

THE REPUBLIC OF UGANDA

IN THE MATTER OF A COMMISSION OF INQUIRY
AND
IN THE MATTER OF COMMISSION OF INQUIRY INTO THE EFFECTIVENESS
OF LAND ACQUISITION, LAND MANAGEMENT AND LAND
ADMINISTRATION IN UGANDA

A SUBMISSION BY CIVIL SOCIETY COALITION ON OIL AND GAS (CSCO)
IN UGANDA

22nd May 2017

Executive Summary:

The civil society coalition on Oil and Gas makes this submission to the Commission of Inquiry into the effectiveness of land acquisition, land management and land administration in Uganda on the premise that its membership is critical actor on land matters in the country.

The submission deals with five broad areas. The first is the question around challenges of land ownership are addressed including recognition of customary tenure under the law however this notwithstanding, the relevant authorities have been unable to issue certificates of registration of customary land. It further deals with the lack of a land registry to respond to the needs for customary land owners and their registration needs. It calls for the standardisation of methodologies for land acquisition.

The second area examines land usage in the country and highlights the existence of a law on physical planning however this notwithstanding implementation remains a huge challenge hence posing a big challenge for the country in the near future especially when developments are allowed to be established in areas where they are not supposed to be. This part also addresses itself on the government public trustee role in the management of protected and conservation areas. It notes that there have been situations where this mandate may have been abused when government allocates this protected and conservation area for an activity that is inconsistent with the protection and conservation needs and or intentions of the law in the first place. It addressed the question of overlapping interests/claims on land as well as the rights of indigenous and minority groups

The third part of this submission examines the challenges experienced in the country in the course of land acquisition. Under here the submission examines the lack of policy formulation to address involuntary resettlement and the use of tools developed to fill the gaps including the use of resettlement actions plans and tools developed by the office of the chief government valuer. While these tools have been developed, they are not within the law and as such may be difficult for PAPs to use in enforcing their rights.

This part also deals with acquisition of land during emergencies and disasters. It notes that whilst emergencies may not be easy to forecast, government should not use this as means to invoke involuntary resettlement because like in oithr cases it

forecasts and knows it will need to undertake a specific activity. In the same vein it should plan for and have land in secured in a land bank to mitigate having to takeover private land for emergency cases.

Land acquisition also addresses the lack of compensation rates in many districts caused in part by the lack of standardized framework to guide the development of district rates. The part also discusses the fact that whilst there may be challenges that affect commencement of projects owing to dissatisfied individuals of compensation; this in itself does not require a constitutional amendment. The solution in addressing this issue is to define a time limitation akin to handling of presidential lections by courts of law for any conflicts arising from compensation to be concluded within a similar time frame of 90days or other time frame.

This submission also addresses itself to other aspects including dispute resolution and good practices from non legal processes an legal reforms all of which are threshed out in more detail herein and which we hope the commission will greatly appreciate.

1.0. Introduction:

1.1. Invitation to submit

CSCO is a loose coalition of Non Governmental Organisations (NGOs) and Civil Society Organisations (CSCO) licensed to operate in Uganda.¹ The membership is open to all organisations working on the extractives sector particularly on oil and gas and its activities are guided by a constitution.

Individual members of CSCO as key stakeholders on matters of natural resources including land, minerals oil and gas, environment etc were independently invited to make a submission to the commission however for optimal benefit, uniformity and consistency, it was resolved a joint and collective submission be presented. We therefore have the honor to submit this paper on the subject of inquiry by this distinguished commission.

1.2. Importance.

The effectiveness of the law and processes of land acquisition, administration, management and registration are important issues of interaction within the membership of CSCO. They inform work on policy and legislative advocacy issues and real impacts for communities who utilise the various land services on the one hand and suffer the consequences on the other. The expected contribution from the exercise of the inquiry by the commission cannot be underestimated.

1.3. Key issues.

The key issues addressed in this submission relate to challenges facing the country around the question of land ownership; usage; acquisition and transactions; dispute resolutions, good practices; land reforms and the need for harmonisation of legal instruments.

1.4. Outline.

This submission will follow the outline of the key issues mentioned above

¹ A detailed list of CSCO members is attached for ease of reference.

2.0. Land Governance Issues

2.1. Land Ownership:

There are a number of key issues in regard to land ownership in Uganda. Whilst the ones discussed here may not be exhaustive, we identify the following as being important critical ones for the Commission to address itself on;

A) Security of tenure (for customary tenure)

Although the Constitution recognises customary tenure as a form of land tenure system at par with mailo, leasehold and freehold tenure systems, there has been tendency by government to treat customary tenure as inferior or alternatively of a lower rank than other tenure systems especially during payment of compensation. Several challenges arise with this treatment including;

