



# LOCKED OUT

How unjust land systems  
are driving inequality in Uganda

**EVEN  
IT UP**



**OXFAM**



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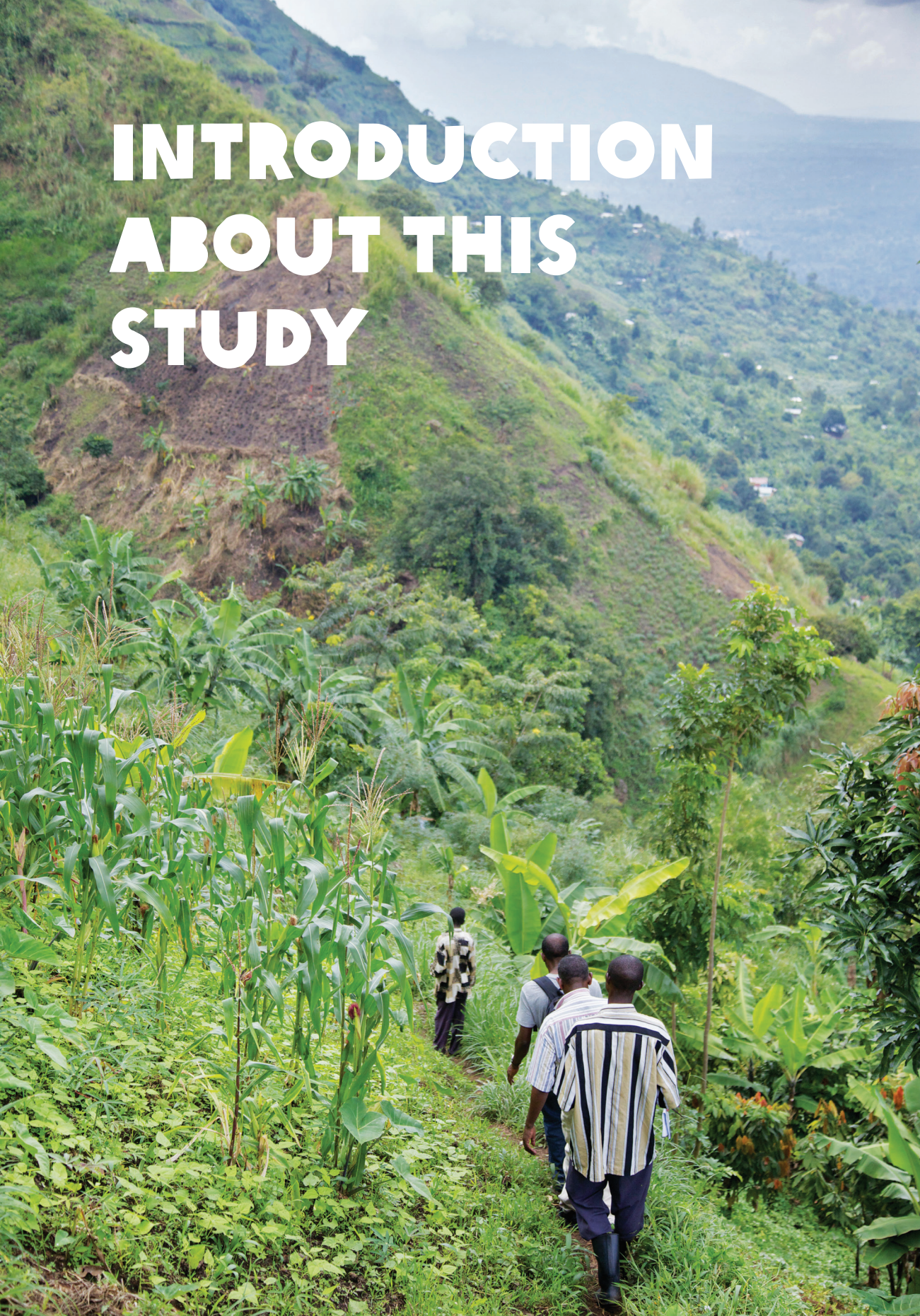


