244 (3).
[157]See, TheMining Act, 2003, section 82 (1) (ii) and (3).
[158]See, HRW Report, supra note 154, at 7-8.
[159]HRW Report, supra note 154, at 8.

to ensure that valuation systems take into account non-market values, such as social, cultural, religious, spiritual and environmental values where applicable." With this, compensation would go beyond covering physical land, but also other aspects lost through processes leading to deprivation of tenure rights.

In as much as the above initiatives such as the LGAF and the UN FAO Guidelines are imperative in the protection of tenure rights, one cannot expect so much from them since they are merely voluntary Guidelines that states may chose to ignore. It is also not clear whether there is any incentive for states to follow the Guidelines in the absence of a looming threat in liability for failure to heed.

It is important to note that in a number of instances, the Voluntary Guidelines call upon the states to act in accordance with their national law and international law. The erroneous presumption here is that national law is always good, or is in tune with the protection of land rights for all; which is not always the case. The gap in the national law could be filled if states heeded international law, something that is most unlikely.

Despite the above relatively discounting points about the Voluntary Guidelines, it might be too early to tell whether they may have any implications for the protection of land rights of populations affected by LSLAs such as women. This is more so since they are a relatively new initiative that has been launched as recently as 2012.

G. Applicability of International Law within Uganda's Domestic Jurisdiction

This paper has indicated the various international laws that Uganda has subscribed to. The Ratification of Treaties Act, 1998, governs ratification of international and regional treaties by Uganda. This law, however, does not indicate what status the ratified treaties have in the local jurisdiction of Uganda. The constitution too does not offer sufficient direction on how these international treaties and standards can be enforced or applied within Uganda. Hence there could be a likelihood to have international obligations regarding protection from the negative consequences of LSLA and evictions from land without practical relevance within Uganda.

There is, however, evidence that international treaties and conventions on human rights form part of Uganda's law, as seen in article 52 (1) (h) (i), and a number of internationally recognized rights have been put in the Uganda Constitution's Bill of Rights. There is scholarly evidence to the effect that this does not make enforcement of international law within Uganda a problematic and non-contentious issue, especially since Uganda is a dualist country that recognizes international law as distinct from municipal law. By implication, international law would have to be domesticated by legislation in order for it to be enforceable within Uganda. The Constitution of Uganda does not necessarily simplify this situation, although it makes an attempt.

Under article 50, "a competent court" has jurisdiction to receive and hear cases in which there are allegations of violations of rights "guaranteed under this constitution". By implication, those that are not explicit in the constitution and are embedded in international instruments that Uganda is a party to would be considered excluded. Within the same Constitution, Article 45:

"The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this chapter shall not be regarded as excluding others not specifically mentioned."

This seems to be inclusive of rights that are not necessarily grounded in the Constitution but in international instruments. Indeed, there have been instances where the courts have made reference to norms founded in international human rights instrument while deciding cases before them. There have also been cases where the application of international human rights instruments to Ugandan situations in courts was almost totally rejected.

In the context of LSLAs, much of the good international practices embedded in Guidelines and non-binding principles is susceptible to suffering from the lack of clarity on how applicable they are at the domestic level. The existence of a constitutional provision on protection of property stipulating some basic standards under article 26 of the constitution should not be underestimated, for it brings home some basic protections on the right to property that are no doubt enforceable within the domestic jurisdiction.

[160] HRW Report, supra note 154.
[161] See, section 5, Access to Information Act, 2005.
[162] See, section 3 (a)
[163] See, Human Rights Network Uganda, Rapid Survey of Public awareness of Access to Information Act in Uganda, 2008.
[164] Mohamed Keita, Freedom of information laws struggle to take hold in Africa, CPJ blog February 5, 2010, available at - http://cpj.org/blog/2010/02/freedom-of-information-laws-struggle-to-take-hold.php, accessed November 29, 2014.
[165] Human Rights Network Uganda, An Analysis of Laws Inconsistent With the Right to Access to Information, July 2012, available at http://www.right2info.org/resources/publications/uganda-analysis-of-laws (accessed November 27, 2014).