- i. While the Land Act provides for the registration of and issuance of certificates of title to owners of such interests, in practice no such certificates are being issued. The Land Ministry which is mandated to produce these certificates has not produced them and therefore the respective district land boards are constrained in delivering on this mandate of theirs.
- ii. Owing to the failure by the district land boards to issue certificates of customary ownership, there is insufficient information on the cause of this limitation. Customary land owners are therefore ignorant about what they can do to obtain registration.
- iii. There is presently no independent registry for customary land registration like the other tenure systems have. This lack of a Registry therefore

Recommendation: *There is need for comprehensive standardization and developing a uniform methodology for customary land registration.*

The treatment customary tenure is also responsible for abuses sustained by customary land owners including being denied adequate compensation; land usurped by powerful and politically well placed individuals etc. Government is partly responsible for this violations considering that often times the government valuer determines what in his/her opinion, is the appropriate market value² when assessing compensation for customary land owners in cases of involuntary resettlement. The determination by the government valuer may not always be the actual prevailing market rate in a given location.

² Ibid. The market value is determined by government valuer applying some indicators.

Whilst it is recognised that a distinction may be made between customary private and customary communal,³ in all cases of compensation toward customary communal is difficult. The reason for this difficulty is challenges with identifying the representative of a communal group. It is acknowledged that there is policy guidance for the use of community land associations however this has not been done and therefore communities cannot benefit from a particular compensation. The failure to support these associations informs in part the deprivation of land such communities have suffered.

Recommendation: *There is need to support communal customary land owners to register as associations to tap into the protections offered by such registration.*

Non registration of customary tenure and/or registration of customary community lands has caused a number of communities to be deprived of their interests in land without fair, adequate and prompt compensation. Examples of such land deprivations include Rwamutonga,⁴ and Kijayo⁵ in Hoima District and Ngwedo and Bugoigo in Buliisa District. Well placed individuals use their influence to cause registration of unregistered land at the cost of the unsuspecting customary communal land owners

B) Land rights for women and children

Women and Children are hindered by several conflicts. Conflicts within the law inhibit the enjoyments of land rights. The Constitution and Land Act for example recognize the rights of women and children over land however the Registration of Titles Act does not protect women rights. Often times during transactions on land, it's the men involved yet gardens are always prepared by women. These inhibitions

³ Walker, "Land Reform in Southern and Eastern Africa: Key Issues for Strengthening Women's access to Rights in Land", (March 2002), pg 58. Report on a desktop study commissioned by the Food and Agriculture Organization (FAO) (FAO Sub-regional office for Southern and Eastern Africa, Harare, Zimbabwe).

⁴ For a detailed study of Rwamutonga as a typical case study of evictions of customary tenure owners, see Civil Society Coalition on Oil and Gas in Uganda (Oil Justice, Gender and Local Content Thematic Group), Rwamutonga Eviction and its Implications on Rights and Livelihoods of Peasant Communities in the Oil-rich Region of Uganda.

CRED has recently facilitated people evicted to seek redress from Court vide REVISION APPLICATION NO. HCT-12- CV-CR-017 OF 2014, *ABWOOLI MUKUBWA BEATRICE and 4others versus BANSIGARAHO ROBERT* but also engage with government and the said Bansigaraho Robert, one of the parties in the consent order in the High Court Civil Suit No.32 of. 2012 *Joshua Tibagwa and Anor versus Robert Bansigaraho* and the deliberations of occasioned the displaced people to return to their original land holdings.

⁵ Kijayo is an example of a private sugar cane investor who caused the eviction of more than 2000 families by means of impunity aided by the police.

are compounded by cultural practices that prevent women and children from owning, accessing, and controlling land.

There are laws that have not reflected these constitutional principles, e.g. The Succession Act, Marriage and Divorce Act, Registration of Titles Act, etc. Amendments in the land Act erased the provision on children's consent before sale – yet the family may ordinarily be deriving livelihood from such land.

Recommendation: *There is need for the various other legislation that are related to land to reflect the land rights of women and children.*

C) Fraudulent acquisitions.

These are rampant across the country. Some are taking place in protected and gazetted areas.

D) Overlapping and conflicting rights, claims, and interests

The question of overlapping and conflicting interests is predominantly experienced in the different land tenure systems. Under the Land Act, the registered mailo land proprietor's rights are protected by law however they are subjected to the rights of a lawful or bonafide occupant and a third party claimant. The third party claimant being a creation of the land 2010 land Act Amendment. This tier of rights however creates conflict amongst the various interests on the land.

Whilst the Land Act creates rights for these various interests named above, the Registration of Titles Act is silent on their respective registration. The registered mailo owner/proprietor will therefore more often than not be unable to exclusively transact on the land when this could be possible if the law allowed for the other rights holders and their respective interests to be reflected on the certificate of title.

The rise of new claimants to lands, is complicates further the problem the country has been grappled with since 1900 Buganda Agreement. These new claimants make it difficult to determine the true interest and claim over land. Land evictions are partly rooted in this problem. Indeed the notion of *Kyapa Ku'ngalo* is rooted partly in this problem. In Bunyoro-Kitara region some land titles are being superimposed over other titles, and in other instances multiple titles have been issued on the same piece of land. Some titles are said to overlap and stretch beyond land Blocks.