# ABBREVIATIONS

ACODE	Advocates Coalition for Development and Environment
ALCs	Area Land Committees
BMAU	Budget Monitoring and Accountability Unit
CGV	Chief Government Valuer
DLBs	District Land Boards
DLTs	District Land Tribunals
DPs	Development Partners
FDIs	Foreign Direct Investments
LAA	Land Acquisition Act
LC	Local Council
LDHC	Land Division of the High Court
LRD	Land Reform Decree
MDAs	Ministries, Departments and Agencies
MLHUD	Ministry for Lands, Housing and Urban Development
NDP	National Development Plan
NFA	National Forestry Authority
NGOs	Non-Governmental Organizations
NLP	National Land Policy
PLA	Public Lands Act
UBoS	Uganda Bureau of Statistics
UGX	Uganda shillings
ULC	Uganda Land Commission



# **INTRODUCTION ABOUT THIS STUDY**





This study explores how land governance and administration contributes to inequality in Uganda. It looks at factors that have impacted poverty and vulnerability, and how policies, laws, regulations and cultural practices can be made more inclusive. Specifically, it:

- Analyses trends in land ownership, access, security of tenure and use in Uganda, what drives those trends and how they contribute to inequality;
- Reviews the impact of land use and security on vulnerable groups such as women and youth in particular; and
- Provides policy proposals to address inequality arising from land ownership, access and use.

The study is based on primary and secondary data, collected and analysed using both qualitative and quantitative techniques. Primary data came from interviews with key informants in government, community leaders and members in selected districts, and others with professional knowledge and involvement in the land sector.

Secondary data were obtained from published and internal documents of government ministries, departments and agencies, non-governmental organizations, development partners, media, social media and academia. Reports by courts of law and commissions of inquiry were reviewed to shed light on the history of land policies and legislation, changing paradigms of development policy, emerging political ideologies and relations with state power. Trends in land ownership, management and use were partly informed by a review of academic studies.

Chapter 1 introduces the history and extent of land inequality in Uganda. Chapter 2 discusses ways in which land inequality and conflict manifest. Chapter 3 distils recommendations to turn land from a driver of inequality to a vehicle for escaping poverty.

## 1. Understanding the relationship between land and inequality in Uganda

Bad luck struck Kabonesa twice. In 2010, her family was displaced to make way for oil exploration activities in the Albertine Graben region in western Uganda. The government simply told her and her neighbours to leave. She was given compensation, but not enough and only indirectly – all the money was handed to her husband, and it was up to him to decide how much to pass on to Kabonesa and to his other two wives.

The money took time to arrive. In the meantime, speculators attracted by the oil exploration were driving up local land prices. Kabonesa used to have four hectares of land, but now she could not afford enough land to feed her family. She started cultivating another plot, two kilometers from her new home, at the edge of a forest reserve – the government owned this land, but allowed local people to grow crops there.

But as the oil project's new tarmac road, Kaise-Tonya, made the area more attractive for commerce, in 2014 bad luck struck again. Kabonesa had to abandon the garden she had planted, as the government leased the land to private investors to grow eucalyptus trees. As the area around them boomed with new development, Kabonesa and her family were relegated to the bottom of the income pyramid, struggling to afford the basics.

“Unprecedented economic growth has bypassed many Africans,”

Winnie Byanyima.

The story of Kabonesa's household is typical. It demonstrates how inequality widens and the poor are made even more vulnerable, even as GDP figures tell a story of success. This paper shows how laws and policies support big investors rather than ordinary Ugandans like Kabonesa. It builds on a 2017 study in which Oxfam identified unfairness in tenure and the control and use of land as a key driver of inequality in Uganda.<sup>1</sup>

In a country where agriculture is the biggest employer, land can be an important resource for reducing poverty and inequality. However, poor people can benefit from land only if laws and policies prevent the rich and powerful from trampling on their rights, and structures are in place to resolve disputes fairly. To achieve national and international development targets, decisions regarding land tenure, control and ownership must be more inclusive and consider the interests of the poor and vulnerable – especially women.

In reality, poor people are left on their own. Laws and policies not only fail to make their lives better, in many cases they make them worse. This report shows how ambiguous tenure regimes, weak implementation of land laws and policies, historical injustices and harmful cultural practices combine to reinforce inequality and exclude the poorest from benefiting from land.