1.12. A CONTEXTUAL ANALYSIS OF THE WOMEN'S LAND RIGHTS IN THE LEGAL AND POLICY INITIATIVES

It is no doubt that women have been victimized in LSLAs in Uganda. In Karamoja, for example, a number of them have been pushed out of their traditional roles into mining as a result of circumstances. In the Baleke Kayira case, some of the women could not continue with tilling land as a result of the displacement and failure to provide alternative land. Studies show that women are the backbone of Uganda's agricultural sector; they produce the food that feeds the nation and also engage in profitable agriculture that improves the country's GDP. Women form over 70% of persons engaged in agriculture, yet access to land is one of those areas were women are marginalized. Women in Uganda own 7% of productive land and slightly above 17% of them own registered land. Majority of women only have user rights over customary land; which is most times controlled by men. Women's Access, use and even ownership of land within the cultural context is greatly defined by custom, which tends to be against women and at times other vulnerable groups. Besides that, there are customary practices and beliefs that hinder women's land rights in institutions entrusted with resolving disputes over land, or enforcing rights over land. It has been argued that it is important to ensure gender equality in the law and gender mainstreaming in land justice and management institutions such that women in cases of LSLA can advocate for their rights.

The author, however, believes that when it comes to issues of land, it might not be as simple as passing laws that promote equality. If one cannot lay any claim of ownership to a piece of land, and there are no efforts to give her land, then the law providing for equality to own property is operating in a vacuum. This is more so where the women are not in a financial position to purchase land on the market. Similar arguments in line with redistribution or provision of minimum acceptable amount of property/ land have been advanced by scholars such as Schermer.

The kind of land rights women hold and the security of their tenure are determining factors in the extent to which they can take part in accountability processes in cases of LSLA. Tenure security for women may depend on many factors including how they acquired the land, their marital status, how advanced or culturally sensitive their community is. If women claim "recognized" rights to land in their communities that would give them entitlement to become part of the negotiating team on matters touching land, which could be LSLA. Traditionally, a title holder is recognized more. As mentioned above, the majority of women in Uganda claim rights in the customary sphere that comes with a lot of hurdles for their participation.

The relegation of women to the periphery on matters of land in Uganda is the reality that is happening in an environment that is governed by pro-women's (land) rights laws both at the international and national levels. Uganda is a party to a number of international instruments that contain provisions in favour of promoting equality between men and women. These include the International Convention on the Elimination of all forms of Discrimination against women (CEDAW), Universal Declaration of Human Rights (UDHR), which are for non-discrimination. Among others, the CEDAW calls upon states to stamp out discrimination against women and also

[166] Nakayi, supra note 82.
[167]See,What is fuelling corruption in lower courts? The Monitor, July 2, 2014, about the Anti-Corruption Coalition (ACCU) Report entitled, "Temple of injustice: report highlighting alleged abuse of office in selected magistrates' courts in Uganda.
[168]Local Council Court Act No. 2006, Local Council Court Regulations, 2007.
[169]Section 10, Local Council Court Act, Id.
[170]Constitutional Court, Constitutional Petition No. 21 of 2006.
[171]High Court; HCT-04-CV-CR-007-2011.
[172]Nakayi, supra note 82.
[173]Nakayi, supra note 82.
[174]Land Act, supra note 13, section 59 (1) (a) - (e).
[175]Land Act, supra note 13, sections 9 (2) & 13.
[176] Also see the Land (Amendment) Act, sections 29-33

take steps to promote equal enjoyment of rights.

Other positive strides towards the protection of women against discrimination in many spheres including that of property ownership are seen in the constitution and other laws of Uganda. Per article 21(1), (2) and (3), men and women should be equal under the law and in all spheres of life of a social, economic or cultural nature; the provision bars discrimination on a number of grounds including sex. Further, the institution of marriage is among those spaces within which women's rights to land are violated. The Constitution of Uganda makes an attempt to provide against this under Article 31 (1) (b) by stipulating equality between men and women at various stages of marriage; - "at and in marriage, during marriage and its dissolution."

That notwithstanding, there are a number of customary practices in the arena of inheritance and succession, for example, that limit chances of women to share property. The constitution contains provisions that have an effect of trumping such customary practices. According to Article 2 (2), "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." In the same spirit, The Land Act Section 27 provides:

Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally shall be in accordance with the custom, traditions and practices of the community concerned, except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void."

From the above discussion, Uganda's law on protection of women is progressive, although there is a ridge between law and practice that leaves women in a precarious situation in terms of their land rights. In addition to promoting implementation of the laws, beneficiaries of these laws (women) need to be informed on how to seek benefit from them. This is more so in cases where they are affected by LSLAs.