This challenge of overlapping and conflicting rights may also be observed amongst different communities e.g. cultivator vs. Pastoralist communities.

Recommendation: *There is need to document all interests on Mailo (and other) Land tenure to make all those interests registrable under the relevant law or regulation (e.g. Registration of Titles Act).*

E) Rights of Indigenous Communities and Minority Groups

The constitution recognises that all land belongs to the people of Uganda and may be held under specified land tenure systems. Many indigenous and minority groups including the **Benet, Ik, Batwa**, Bambute, Basongora, and other Karamojong groups have lived on and used lands prior to the gazettelement of the land as conservation and or protected areas. The process of gazetting the areas where these groups hail from deprives the affected communities of their land and has the effect of rendering them landless and destitute.

***Recommendation:** it is recommended that government should make the interests of indigenous communities recognized and documented. Additionally, Land should be allocated for these indigenous and minority communities to be resettled.*

F) Levies vs. Ownership

Under the land law, provision was made for District Land Boards to develop and set the *busulu* levy rates. In the absence of such levys by the land board, the Minister was mandate by law to formulate the levys. Unfortunately, the Minister too has failed to come up with the levies hence creating potential avenue for landlords and tenants to conflict. In practice landlords have set their own rates which are not accepted tenants.

In some cases, Bibanja owners don't know where to pay *busulu* and or how much to be paid. Owing to the lack of regulation of land-related relationships between landlords, tenants, occupants and claimants, the above conflicts have arisen in many cases when they could have been avoided.

***Recommendation:** Deliberate measures must be take to define and regulate the landlord – tenant relationships over land lest the above and other conflicts will continue to manifest themselves severally.*

G) Conflicting institutional ownership and controls

Studies have shown that one of the other challenges that the country is experiencing is the question of conflicting institutional ownership and controls. These conflicts may arise either because the different institutions have been triggered to address one conflict on the same piece of land or where the different government institutions may have independent interests on the land. In all such cases conflicts will arise and expose communities to serious risks to life and property and in other cases enforcement of an authoritative decision may be hampered. Examples of these conflicts include;

- i. Intra-government conflicts
- i. Conflicts between central state and traditional authority structures (kingdoms)
- ii. Inter-district boundaries: Conflicts between local governments over boundaries (Otuke vs. Napak; Tororo Municipality; Lango vs. Karamoja vs. Teso)
- iii. Boundary conflicts between neighbouring communities and protected areas (e.g. Kaabong Community vs. Kidepo NP; Katunguru/Queen Elizabeth conflicts, etc)

Recommendation: *It is recommended that careful resolution of such conflicts should be considered through undertaking mediation processes and where authoritative decisions have been made like judgments from courts of law; government takes lead in ensuring that the spirit and letter of the decision is implemented as ordered.*

Corruption and Institutional Weaknesses:

Society ills including corruption have contributed to land challenges in the country. Owners of land have been deprived of their lawful interests in land and not received compensation even when they were in possession of court orders for their protection. A good example is the Mpokya land case in Kibaale. In this case victims of evictions orchestrated by government to rid lawful occupants of land interests in the forest reserve in the belief that evictees were encroachers ended in a settlement of a court action whereby government paid compensation however most of the affected persons have not received any compensation to date. The representatives and in some cases lawyers involved in representing the land owners/evictees have many a time diverted the proceeds of compensation at the expense of the unsuspecting beneficiaries thereby denying them any form of compensation and thereby exposing them and their families to all kinds of vagaries.⁶

The Rwamutonga case is another classical example of using the court process to corruptly deprive customary land owners of their interests in land. In this case, two parties entered into a consent order overseen by a Registrar of the High Court to settle a land dispute between them. In reaching a settlement, the two parties who had pending suits against them respectively by customary land owners; did not disclose this to the court in the consent order proceedings and by reason of the

⁶ For a detailed study of the Mpokya case see Balancing Development, supra pg 31. See also Land Alliance, *ibid.*, pg. 18

approved consent court order over 2000 families were evicted from their lands and others were killed during the eviction.⁷

Large numbers of individual land owners and community members are ignorant of basic land rights and laws on ownership.⁸ In areas along the Albertine Graben, there are numerous documented cases of exchange of parcels of land⁹ between families and in some cases church institutions as gifts inter-vivos without written proofs to back up the exchanges. Ultimately beneficiaries of such exchanges have utilised and developed the land beyond the statutory 12 year limitation period of recovering land. HOWEVER today such beneficiaries are threatened with eviction after the passing of the original owners of the customary lands by the estates of such individuals. In one case in Kabwoya Sub County, Hoima District it took the intervention of CRED to explain to two feuding families that once a gift of land has been made, any developments on the land form part of the land and cannot be removed unless a contrary intention was reached in first place.