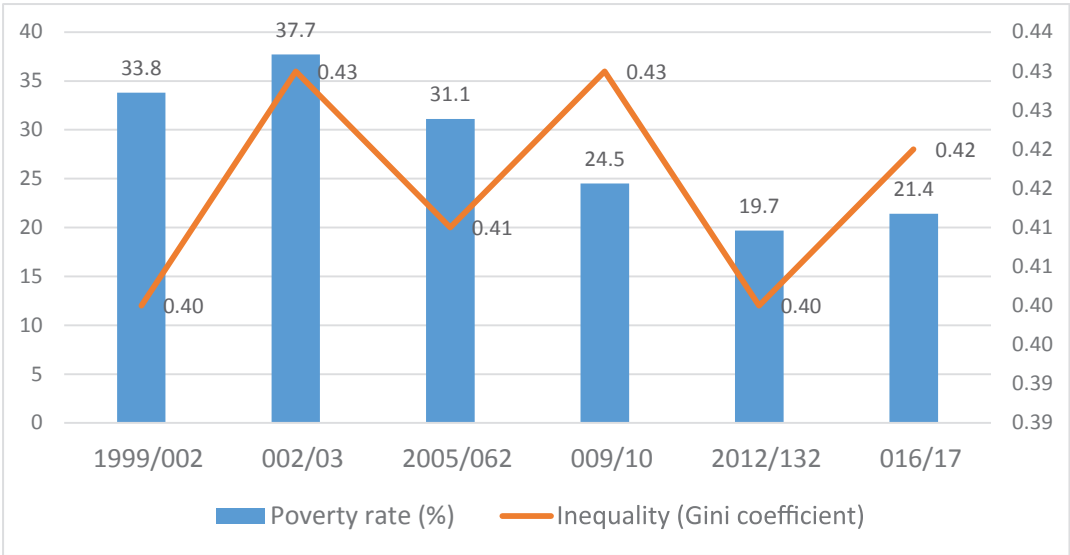
# 1.1 The extent of land inequality in Uganda

Inequality exists in multiple forms- including in wealth, income and opportunities. It worsens when the most vulnerable in society are excluded from accessing resources to improve their lives and livelihoods and influencing decisions about how society is managed. Its causes are often historical and entrenched in a framework of laws and policies that govern ownership, access and use of resources. These resources include land. Inequality may be eased or worsened by the political ideologies that define agendas of economic development.

As Figure 1 shows, Uganda made significant progress in reducing poverty in the decade to 2013. Since then, however, the trend has reversed. Between 2013 and 2017, the percentage of people living in poverty increased from 19.7 to 21.4 – in absolute terms, a rise from 6.7 million to 10 million poor people.<sup>2</sup>

The reduction in poverty in the early 2000s hides lack of progress in tackling inequality. According to a report by Oxfam<sup>3</sup> and World Bank,<sup>4</sup> between 1996 and 2012 the richest 10 per cent of the population increased their share of national income from 29.9 percent to 35.7 percent, while the share of the poorest 10 per cent decreased from 3.2 percent to 2.5 per cent. As measured by the Gini coefficient, income inequality has fluctuated over the last two decades and increased from 0.40 to 0.42 in the four years to 2017.<sup>5</sup>

**Figure 1. Uganda trends in poverty and inequality 1999/2000 – 2016/2017**



Source: UBOS

Uganda's economy is growing quickly, although today's rate of 4.5 percent is lower than

the average of 7 percent in the 1990s and early 2000s.<sup>6</sup> The growing economy is having environmental impacts: Uganda's capital, Kampala, is ranked amongst the most polluted cities in the world.<sup>7</sup> Nonetheless, poverty is more than twice as prevalent in rural as urban areas, and over 80 percent of rural households are considered to be vulnerable to poverty compared with under 30 per cent in urban areas.<sup>8</sup>

The recent reversal in poverty reduction is directly linked to land, which is both a generator and a store of wealth. Questions about land influence inequality in many ways: how much land is available to individuals and communities, how secure is their tenure, what kinds of livelihood can it support, what legal and institutional structures determine its usage, and are young people and women marginalized by cultural beliefs and practices?

These questions about the use of land impact even households that do not directly depend on it, as levels of food and industrial production influence prices, export revenues and the value of real income. But most Ugandans do depend directly on land – nearly 70 percent of households in Uganda are engaged in land-based subsistence farming.<sup>9</sup>

Vulnerability is higher, at 82 per cent, in the rural areas compared with 29.2 per cent in the urban areas. This means that people in rural areas are three times more vulnerable than those in urban areas. They are three times more likely to slip back into poverty in case of shocks such as failed crops, death or sickness.

