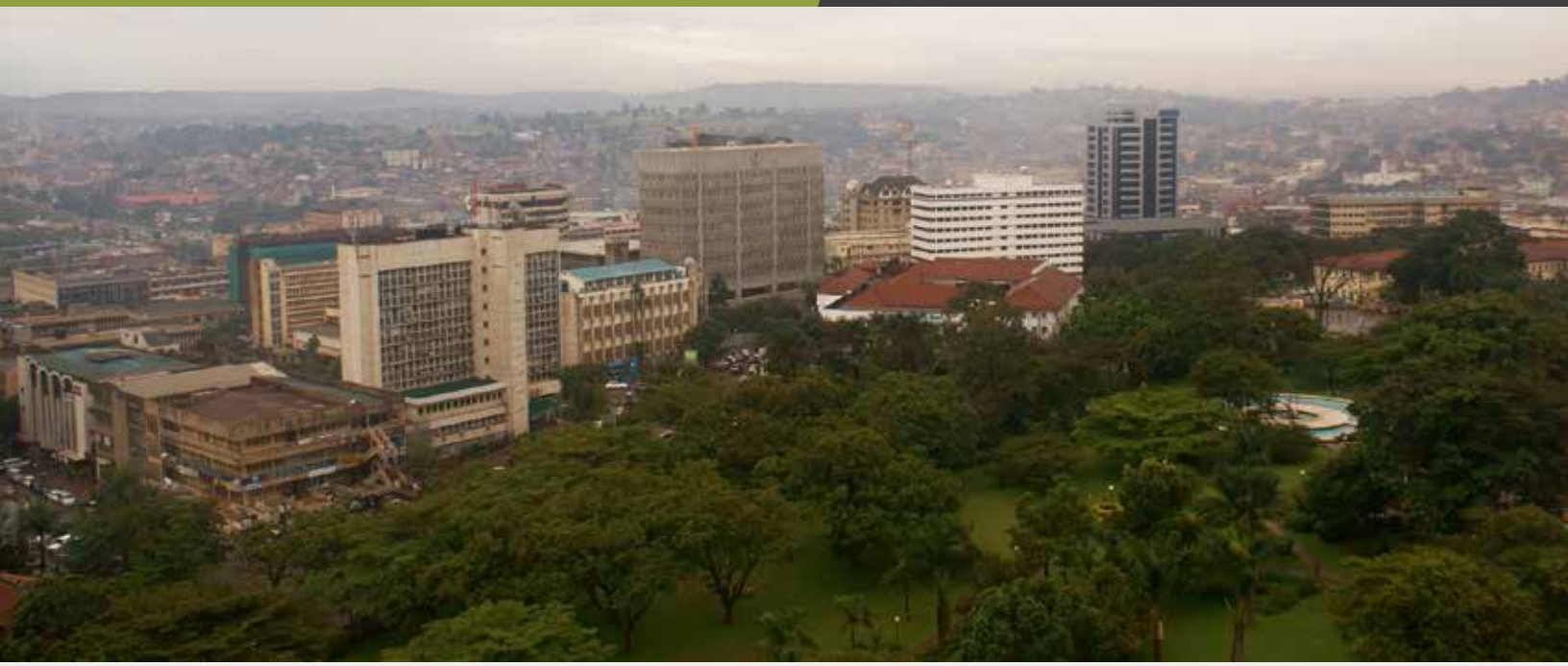
FOCUS ON LAND IN AFRICA
Placing land rights at the heart of development

BRIEF

LAND FOR PRIVATE INVESTORS AND ECONOMIC DEVELOPMENT

Uganda



The Ugandan government faces a difficult challenge as it attempts to balance private business interests, national development needs, current rural livelihood needs, and environmental protection in its allocation of land use rights. *Photo: ©Adrian Dutch*

By Peter Veit

INTRODUCTION

Private investors need land to conduct their business. Little, if any, land in Uganda, however, is vacant, idle and unclaimed. As a result, many companies experience difficulties securing land for their operations. To facilitate investment, the government is helping companies secure land. In recent years, the government has sought to allocate land in forest reserves and other protected areas for economic development purposes. The following brief examines the law and practice of allocating land in the protected estate for private investment.

MAP

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The acquisition of land is frequently reported as a significant challenge by companies doing business in Uganda. *Photo: ©Adrian Dutch*

TYPES OF LAND TENURE

Investors—foreign and domestic—need land to conduct their operations and be productive. In Uganda, land is held under various types of tenure systems and can be obtained from private owners, traditional leaders, local councils, the Uganda Investment Authority and other government agencies. However, little, if any, land in Uganda is vacant, idle and unclaimed. As a result, many companies experience difficulties locating and securing land for their operations. Companies doing business in Uganda generally consider the acquisition of land with a clean title to be one of their biggest challenges. In 2009, the International Finance Corporation's Doing Business Survey ranked Uganda's property registration process near the bottom; 167 out of 181 countries surveyed, down two places from 2008.