Ignorance of basic land rights is further compounded by the rich /poor divide in society. Some rich members of society use their financial weight to impose burdens on the poor through initiating legal actions well aware that with lapse of time and the prolonged court processes, poor folk will be unable to cope with the numerous court appearances and consequently surrender their rights or revert to violence. This sometimes may also be attributed to lack of access to justice for the very poor members of society.

The land rights of women continue to suffer challenges. It is well documented from researches conducted that the biggest chunk of land in Uganda is cultivated and utilised by women however only a small percentage of women actually owns land.¹⁰ The sum effect of this situation is household economic empowerment is hampered as women have no security of tenure on land and can be evicted if their spouses entered into a new relationship or passed on. Additionally in cases of involuntary

⁷ Ibid.

See also Global Rights Alert, "Human Rights Violations amidst Oil and Gas and Related Developments: A Case of Land Rights and Vulnerable Local Communities in Hoima District.

⁸ Land Alliance, *ibid.*, Pg 20

⁹ *Ibid.*, pg 16

¹⁰ Millicent Odeny, "Improving Access to Land and Strengthening Women' Land Rights in Africa", A Paper presented at the Annual World Bank Conference on Land and Poverty in Africa, 2013, para.2.1 to 3.1.

resettlement, women have similarly been exposed because they were not included in the process of involuntary resettlement. This is notwithstanding the fact that policy and legal instruments provide for equality under the law and equality of treatment.

Recommendation: it is recommended that legitimate and fraudulent interests should be distinguished; institutions should be strengthened; and political and bureaucratic corruption and collusion should be fought.

2.2. Land Usage.

Land in Uganda has several usages. This land usage may be properly appreciated when viewed from a policy, legal and rights perspective. This perspective impacts on development and communities severally. These perspectives may be categorised as civil, economic, and socio-cultural rights. They are as follows;

A) Civil Rights:

The right to own land informs the right to self determination of a particular people. Self determination includes civil and economic empowerment of a people. Ownership of specific chunks of land may result in a particular group desiring to self determine. The territory that constitutes the independent nation of Uganda is a result of self determination of its peoples.

At a policy and legal level, an individual and or groups of people may exercise their rights to own land/property and deal with the land and or property as they please to impact on their livelihoods.

In the same vein government may exercise its development and security mandate by acquiring private land from individuals in public interest subject to the rights to compensation for the affected individuals. This governmental mandate often results into displacements of entire communities from land. Presently in Uganda, infrastructure developments for improved road networks, increased energy demands, oil and gas developments and the history of conflicts are responsible for government land acquisition.¹¹

¹¹ Advocates Coalition for Development and Environment, "Balancing Development: Land Acquisition, Resettlement and Community Livelihoods in Uganda", November 2015, pg 1.

B) Economic Rights:

Economic rights to land inform community livelihoods. Herein individuals or groups of people use the land for their sustenance through subsistence farming and others for commercial farming. Subsistence farming on customary land tenure forms the greater part of land usage.¹² The proceeds from either form of farming accounts for other relevant economic rights including supporting health and education.

Government interest to spur economic developments impacts on economic rights to land positively and negatively. At a positive level, development will require large chunks of land and may contribute to economic improvements on household incomes. At a negative level development deprives land owners of their livelihoods and the resultant impacts of loss of shelter, education and culture

C) Socio-Cultural Rights:

Under this set of rights individuals and or groups of people enjoy the use of land for their social and collective benefit on the one hand as well as allow for other cultural aspects such as celebration of culture of given people and related matters as resting or burial places for loved family/clan/tribal members that may have passed on.

Challenges with Land Usage;

A number of challenges are associated with land use in the country. The following challenges are identified;

- i. Physical Planning versus Physical Features;

The declaration of all land to be a planning area and existence of a Physical Planning law notwithstanding, government continues to fail in implementing this law with the effect that developments not suited for some places are allowed to be established and which developments in future will not be tenable because of their location.

¹² National Development Plan 2010/2011 – 2014/2015, (April 2010) p160-161.

ii. Protected and Conservation areas:

As a public trustee, government holds in trust for the people of Uganda some public areas through its agencies. In exercising this mandate, there have been cases where through political or other influence, the responsible agencies have caused the issuance of certificates of title and or leases in protected and conservation. This issuance, directly conflicts with the initial intention of protecting and conserving a particular area and is in breach of the public trustee responsibilities. These protected and conservation areas include forests, wetland and swamps.

Recommendation: Government should map out and gazette all wetlands in the country and with immediate effect stop the issuance of titles protected and conservation areas. In the alternative, government consider developing and enforcing regulations for co existence in the protected and conservation areas where issuance of a certificate of title is unavoidable.

iii. Land, Trade and Investments:

The government established the investment authority to guide investment in the country. Allocation of land for investment purposes is premised on the available land such as Namanve Investment Park. Whilst this is the case, it is not clear how transparent the process of allocation is to allow for national and non nationals to competitively access the land. The case of Kaweri Coffee Factory land allocation raises the challenges related to the lack of guidelines to employ when allocating land for investment.