Most rural households have a direct and almost full time dependence on agriculture. Only a few engage in some form of commercial farming, business or other employment opportunities. These additional sources of income, though critical, have limited impact on the income and welfare of most households. For example, commercial farming and property account for only 1.6 percent and 0.6 per cent of household income respectively. Other sources of income, which are not related to agriculture, are dominated by employment (16.4 per cent), business enterprises (8.1 per cent) and cottage industry (0.3 per cent).

People providing paid agricultural labor and people in subsistence farming are more likely to be poor than those whose main income is commercial farming or other non-agricultural enterprise. Poverty rates among paid laborers in the agricultural sector

stand at 35 percent while for subsistence farming it is 32 percent. People whose main source of income is commercial farming have poverty rates of 14 percent while those in non-agricultural enterprises have poverty rates of 11 percent. People relying on subsistence agriculture have poverty rates more than double that of people doing commercial agriculture and three times those that rely on non-agricultural enterprises.

The use of land also has an impact on households that are not directly dependent on land-based activities, through the production of food, export revenues, and industrial production that influence the price levels and value of real income. In essence, issues of land access and use affect everyone. Land laws and policies have kept the poor and vulnerable worse off, right from the pre-independence era to date. Oloka-Onyango observes that land inequities “have been exacerbated by the failure of post-independence governments to comprehensively pursue land reform measures which are equitable, rational and sustainable.” Inequities in land ownership and access have persisted in Uganda for centuries and may be getting worse as land grabbing has been ranked among the top three most significant causes of landlessness in Uganda.

## 1.2 Land inequality and inter-generational transmission of poverty

Some theories suggest that inequality naturally increases in the early stages of economic development and declines in the later stages.<sup>11</sup> Even if this theory were accurate, it would pose a moral dilemma – for how long is it acceptable to tolerate rising inequality? However, the persistence of inequality in high-growth economies such as Uganda does not bear out the theory.<sup>12</sup> Countries need to adopt proactive, deliberate strategies to ensure that growth brings equity, and issues related to land are critical.

For poor households, lack of secure land tenure propagates a vicious cycle of poverty – without tenure, they have little incentive to invest in developing their land to improve its productivity and value.<sup>13</sup> Poor people also tend to lack the skills, knowledge and access to capital necessary to improve productivity.<sup>14</sup> As a result, over the generations they fall further and further behind landowners who do have the means to improve their land, because improved productivity generates more income to fund more improvements. It is especially challenging for women to create wealth through land. Land is generally handed down from father to son. If a man has no sons, his brother, nephew or another male relative will inherit. Women are legally allowed to buy land, but few have the necessary resources. Women typically have only temporary rights over land, linked to

their relationship with their father or husband. The lower social status of women, due to deep-rooted cultural attitudes, means they have more difficulty than men in enforcing land rights.<sup>15</sup>

### 1.3. A brief history of land laws and policies in Uganda

Inequities in land ownership and access have persisted in Uganda for centuries. Oloka-Onyango writes that they “have been exacerbated by the failure of post-independence governments to comprehensively pursue land reform measures which are equitable, rational and sustainable.”<sup>16</sup> In recent years, the situation has worsened due to the government giving away publicly owned land or acquiescing in illegal land grabbing.<sup>17</sup> Land has often been a source of tension as communities fight to protect their rights, individuals seek to increase their wealth and population growth puts more pressure on this limited resource. In both the colonial and post-colonial eras, Uganda has enacted policy and legal reforms aimed at resolving historical injustices and contemporary challenges – but it has failed to find a solution that harnesses land as a driver of inclusive growth and reduced inequality.

The first major effort to juggle the interests of landowners and occupants was the 1900 Buganda Agreement between the colonial government and the Buganda Kingdom. The agreement quickly came under strain, and in 1903 the colonial government enacted the Crown Land Ordinance, claiming oversight and control of land that did not fall under private ownership.

Traditionally, people were able to establish security of tenure over land under tribal or clan rules. The Ordinance allowed indigenous Ugandans to occupy land, in accordance with these customary laws, if it was not subject to a freehold or leasehold – however, the implication was that the British Governor could sell or lease this land to someone else. The uncertainty this created undermined incentives to invest in improving land.