Uganda's Constitution of 1995 and Land Act of 1998 recognize four types of land tenure. The Land Act, Section 2, stipulates that all land, "shall be owned in accordance with the following land tenure systems—(a) customary; (b) freehold; (c) mailo; and (d) leasehold." Most land in Uganda—70% to 80%—is held under undocumented customary tenure. Customary lands are regulated principally by traditional institutions and unwritten rules, and are limited in their operation to specific geographic areas or groups of persons (e.g., ethnic, linguistic). Investors often obtain customary land through leases or other contracts, but such land is rarely surveyed or titled, the contracts can be difficult to enforce in courts of law, and banks generally do not accept contracts over customary land as collateral for loans.

Freehold tenure offers holders permanent and perpetual rights, but also the rights to dispose of land at will. Little land in Uganda is held under registered freehold tenure and most of it is found in urban centers and in the former Ankole, Toro, Kigezi, and Bugisu Districts. Freehold rights are only available to Ugandan citizens and must be registered. The Land Act, Section 40(4), states that, "…a noncitizen shall not acquire or hold mailo or freehold land." Foreign investors, whether individuals or companies, may only lease land unless they are companies with local shareholding participation of 50% or more, in which case they are entitled to buy and own land outright. Freehold titles can be used as collateral for bank loans.

Mailo tenure is a customary form of freehold tenure. Land held under mailo tenure—totalling about 9,000 square miles—is confined to Buganda (central Uganda) and Bunyoro (western Uganda). The British colonialists allocated square-mile blocks of land to Buganda notables in exchange for political cooperation. Today, most mailo land is occupied and used by tenants, rather than the landowners. Foreigners cannot own, but may lease mailo land. The Land (Amendment) Act of 2010 enhanced the security of "bona fide" or "lawful" occupants on registered land. Section 2 states, "a lawful or bona fide occupant shall not be evicted from registered land except upon an order of eviction issued by a court and only for non payment of the annual nominal ground rent." As a result, it may be problematic for investors to clear mailo

land currently occupied by "bona fide" or "lawful" tenants.

Leasehold tenure is contracted out by owners or holders of customary, freehold, mailo, or public land. It is the tenure type most commonly used by foreign investors. Foreigners may obtain contracts for leases of land of up to 99 years, with the opportunity for renewal. By the Land Act of 1998, Section 40(2), "A lease of five years or more acquired by a noncitizen shall be registered in accordance with the Registration of Titles Act." The Registration of Titles Act of 1924 lays out the procedures for registering leaseholds. Long-term leases can be used as collateral to obtain a commercial loan.

LAND ACQUISITION

To facilitate investment and promote economic growth, the government is helping local and foreign companies to secure land, including leasing out public lands. The Uganda Investment Authority (UIA), established by the Investment Code Act of 1991 (revised in 2000), is a semi-autonomous state agency responsible for promoting and facilitating investment projects, providing serviced land, and advocating for a competitive business environment. The UIA has been charged with establishing 22 Industrial Parks around the country between 2008 and 2013. In 2008-2009, Industrial Parks were established in Mbarara, Mbale, Soroti and Gulu; and in 2009-2010, in Kasese, Kabale, Masaka, and Arua.

The UIA has the authority to acquire and hold property. It holds large tracts of urban and rural land throughout Uganda, and also maintains a database of public and private land available for investors. Under the Investment Code Act, Section 10(2), "No foreign investor shall carry on the business of crop production, animal production or acquire or be granted or leased land for the purpose of crop production or animal production." According to the UIA, this provision contradicts the Constitution and Land Act and is due to be repealed. In practice, foreigners seek cabinet approval through the UIA for land to be used for agricultural or animal production purposes.

The government acquires land for investors in various ways. Some land is purchased from private landowners through willing seller, willing buyer arrangements. Once acquired, the land becomes public land, is vested in the UIA or the Uganda Land Commission (ULC), and is made available to private investors on a leasehold basis. The ULC, established under the Constitution of 1995 and the Land Act, is responsible for holding and managing all land vested in or acquired by the government. The ULC also maintains records of leases on state land, and, like the UIA, is engaged in the acquisition and allocation of public land to the private sector for investment purposes.

For most Ugandan citizens, the process by which the government acquires land for investors is not clear or fully understood. Little public attention has focused on land acquisitions, including purchases, by the state, although some civil society organizations are beginning to examine these transactions. Their efforts have focused on the land valuation process and the purchase price of such land deals. Advocates argue that the procedures by which such land is identified and valued should be open and transparent to the public, and that the ULC and UIA must be independent and free from political influence.