A related issue is the role of communities in land allocation especially where allocated land is occupied by people who derive sustenance from it. The UN Committee on Economic Social and Cultural Rights has criticised Uganda for its failure during land allocation for development to factor in community participation.

Recommendation: There is need to take into account the community state in the decision to allocate land for investment. Accordingly, a social impact assessment must be undertaken by any investor on land in community areas and a social license to operate obtained from the community.

2.3. Land Acquisitions and Transactions

The government has several times been involved in land acquisition and transactions. The processes of land acquisition in the country poses a number of challenges as discussed below;

- Acquisition, resettlement, compensation

Whilst a Land Acquisition law exists, it is non comprehensive and insufficient to guide the entire process of land acquisition by government. To plug the existing gaps, the relevant government ministries and agencies have often devised mechanisms to cope with the lack of a uniform codified instrument to guide in land acquisition processes. These mechanisms include the use of Resettlement Action Plans (RAPs); valuation of property tools amongst others. According to the government valuer for example, land acquisition is guided by three major principles namely; equivalence¹³, severance¹⁴, and injurious affection.¹⁵ Suffice to note that these principles are not reflected in the Land Acquisition Act nor are they by themselves elaborately developed to meaningfully provide sufficient guidance therefore the valuer exercises discretion which may to some extent, be arbitral and triggers tensions amongst project affected persons (PAPs).

Lack of a policy presents challenges especially for PAPs during and post compensation. For example lack of guidance on a “cut off” date means a RAP implementer can shift the cut off dates to the disadvantage of a PAP. Such shift may imply delayed compensation and delay in compensation means that a PAP loses value in the compensation sum received as they will be unable to restore the same land acreage they had prior to the involuntary resettlement.¹⁶ When this occurs, a PAP is put in a worse off position yet the goal in involuntary resettlement is to put the PAP in a better position than he/she was in. In Kabaale- Buseruka an acre of land

¹³ According to Mr. Tonny Kato in a paper presented for CSCO stakeholders’ dialogue on the 14th February 2014 at Hotel Africana, the equivalence principle entails compensation being fair, adequate and compensation.

¹⁴ Ibid. The principle of severance occurs when government exercise its power under the eminent domain principle to acquire private property.

¹⁵ Ibid. The principle of injurious affection relates to loss or damage that may be sustained by a land owner as a result of suffering partial compulsory land acquisition. This loss and or damage does not have to be physical in nature.

¹⁶ Global Rights Alert, “Acquisition of Land for the Oil Refinery: Tracking Progress in Resettling Project Affected Persons who opted for Land for Land Compensation” (2015).

was assessed between 3.5 and 4.5 million shillings respectively. By the time PAPs received compensation money, the cost of an acre of land in the surrounding areas had risen to between 6 - 10 million shillings forcing PAPs to either acquire less acreage or if they needed to restore the same acreage to go further than they would have wanted.¹⁷

Under current obtaining policy and legislation in the country there is no requirement for resettlement action plans (RAPs) during land acquisition. The practice of employing RAPs has evolved because funding for such large infrastructure projects originates from international funders including the World Bank (WB), International Finance Corporation (IFC), African Development Bank (ADB) and others. These institutions have developed tools to deal with involuntary resettlement during implementation of massive projects such as construction of power dams and constructing roads amongst others demand its use.¹⁸ Accordingly, RAPs have become a formal requirement and as noted above without premise in domestic legislation.

These financial institutions require the development of RAPs to guide processes that deal with how affected communities will be resettled and livelihoods restored. Many a time, these projects such as Bujagali,¹⁹ Kabaale – Buseruka,²⁰ Hoima – Kaiso/Tonya Road,²¹ have developed RAPs however resettlement has not followed what is stated in the said RAP instruments. It will be recalled that the provisions of the RAP draw from international best practice tools however because implementation does not follow what is stated in the RAP, individuals and communities cannot enforce their rights using the RAP. For example in Kabaale, land from 13 villages was compulsorily acquired for the planned oil refinery. The RAP document aspired to use the IFC standards for the involuntary resettlement of PAPs since there was no local policy and legislative equivalent. At implementation however and contrary to

¹⁷ Global Rights Alert, "Sleepless Nights: The Fears and Dilemmas of Oil Refinery Project Communities in the Face of Government of Uganda' Resettlement Plan"

¹⁸ For detailed discussions of a RAP, see United Nations Food and Agricultural Organisation (FAO)' Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; the International Finance Corporation (IFC)' Performance Standard 5 Land Acquisition and Involuntary Resettlement and World Bank (WB)' Operation Principle 4.12 and Resettlement Sourcebook Planning and Implementation in Development Projects

¹⁹ Bujagali is a case of involuntary resettlement for the construction of a hydro electric dam.

²⁰ Kabaale is a case of involuntary resettlement for the proposed petroleum refinery project.