At independence, the Public Lands Act (PLA) 1962 vested the management of Crown land in the new independent state. A 1969 revision to the PLA stopped the issuance of freehold and leasehold grants on any public land occupied by customary tenants without proof of their consent.<sup>18</sup> More radically, the Land Reform Decree (LRD) of 1975 converted all Uganda’s land into leaseholds and vested it in the State to be held in trust.

The current legal framework for land ownership, administration and use is anchored in the 1995 Constitution.<sup>19</sup> It declares that land belongs to the citizens of Uganda, not the state, and defines four land tenure systems: customary, freehold, mailo and leasehold.<sup>20</sup> Particular complications are introduced by mailo, especially when the land is commoditized.<sup>21</sup> With its origins in the Buganda case, the mailo system defines the rights and obligations of an owner of land that is occupied by others in good faith. As the Minister of Lands put it, “As someone who deals with land matters every day, Mailo system is the number one challenging system because of the multiplicity of interests on that land.”<sup>22</sup>

Chapter 15 of the Constitution lays down the functions of the Uganda Land Commission (ULC) and District Land Boards (DLBs) as managers of land for public good. The Land Act 1998 was enacted to implement the Constitution. It formally recognizes customary land tenure, and provides citizens an option to acquire certificates of customary ownership.<sup>23</sup> It provides for the conversion of customary or leasehold land tenure to freehold.<sup>24</sup> And it recognizes the security of tenants and bona fide occupants of land. However, implementation has been ineffective.

There have been two major amendments to the Land Act. The first, in 2004, sought to improve protection of women’s and family rights. The second, in 2010, sought to address a public outcry on land grabbing and forceful evictions by clarifying the relationship between lawful and bona fide unregistered occupants and registered land owners. In 2013, the National Land Policy (NLP) set out to address weaknesses in institutions charged with handling land management disputes. It provides for:

- (i) Decentralization of the institutional framework for land administration and management to improve efficiency and accessibility of services.
- (ii) Strengthening women’s land rights by enabling married parties to own land jointly.
- (iii) Setting up administrative land tribunals to handle land conflicts and evictions.
- (iv) Empowering customary authorities to handle some land disputes within communities.

Despite all these moves to make land policies more inclusive, inequality and injustice persist. More radical attempts at reform have failed: for example, proposals for joint ownership of property for married couples to be automatic, and attempts to change the succession laws so as not to favour inheritance down the male line.<sup>26</sup> And there has been pressure in the opposite direction: the current government has pushed to amend laws to make it easier to take away land before adequate compensation has been agreed.<sup>27</sup>

As the next chapter explores in more detail, laws and policies on land also need to be coupled with efforts to tackle cultural notions, power structures and other root causes of inequality. Allowing customary land registration does not mean much for women unless the customs that prevent women from owning land are addressed. Nor does it mean much to a young person who cannot afford to buy seeds or invest in making their agriculture more profitable.



# **BIG PROJECTS VERSUS ORDINARY PEOPLE**





## 2. Big projects versus ordinary people: How land injustice reinforces inequality

With population growth, poor households are continuing to subdivide ancestral lands and individual plots are getting smaller – as well as less productive, due to the effects of climate change. However, rather than addressing these issues, national policies prioritize economic growth through privatization and consolidation of land for big projects.

The government's long-term strategy for Uganda, Vision 2040, includes a commitment to "facilitate faster acquisition of land for planned urbanization, infrastructure development, and agricultural commercialization".<sup>28</sup> Similar aims are set out in the five-year National Development Plan.<sup>29</sup> The NLP's mission is to "facilitate land use regulation to enhance economic productivity and commercial competitiveness for wealth creation and overall socio-economic development."<sup>30</sup>

In both urban and rural areas, the government has provided land to investors – mainly large-scale and foreign-based – free of charge or for a nominal sum, to operationalize public-private partnerships. Leases on the land provided can last for as long as 99 years.<sup>31</sup> The government assumes that economic growth arising from these large-scale projects will improve the lives of all Ugandans, including the smallholders farmers and other poor people who are displaced from their land to make way for them.