CONCLUSION

This paper has shown that there are some cases of LSLAs that have taken place in Uganda, although it is not yet seen as among the major land-related problems in the country. Instead, regular evictions of individuals or land owners from land are seen as major problems. These rampant and isolated cases of eviction from land in a sporadic and incremental fashion across the country could have a sum total and consequences akin to those in typical LSLA, yet they may not technically qualify to be LSLAs. These (relatively small but multiple) land acquisitions, leading to evictions, coupled with the high demand for land in a bid to transform the economy and in response to land demands by foreign investors makes LSLAs eminent in the very near future. It therefore makes a study on the trends and how appropriate the legal framework is to deal with them pertinent. The trends captured in this study include: involvement of the state; use of positions of power to perpetrate evictions against the poor; relatively weak land governance norms and institutions for land management and administration; complicated and diverse customary systems and structures. Within this context, women are left in a precarious situation in cases of LSLAs.

The preceding is more so since the nature of land rights that majority of women claim to land are embedded in the customary tenure context; which is not valued as much in valuation of compensation as the other tenures characterized by registered interests. This paper has put the percentages of women that are currently holding registered title to about 25%, a percentage that is most unlikely to be victims of LSLAs since they claim rights to smaller portions yet LSLAs are usually about vast lands. This is to re-emphasize the vulnerability of women on customary estates. Yet, a wealth of literature doubts security of customary tenure in general.

It has also been argued that among the ways to protect persons from the adverse consequences of LSLA is to strengthen tenure rights security through legal and policy reforms, and also pay heed of international best practices. There is a relatively appropriate legal and policy framework at the national level and a robust package of guiding principles and guidelines at the international level, but not fully heeded at the national level. There are, however, a number of efforts at the national level that could result

[177]Can women own Land? THE OBSERVER October 20, 2013.
[178]Veit, supra note 78, at 2-3.
[179]Nakayi, supra note 82.
[180]For example in the Ocula case, supra note 89, is against an investor Madhivani.
[181]See, for example, Local Council Court Act, Section 4 (2) & (3). Land Act, supra note 13, section 65 (2) one member of the Land Committees must be a woman

into tackling the underlying land governance glitches that offer fertile ground for human rights violations in cases of evictions and LSLAs in Uganda.

Since 1995, Uganda has carried out a number of law reforms in the land sector, aimed at restoring security of tenure for persons that hold land in the various tenures such as mailo, and customary. This, as already mentioned here, was mainly to do away with the consequences of the 1975 Land Reform Decree which promoted leaseholds as against all other tenures. These reforms have been far-reaching to include protection of the women's rights to property at all stages of marriage and its dissolution. Further, since the majority of women claim rights in the customary context, the outlawing of customs that are inconsistent to the constitutional values of equality and non-discrimination is praiseworthy.

Turning to LSLA, Uganda's laws as discussed above contain some provision which, if implemented, would to some extent offer protection to women first; against losing land in LSLAs and second; ensure their participation in processes leading to LSLA and, lastly, claim reasonable remedies in case their land is lost to investors. Among the challenges, however, are the limited implementation of the laws, and also politically motivated selective approaches to application of the laws, depending on political expedience required in dealing with a given subject matter. Official rhetoric considers it in the interest of the public and the country to promote foreign investment. This puts the state at the centre of it all as a key player, and therefore engagement with such cases is engagement with the sovereign with all its might. At the same time, the international community expects poor countries such as Uganda to be working towards improvement in their GDP and development in general, through investment in their selected potential activities such as agriculture, communications, tourism, mining etc. This therefore makes it politically correct to promote such investments, which are at times by foreigners who may not have the land resource. In such cases, practice can overtake law, in which case land is availed to the foreign investor at the expense of the locals and at times in disregard of the law. One may not therefore over-celebrate the existence of some progressive laws, if they can be bypassed when it is expedient. Similarly, the entrenchment of patriarchy in the various sections of society and state institutions would mean that women are left in a precarious situation in processes of making decisions touching land in LSLAs.

This paper has also shown that the international arena is interspersed with persuasive, non-binding instruments recommending guidelines to be applied in cases of LSLAs. In the absence of any coercive means at that level to push states to comply, it remains a mere moral obligation to follow the rules and guidelines. Indeed, if compliance is set as a condition to access credit from big institutions such as the International Finance Company (IFC) and the World Bank, states may comply. Other than that, the general victims of LSLAs and women in particular are only oscillating between weak unimplemented national laws and voluntary international standards on LSLA, leaving them vulnerable in the context of increased demand for land for investment in Africa.

[182] Nakayi, supra note 27, 348.
[183]See, the SERAC case, supra note 105.
[184] See, United Nations General Assembly Resolution 63/187, Adopted on 18th December 2008, paragraphs, 5, 11.

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