²¹ Hoima – Kaiso/Tonya Road is an upgrade of the old road to bitumen standard as part of the oil infrastructure developments.

the said IFC standard on resettlement, compensation and resettlement was delayed; compensation was challenged by some land owners; livelihoods were destroyed considering these communities depended solely on subsistence farming and not restored; women' and other vulnerable groups rights were disregarded including non participation in meetings and in the payment of compensation.²²

- Land Acquisition for emergencies and disasters.

There are documented cases of government during emergencies and or disasters taking over private land under the provisions of article 26 of the Constitution however without respecting constitutional requirement for fair, prompt and adequate compensation prior to the taking of land. Whilst emergencies are not planned, the taking over of private land such as in settlement of refugees should not be basis and justified for triggering the compulsory acquisition of land. Government from experience can forecast and anticipate the challenges with emergencies and in doing so avoid inconveniencing land owners.

***Recommendation:** It is recommended that government should in the same way it plans for other projects through forecasting, plan for emergencies by acquiring land and keeping it a land bank. In the event the need for land arises then land saved in the land bank may be applied to address the emergency question.*

- Compensation rates (guidance on a road map for arriving at rates)

Under the Land Act, Districts are required to annually revise their district compensation rates to guide compensation processes. In practice, most districts cannot revise any rates because they do not have any rates of their own or if they do they will adopt from a neighbouring district. Whilst it is allowed for the districts to borrow from another district, the larger problem responsible for the failure by the respective district land boards to develop their own rates is the lack of a standard framework or road map to be employed in arriving at the different rates.

***Recommendation:** It is recommended that a standardized framework be developed to aid district land boards in developing their compensation rates.*

²² Ibid. See also Global Rights Alert, "Sleepless Nights"

- Private land acquired for government investments:

For challenges related to land acquisition for development purposes visa vis the delays in commencing the execution of the project, it is submitted this does not need a constitutional amendment as suggested by the Minister.

Recommendation: *It is recommended that to effectively deal with the challenge above, an amendment to the Land Acquisition Act as opposed to the Constitution needs to be undertaken to require amongst others for any conflict on compensation during involuntary resettlement to be concluded in the Courts of law within a specified period of for example 90days as is required under the Presidential Elections Act.*

- Privatization of communal lands; who gives out the rights on behalf of the community
- Land Grabbing and Speculation

2.4 Other Issues

- Licensing and operations vis a vie community benefits
- Compensation for land (surface rights) in the mining sector where companies are purporting to acquire only surface rights but communities sign additional lease agreements for up to 99 years essentially denying the community their land.

2.4.1. Dispute Resolution

A number of beneficial dispute resolution mechanisms have been identified and applied under the law and in practices and are recommended include;

- i. Land tribunals established under the Land Act could be re-introduced resources allowing because their intention under the Act could be beneficial to the communities at lowest levels of society.
- ii. LC courts are not legally operational because no fresh elections have been held for the office bearers following the constitutional court pronouncement that required the said lections to be carried out under a multiparty dispensation. The lack of the legal mandate hampers the effective resolution of land disputes by these courts.
- iii. The High Court Land Division should be replicated at all magisterial stations as specialised courts as well as at all High Court circuits. This would allow for

quick disposal of suits since land matters form the bulk of land cases in the court system.

2.4.2. Good Practices

The challenges discussed above notwithstanding, a number of good practices have evolved which may be hailed however must be adopted with caution. These include;

- i. Mediation by both independent mediators and through community structures
- ii. Interventions of other institutions in potentially violent land disputes i.e. short term remedies such as prevention of lynching and mob justice however the intervention of the office of the Resident District Commissioner (RDCs) and the police has to be regulated. Guidelines should specify time limits and hierarchies.
- iii. Free prior and informed consent in land acquisition processes by government.
- iv. Clear demarcation of land by communities in areas where there no land titles.
- v. Formation of Community Land Associations after determination of common lands (collective action).
- vi. Management of state-kingdom relations.
- vii. The District Land Boards and Area Land Committees are doing some work despite weaknesses.

Recommendation: *it is recommended that Government consider regulating mediation of land disputes handled outside the formal justice process to give effect to any consensus reached during mediation.*

Because mediators may be individuals appointed by the conflicting parties, consider regulating their activities so that the costs of mediation do not dispossess the parties of their interests and rights to the land upon conclusion of mediation for failure to pay the mediation costs.

Develop guidelines on the mandate of the other institutions like RDC/Police that intervene to mediate conflicts to allow for a hierarchy of decision making amongst these institutions.

Establish community boundary demarcations in respect of customary & communal common resources.