The reality, however, is often very different: fewer jobs than anticipated are created, the displaced people often lack the skills to take them up, and no training in the required skills is made available. Studies by

"The image Miisi had constructed in Britain of the noble African rooted in his cultural values shunning westernization was a myth. What he returned to were people struggling to survive, who in the process had lost the ability to discern the vivid colours of right and wrong. Anything that gave them a chance to survive was moral,"

Jennifer Nansubuga  
Makumbi

civil society organizations have demonstrated the negative impacts of development in districts including Kibale, Hoima and Buikwe.<sup>32</sup> They show wide disparities between policies and their implementation, resulting in people losing their livelihoods, and uneven application of resettlement protocols.

## 2.1 Defining the “public interest”

Laws allow the government to give land to investors in the public interest, but do not clearly define the public interest. The Constitution<sup>33</sup> stipulates that “public use” covers interests such as defence, public safety, public order, public morality and public health, but laws give broad authority to the Minister of Lands. The Land Acquisition Act refers to the Minister being “satisfied that any land is required by the government for a public purpose”, but does not define public purpose. A draft report on implementation of the Land Acquisition, Resettlement and Rehabilitation Policy argues that concept is interpreted too broadly.<sup>34</sup>

In practice, the supposed “public interest” often ends up benefiting already wealthy individuals. For example, in one case in Kampala, land that housed a primary school serving a low-income community and training teachers was given to a private investor to build a hotel.<sup>35</sup> The investor instead built a shopping mall with office space. The school was relocated to the outskirts of the city, far from the community whose children it was set up to serve, and the teacher-training aspect has not been restored.<sup>36</sup>

“The generation that destroys the environment is not the generation that pays the price. That is the problem.”

Wangari Mathaai

In another case, public land in Naguru – a suburb of Kampala – was given in 2011 to an investor, OpecPrime Properties Ltd, to develop new housing

with financial support from the government.<sup>37</sup>

The investor paid the nominal sum of Shs 36,000, or US\$ 10, for the land. Seven years later, houses that were previously on the land had been demolished but no new houses built. The government reallocated part of the land for construction of a hospital, and in response the investor demanded Shs 170 billion in compensation.<sup>38</sup> Figure 2 shows a newspaper report on the case, with a photo of a mother whose house was demolished.

Figure 2. Newspaper report on Naguru case



Source: Daily Monitor, Monday, March 5, 2018

Some evictions have been from areas set aside for wildlife conservation, prompting one elder in Kotido to complain about a “government of animals and not people”. As a senior official of the Uganda Wildlife Authority explained, “The animals provide more economic benefits through tourists who, for example, pay US\$ 600 each to visit the mountain gorillas.”

The NLP sums up the problem:<sup>39</sup> *“There is no clear distinction between public land and government land in legislative framework. The regulation and guidelines to control the management and land use, including the disposal of these lands are not provided in the constitution or laws of Uganda. Government currently deals with government land and public land without regard to public interests as if the two estates are held for the beneficial interest of the government as an institution. It has disposed of the two estates to investors and individuals as though they are one and the same thing. District Land Boards are failing to observe that they hold public land in trust for the people of Uganda.”*

## 2.2 Gaps in record-keeping

In most cases, the land given away is under the management of the ULC and the DLBs. The ULC fails to keep a comprehensive inventory of its land: a 2015 report by the Auditor General looked at 211 pieces of government land, and found that 19% did not have records.<sup>40</sup> Similar gaps have been found in land records managed by the DLBs. The DLBs and ULC interpret any land as public land if it is not occupied or claimed as customary, with proof of long usage, even if there are no records showing it as public land.

One example of the problems this can cause comes from Amuru district in Northern Uganda. In 2008, community members sued the Amuru District Land Board for transferring about 40,000 hectares to Madhvani Group for growing sugar cane. The community argued this was customary land and the DLB had no authority to give it away. The DLB did not, in fact, have any records showing that the land was public land. Nonetheless, in 2012 the High Court ruled against the community, on the basis that they could not prove it was not public land.

The gaps in records have facilitated encroachment onto government land and land grabbing by investors through government agencies.<sup>41</sup> Numerous audit reports have recommended that the government improve implementation.<sup>42</sup> In 2016, the Minister for Lands set up a Committee chaired by the Minister of State for Housing with aims including: (i) compiling a comprehensive inventory of government and public land; (ii) determining the boundaries of individual holdings of government and public land by overseeing its adjudication, demarcation and titling; and (iii) advising on how to manage or reclaim government and public land that is disputed or encroached on.<sup>43</sup> However, no outcomes from this exercise have yet been made public.