The government also allocates public land to private investors. Some public land is officially idle, although much of it is used for various public interest and public benefit purposes. Recently, the government has closed or relocated several public schools in urban and peri-urban areas to make land available to investors. Some advocates argue that the leasing of public land to private investors is not in the public interest, and that other uses generate more benefits to the citizens of Uganda. Further, they argue that changing the use of public lands should be an open and transparent procedure that would allow citizens and their representatives to engage and participate in the decision-making process.

DEGAZETTEMENT

Over the last 10 to 15 years, the government has sought out land in gazette protected areas for investment purposes, especially wildlife sanctuaries and forest reserves. Wildlife sanctuaries and forest reserves are not managed as strict nature preserves, but rather for the sustainable use of natural resources and ecosystems. In such multiple use areas, certain lands and natural resources may be used by local populations with appropriate permits and licenses. For many rural people, sanctuary and reserve-based natural resources contribute to local livelihoods and are critical to sustaining their well-being.

In some cases, the government has degazetted protected areas. Degazettement refers to the loss of legal protection of all or part of an established protected area. In Uganda, this—still public—land is put into other uses for public benefit purposes or leased to the private sector. In the latter case, the proprietary interests of citizens are destroyed and opportunities for public access to the land and resources are diminished. In 1997, 1,006 hectares of the Namanve Forest Reserve on the outskirts of Kampala were degazetted for industrial development. In 2000, 3,500 hectares from several forest reserves on the Bugala Islands in Lake Victoria were degazetted for palm oil plantations. In 2003, the government sought to degazette part of the Pian Upe Wildlife Reserve for fruit production and, in 2005, it sought to degazette part of the Kaiso-Tonyo Wildlife Reserve for a small oil refinery. The latter two efforts were not completed and the reserves remain intact.

In 2007, the government sought to degazette 7,100 hectares of the Mabira Forest Reserve for sugarcane production by the Sugar Corporation of Uganda. Local NGOs and activists, organized in a coalition, pressed the government to not pursue the degazettement. They conducted policy research on the ecological and economic value of the Reserve, lobbied lawmakers, aligned their efforts with the National Forestry Authority (the government body responsible for managing forests), filed petitions in court, called for boycotts of Sugar Corporation products, and organized protests. The street demonstrations, involving some senior government officials and a former

presidential candidate, led to ethnic tensions, loss of life and property damage. The government halted its effort, but continues to eye the land in the Reserve.

Elsewhere, the government has authorized land use changes in protected areas. In 2003, after abandoning efforts to degazette the 13 sq km Butamira Forest Reserve, the government revoked or bought out the nearly 180 tree-planting permits to local farmers and communities (for fuelwood lots) and issued a 49-year permit to Kakira Sugar Works to grow sugarcane (the government supports sugarcane production principally to reduce sugar imports and promote economic growth). The government has also allowed mining and drilling in protected areas, including oil drilling in Murchison Falls National Park and limestone mining in Queen Elizabeth National Park, Uganda's two largest fully protected national parks.

Degazettement and land use changes in protected areas are regulated by law in Uganda. The Constitution, Article 237, Section (2)(b) states, "the Government or a local government as determined by Parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens." A similar provision is found in the Land Act, Section 45(1). Advocates argue that the Doctrine of Public Trust is enshrined in these legal provisions; the principle that certain lands or resources are preserved for public use, and that the government is obligated to maintain these lands for the public's reasonable use.

In 2003, the National Environment Management Authority (NEMA), Uganda's apex environmental protection agency, argued that degazettement is not possible under current law. Regarding the proposed degazettement of Pian Upe Wildlife Reserve in 2003, NEMA concluded, "…our understanding of the Constitution, the Land Act, 1998 and the Uganda Wildlife Statute, 1996 when read together is to the effect that alienation (for that matter degazettement) of a Game Reserve or National Park is not permitted. What the above laws permit is the issuance of permits, concessions or licenses in Game Reserves and National Parks, among the other reserved natural resources."

Also regarding Pian Upe, the Attorney General noted, "The implication (of the Constitution and Land Act provisions) is that government is trustee and as such its powers to deal with such natural resources are not absolute; rather they are subject to the interests and wishes of the people of Uganda. In fact, Section 45(4) of the Land Act goes further to expressly prohibit Government or a local government from leasing or otherwise alienating any of the aforementioned resources. The effect of this is that any act of Government or a local government which ultimately results in the transfer of any of the natural resources specified in Article 237(1)(b) of the Constitution and Section 45(1) of the Land Act will be unlawful."