Legal Reforms

The following legal reforms are recommended;

- i. Land sector needs integration and harmonization of all reforms.
- ii. Harmonize legal frameworks e.g. LARRP, Land Policy, Physical Planning and Urban planning Policy and laws.
- iii. Implementations of current land reforms for a significant number of years before new reforms are introduced.
- iv. Address inconsistencies between the Land Acquisition Act and the Constitution.
- v. Complete pending laws and policies i.e. Landlords and Tenants Bill, Surveyors Registration bill, LARRP and operational instruments, amendment of Rent Restriction Act, Urban Planning and Management Policy.
- vi. Protection of land rights under Article 26 of the Constitution, there is no requirement for a constitutional amendment rather the Land Acquisition Act should be amended to accommodate the proposed amendments. Further specify time and process for court through which land can be acquired compulsorily which should all happen before the government can take possession.

2.0. Land Reforms and Harmonisation of Land Governance Instruments :

3.0.

Land in the country is governed under several pieces of policies and legislations some of which contradict with one another when it comes to land issues. This submission restricts itself to the following pieces of policy and Legal instruments:

- I) The Constitution of the Republic of Uganda 1995 (As amended)
- II) The Land Act (As amended)
- III) The Registration of Titles Act
- IV) The Land Acquisition Act
- V) The Land Policy
- VI) The National Oil and Gas Policy
- VII) The Petroleum (Exploration, Development and Production) Act
- VIII) The Access to Information Act
- IX) Succession Act
- X) Agriculture Policies and legal instruments
- XI) Marriage and divorce Act
- XII) National Environment Act

- XIII) National forestry and Tree planting Act
- XIV) Local Council Courts Act
- XV) Physical Planning Act
- XVI) National Land use Policy

The above legislation cover a variety of areas which this submission does not wish to review in detail as the Commission will by all means have occasion to review this legislation to inform its inquiry as well as its final report. This submission will instead address itself on core policy and legal principles important for land management and administration in Uganda drawn from the said legislation as follows;

A) Ownership of land/Property.

CSCO notes that international and regional policy and legal instruments protect the right to own property. Very importantly, this right is similarly reflected in the Ugandan constitution, land policy and the land act. The Ugandan courts of law have enforced the protection this right in a number of cases.²³ The law however provides exception to the right to exclusively enjoy the right to own land. The exception laid down is when land or property is needed in public interest including for security reasons, development etc. Accordingly when this exception is triggered, then the deprived individual is entitled to fair, adequate and prompt compensation. This is an important policy and legal enactment.

B) Equality and Non Discrimination.

The rights to equality and non discrimination are at the heart of every sphere of human life and activity. Both international and regional policy mechanisms espouse this important principle. At the national level enactments that mirror these standards have been established and are useful in the enforcement of individual rights in situations of land conflicts and involuntary resettlement. Courts of law have attempted to enforce this right however challenges still remain in enforcing it for land management and administration.

C) Access to information.

²³ Article 26 of the 1995 Constitution.

See also for example Constitutional Petition No. 40 of 2013, *Advocates for Natural Resource Governance and Development and 2 Others versus Attorney General and Another*.

The right to information is a cardinal rule of justice. Access to information allows for informed decision making in all cases of land acquisition including involuntary resettlement for individuals. The obtaining policy and legislation at the domestic level mirror this principle. The principle is crucially important and ought to be strengthened. There are however still many practical challenges with the enjoyment and enforcement of this right. Public information is usually not sufficiently provided and in situations where it is provided such as involuntary resettlement it is provided in the official English language without consideration for the many illiterate folk in the communities.

D) Protection, Respect and Remedy.

Individual rights are interrelated and interlinked as both international and regional policy and legal instruments have established. Domestic legislation has not gone the extent to codify this important aspect of rights. It does however establish mechanisms for the protection, respect and remedy through the courts of law. These aspects must be strengthened within enacted legislation.

Policy and other Governance Instruments

The government through the line ministry should take measures to effectively implement the land policy whose objective statements and aspirations seek to address the land challenges confronting land administration and management in the country. It is appreciated that the land policy was developed post the enactment of the land Act however this notwithstanding, it offers the government opportunity to amend existing and or enact new legislation that implements the provisions of the land policy in a comprehensive manner. By way of example, although expressly stated for a land bank to be established, this has not come to pass. Government must therefore commit itself by setting aside resources to implement the land policy which in this case would allow for acquisition of land in the market for purposes of the land bank and by so doing respond to the land needs of the country in development.

The government has responded to CSCO and its members' call for the need of a RAP Policy document. Accordingly, through the line ministry government must now consider fast tracking the draft Land Acquisition, Resettlement and Rehabilitation Policy (LARRP) and enact relevant legislation as applicable to ensure that all cases of involuntary resettlement for development purposes henceforth conforms to the

policy and mitigates the negative effects that arise from situations of involuntary resettlement on the one hand and offer avenues of redress for victims on the other.

