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A GUIDE TO PROPERTY LAW IN UGANDA



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A Guide to Property Law in Uganda



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Introduction

This guide has been written as an information resource for government officials, community leaders, humanitarian aid workers, judges, lawyers and others whose responsibilities include upholding land and property rights in Uganda. It outlines the main provisions of Uganda's constitutional and legal framework and the protection these provide to property rights. It briefly outlines the historical background to existing land tenure relations, describes the constitutional provisions relating to land in the 1995 Constitution and sets out the main provisions of the Land Act 1998.

Many important principles related to land law in Uganda pre-date the current constitutional and legal framework. Some derive from concepts developed under English property law and many of the cases discussed below were heard by the courts while Uganda was still under colonial rule. It also explains some of the terms and concepts which under-pin the existing system of land rights in Ugandan law.

Although the formal system for administering land tenure, carrying out transactions and settling disputes in Uganda is quite clear, the practice is less so. Lack of resources has made it difficult to implement some of the main provisions that the laws envisage and the official institutions suffer from a serious lack of capacity, which has increased the role and significance of customary law in filling the resulting vacuum. This guide provides a brief introduction to how customary law in Uganda deals with land rights in the Acholi region of Northern Uganda. It includes a brief overview of the context in which Acholi ethnicity has developed and how this has given rise to certain beliefs and ways of approaching land rights and settling disputes.

Finally, the guide describes the protection given to land, housing and property rights under international law, which, while not directly applicable, forms an important framework within which the courts should operate. It provides practical guidance on how international human rights monitoring bodies can be used to draw attention to particular violations of land, housing and property rights.

This guide has been published by UN-HABITAT and the UN Development Programme as part of their efforts to support reconstruction and development in Uganda. Both agencies have experience of responding to humanitarian crisis situations by supporting governments, local authorities and civil society in strengthening their capacity to recover from a variety of complex emergencies and natural disasters. Both agencies have also developed expertise in designing interventions which link humanitarian relief with medium to longer term programming and planning.

Recent surveys indicate that although most people are aware of the existence of the Land Act and some of its provisions, there is relatively little awareness of land sector institutions and procedures. Knowledge of the practical mechanisms necessary to uphold people's land rights is generally limited and confused. Consequently, as people in the North increasingly leave temporary camps and begin the process of returning to their communities of origin, the numbers of potential disputes over access to land in both rural and urban communities will further debilitate already weak land administration capacity in the region.

The Ministry of Land, Housing and Urban Development (MLUDH) has called for the development of a land rights information campaign aimed at making people more aware of their rights under the Land Act. A number of international agencies have made similar recommendations. Confusion exists about the role of the official legal and administrative institutions in settling issues related to land rights and usage and how much should be decided through customary law and traditional institutions. Currently the two systems exist in parallel and it is important to ensure that they work in harmony.

This guide is intended to be a short and accessible, but comprehensive, introduction to the applicable law on land and property, which can be used as a basic reference point and a training resource. It aims to provide practical help for all those whose work and decisions may have an impact on the lives of displaced people seeking to exercise their simple and basic right to go home.

Chapter One

Land law in Uganda

This Chapter provides an introduction to the system of land rights in Uganda, including the structure of Uganda's court system. It briefly outlines the historical background to existing land tenure relations and the various land policies pursued by previous governments of Uganda. It then describes the constitutional provisions relating to land in the 1995 Constitution and sets out the main provisions of the Land Act 1998. This Act created a number of institutions for the management and administration of land in Uganda and the Chapter describes the powers and functions of these bodies.

It should be noted at the outset, however, that many of the provisions envisaged by the framers of the 1995 Constitution and 1998 Act have never been implemented. This has mainly been due to a lack of resources and the Government of Uganda remains committed to implementation of most parts of the Act. It is important, therefore, to be aware of the formal legal framework governing land relations in Uganda, while bearing in mind that this is not quite how the law works in practice. These points are further discussed in the following two chapters on taking cases using both the formal legal system and under the institutions of Ugandan customary law.

The Constitutional and legal framework

Uganda is a former British colony and the English legal system remains influential. Since achieving independence, Uganda has adopted three constitutions: the 1962 constitution, the 1967 constitution, and the 1995 Constitution, which remains in force. The 1995 Constitution provides for an elected President and Parliament, an independent judiciary and a legal system based on English common law and Ugandan customary law.¹

The highest court in Uganda is the Supreme Court, followed by the Court of Appeal (which also functions as the Constitutional Court for cases of first instance involving constitutional issues), the High Court, the Chief Magistrate's Court, and local council (LC) level 3 (sub-county) courts, LC level 2 (parish) courts, and LC level 1 (village) courts. The Judiciary is headed by the Chief Justice and deputized by the Deputy Chief Justice.²

The President of Uganda nominates, for the approval of Parliament, members of the Judicial Service Commission, which makes recommendations on appointments to the High Court, the Court of Appeal, and the Supreme Court. A minimum of six justices may sit on the Supreme Court and the Court of Appeal or Constitutional Court. In addition there are a few specialized courts that deal with industrial and other matters. There are also Land Tribunals, which are discussed in greater details below.

At the lowest level are three classes of courts presided over by magistrates. These LC courts have authority to settle civil disputes, including land ownership and payment of debts, and criminal cases involving children. They often settle cases by mediation. The LC courts should not hear criminal cases including murder and rape. The decisions of LC courts can be appealed to magistrates' courts and beyond through the rest of the Ugandan court system.³

Background to the tenure system of Uganda

The evolution of the four main systems of land tenure – Freehold, Leasehold, Mailo and Customary – was mainly a product of the way in which the British colonial administration interacted with Uganda's pre-colonial tribal chiefs. Land has always been an important factor in Ugandan societies. Even before colonization, it played an important part in social relations of the kingdoms of Buganda, Busoga, Bunyoro and Toro, as well as among territorial societies such as the Karamojong.⁴ When the British colonial administration established itself in Uganda it sought to gain control of Uganda's productive resources, while at the same time striking deals with some

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