The Attorney General further argued, "The only other option (other than by way of concession, permit or license) for consideration is for the Minister responsible for wildlife to exercise his powers…by striking Pian Upe off the list of areas gazetted as wildlife reserves so that it ceases to be covered by Article 237(1)(b) of the Constitution and Section 45(1) of the Land Act, 1998." The Minister would need to do this through a statutory instrument approved by Parliament. Civil society organizations, however, disagree, maintaining that the Constitution provides absolute protection for parks and guarantees their permanent availability for public uses. They argue that degazettement requires a Constitutional amendment to the public trust doctrine which can only be achieved by Parliament and, therefore, the Minister does not have the power to change the status of protected areas.

Local NGOs were able stop plans to degazette 7,100 acres of Mabira Forest Reserve for sugarcane production in 2007. *Photo: ©Tattooed JJ*

LAND USE CHANGES

The Land Act and the Uganda Wildlife Statute of 1996 allow for land-use changes in protected areas. The Land Act, Section 45(5) allows the government to grant "concessions or licences or permits" for use of land or natural resources in protected areas, although under Section 45(4), the government may not "lease out or otherwise alienate" these resources. Advocates and civil society organizations interpret this to mean that allowable land use must be consistent with the objectives of the protected area. Again regarding Pian Upe, the Attorney General agreed, "In order for concessions, licenses, or permits to be lawfully granted, they must be in respect of a business related to wildlife management or one which has an impact on wildlife management and conservation areas." In doing so, he declared that the proposed investment in commercial crop of concessions, permits and licenses often does not follow prescribed procedures. For example, the National Environment Statute requires an Environmental Impact Assessment (EIA) and a public hearing for many proposed developments, including in protected areas. These procedures, however, have not always been followed.

Another case in which civil society has challenged the government on land use in protected areas concerns the Butamira Forest Reserve. In 2004, ACODE filed a petition in the High Court over the 49-year permit the government issued Kakira Sugar Works to plant sugarcane in the Reserve. ACODE alleged that the permit to plant sugarcane was in violation of the public trust doctrine, and that a proper EIA, a public hearing and other measures as required by the National Environment Statute were not conducted. In late 2005, the High Court ruled that the government breached the doctrine of public trust and that it failed to meet its duties, including conducting an EIA. The court, however, did not order the government to revoke the permit to Kakira Sugar Works or to reinstate the tree-planting permits to the local people.

Concurrently, the parliamentarian who represented the local people who lost their tree-planting permits in the Reserve referred the matter to the Inspectorate of Government. He also asked the government to set a time frame for the conditions of the Kakira Sugar Works permit to be fulfilled, including the planting of another forest of similar acreage, the protection of mature trees in the Reserve, and the protection of all vegetation lining Reserve waterways. The lawmaker was supported by several members of the sessional Committee on Natural Resources in the Parliament, although Uganda's President Yoweri Museveni called him an "economic saboteur." To date, however, the government has not conducted an EIA and Kakira Sugar Works has not met all of its permit conditions.

FACT

The Land Act and the Uganda Wildlife Statute of 1996 allow for land use changes in protected areas, a cause of significant tension and disagreement between the government and civil society organizations.

Parts of some protected areas have been cleared for mining and drilling, including parts of the Queen Elizabeth National Park. *Photo: ©kiwiexplorer*

While calling for the government to stop pursuing land in protected areas for investment purposes, some local advocates are encouraging government to focus on: 1) acquiring land for investment through willing seller purchases, willing buyer arrangements; 2) identifying and documenting private land available for lease to investors; and 3) helping private investors to lease land directly from landowners. Other civil society groups, however, argue that the state should not be a landlord and should not lease out public land for investment purposes. Instead the government should offer administrative support to private land deals, regulate urban planning, and tax undeveloped land where needed to deter neglect. These issues need urgent attention since private sector needs for land remain unmet, stifling investment and limiting economic growth and development.

As urban growth intensifies and development needs grow, Uganda's government will need to address the need for land for investment. *Photo: ©Edmund Frettingham*

SOURCES

Tumushabe, Godber W. 2003. Trading Natural Wealth for Fiction: A Legal Opinion on the Proposed Degazettement of Pian Upe Wildlife Reserve. Legal Series No. 1. Kampala: Uganda Wildlife Society. Available at: http://www.careuganda.info/PUWR%20Legal%20Brief%20governance.pdf.

Tumushabe, Godber W. and Arthur Bainomugisha. 2004. The politics of Investment and Land Acquisition in Uganda: A Case Study of Pian Upe Game Reserve. ACODE Policy Briefing Paper No.7. Kampala:

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