A RAP policy if implemented and used in all cases of involuntary resettlement will be categorised by amongst other things;

- I) Complaints mechanism for PAPs. This has the effect of saving PAPs from the costly exercise of appealing to the High Court or other judicial body.
- II) Resettlement as a last resort. Involuntary resettlement should be undertaken only as a last resort where not alternative land can't be found for a particular developmental need. This has the effect of preventing unnecessary cases of involuntary resettlement.
- III) Prompt, Fair and Adequate Compensation. PAPs can on the basis of the policy be assured of the timely response by government to protect livelihoods.
- IV) Involuntary resettlement to Improve Livelihood Standards. As a general policy PAPs should not be made worse by the involuntary resettlement. On the contrary the livelihoods of all PAPs should be spared and improved to greater heights through for example receiving modern well planned accommodation, health facilities, education and water facilities amongst others.
- V) Etc.

Customary Tenure

Security of tenure for customary land owners should be respected and protected through measures that allow for its treatment to be at par with other tenure systems in accordance with the Constitutional provisions. These measures include; when making valuations and assessments for compensation in cases of involuntary resettlement treat customary tenure to be at par with other tenure systems; deliberately provide for women and their spouses to be participants etc.

Sensitization of Communities

Some of the land governance challenges arise from lack of adequate sensitisation to the communities about land governance issues. Given the high rates of illiteracy in the country, the line ministry should undertake measures that incorporate public sensitization on land rights especially on accrual and termination of rights;

environmental aspects including on forests, protected water bodies and swamps; as priority and executed within the national and ministerial plans.

Out of Court Settlements

Communities should be encouraged to support the judicature pre trial mediation exercises and or mediation at community levels as a measure of avoiding the heavy costs of litigation. Deliberate measures that include identifying and mandating reputable civil society organisations working on land in communities to act as mediators for land disputes could be considered.

4.0. Tabulation of Key Issues

Issue	Details	Recommendations
Current land and related governance frameworks (Policies, Laws, regulations, guidelines, organised institutions)	Land Policy	<ul style="list-style-type: none"> • Fully implement these provisions • Strengthen institutional capacity to implement these provisions • End/fight impunity in land matters
	Land-related Legislations, Regulations, Guidelines, and Principles	
Policy, Legal, and institutional Reforms: Harmonisation of land and related governance instruments		<ul style="list-style-type: none"> • Harmonise land governance frameworks with other framework instruments on: physical planning, urban planning, land use, protection and conservation, extractives (mining, oil and gas, forestry, fisheries, etc) sectors • Undertake physical planning strategy that caters for changing land issues over time
Land ownership issues	Security of tenure	<ul style="list-style-type: none"> • Uphold and protect security of customary tenure • Issue Customary Certificates of Ownership (CCOs) • Undertake awareness and civic education to erase ignorance among customary owners on registration processes • Systematic and communal land demarcations should be given priority
	Demarcations	
	Competing claims	
	Standards & regulations on acquisition of customary land	
	Community land rights	
	Overlapping/competing	

	claims and interests	<ul style="list-style-type: none"> • Consider independent Customary Land Registry • Standardisation of the methodology & regulations for the acquisition of customary land • Protect community rights on communal land as against powerful investors, speculators • Address conflicts between Land Act and Registration of Titles Act: women's rights as protected under Land Act need to be reflected in the RTA • Overlapping, sometimes competing land rights
Land use, control, and rights issues	<p>Physical planning vs. Physical features: Physical Planning Act in place but not implemented, hence challenges for future governance</p> <p>Government is a people's trustee, but should not abuse this trusteeship – e.g. reallocating land to non-conservation use (e.g. Mabira forest) as though there is no other possible land that can be allocated for investment</p>	<ul style="list-style-type: none"> • Implement Physical planning act • Governments role as trustee should not be construed as reason for encroachment on people's land rights • Nature and environmental conservation should be given the importance it deserves due to threats of climate change and global warming
Contentious land issues in Uganda	<p>Issuance of Certificates of title in wetlands. Encroachment on wetlands – inconsistent with conservation principles and laws</p>	<ul style="list-style-type: none"> • Government should map and gazette all wetlands, conservation areas, protected areas, and similar lands of national and global importance
Lessons from legitimate practices	<p>Many are documented, and some lessons need to be drawn</p>	<ul style="list-style-type: none"> • There is need to give legal mandate to these good/best practices
Balancing land for public interest/use vs. Private Land rights	<p>Possibly related to compulsory land acquisition</p>	<ul style="list-style-type: none"> • Safeguard people's land rights provided for under Art. 26 of the Constitution

		<ul style="list-style-type: none"> • Provide Court Process through which compulsory land acquisition process may evolve • Set time-limit within which such disputes must be resolved by court
Land Conflicts/Disputes Management	<p>Court processes are slow, yet other methods and actors do not have the same legal mandate and weight as courts – yet court processes have been used to disenfranchise weak parties in land conflicts</p>	<ul style="list-style-type: none"> • Set time limits within which court cases on land must be resolved
Processes, procedures of: Land Registration, Acquisition, Resettlement, & Rehabilitation		<ul style="list-style-type: none"> •
Preservation, conservation, and protection issues		<ul style="list-style-type: none"> •