These challenges have taken on a new dimension with the recent introduction of policies aimed at separating ownership of land from mineral wealth. The effect is that the government can permit mining companies to access private land that contains minerals without negotiating access with the land owners. The government argues that it owns the minerals under the land, and it does not need the landowner's consent to extract them.<sup>44</sup>

## 2.3. The difficulty of valuing land for compensation

The Land Acquisition Act empowers the Minister to make regulations for the assessment and payment of compensation, but there is no legal definition of the basis for assessing compensation or the valuation method to be used. The absence of clear procedures for valuing land given to private companies makes it impossible to weigh the expected benefits from the planned investment against the costs to the Ugandan people, as a basis for demanding fair compensation.

Valuation of land for compensation purposes is done by the DLBs under Section 59 of the Land Act, and by the Chief Government Valuer under other legislation for purposes such as assessing stamp duty and registering titles. Wealthy landowners are better placed to contest valuations, as Figure 3 shows. The poor have limited or no power to influence what they receive, and often receive too little. For example, the Ministry of Finance's Budget Monitoring and Accountability Unit (BMAU) found that in the Karuma Interconnection Project, the market price of land was between 2.5 and 7.5 times higher than the compensation paid.<sup>45</sup>

Sometimes those removed from land receive no compensation at all, as in Kalangala in April 2003 when multiple court cases resulted from the government giving 26,500 hectares to BIDCO Oil Refineries Limited to develop the oil palm industry.<sup>46</sup> The Land Acquisition Act has been successfully challenged in court for not requiring payment of compensation prior to taking possession of the land, which violates the constitution.<sup>47</sup> However, parliament is yet to amend the law.

**Figure 3.**  
Newspaper report on land valuation





Section 77 of the Land Act states that “the value of the land shall be the open market value of the unimproved land, the value of the buildings at market value as well as the value of the standing crops.” However, the open market value can be hard to determine with confidence as the land market in much of Uganda is not well developed – in most rural areas, land tends to be sold only when money is needed to meet unexpected costs. In some communities, no market value is attached to land as it is believed that land should not be sold, but kept for future generations.<sup>48</sup>

The BMAU note that property rates are not reviewed annually, as provided for in the Land Act. Valuation staff are forced to use indicative rates from neighbouring districts, or apply rates that have not been revised for several years.

## 2.4 What land valuations miss out

Even if market-based valuations were accurate, they would not capture the value to communities of their historical and cultural attachments to their land, or the benefits of living as part of family and clan structures, which provide resilience against shocks. These intangible values have a major impact on people’s quality of life.<sup>49</sup>

Nor do valuations properly account for environmental impacts. The livelihoods of low-income rural people depend heavily on land and the environment. Many large-scale development projects not only displace people but pollute the environment, reducing the productivity of agriculture and other land-based activities in surrounding areas, increasing the incidence of health problems and in some cases exacerbating the effects of climate change.

In 2017, for example, there were community protests in Moroto municipality against the decision of a government agency to allow investors to cut down trees planted in 1945 on Mount Moroto, which would affect the water supply to the semi-arid surrounding area.

In another case, mining companies in Kotido acquired land that cut off a nomadic tribe’s access to communal grazing lands. As the local community leader explained, access to the land in question “enables us to manage risks of adverse weather conditions”, and the loss of access has “resulted in loss of livestock to levels that endanger our livelihoods”. The fencing off of land not only restricts grazing, but communities’ access to water and forest resources, resulting in reduced production of local foods. When nomadic communities seek alternative lands on which to graze their livestock, this can

lead to disputes with the communities already using those lands, as shown by cases in Gulu and Hoima districts.

The story of Kabonesa from Chapter 1 illustrates that being displaced is not the end of the story. In the Albertine region of Hoima, households who were compensated to pave way for oil-related infrastructure then found the development of infrastructure attracting new investors in different industries, resulting in another forced relocation.

Many of those displaced were able to build new and better houses with the money they received, but not to buy enough land to farm. Having been unable to transition to a stable alternative livelihood, they later needed to sell their new houses to get money for food. In the end, the main beneficiaries were the relatively wealthy individuals who sold land to the displaced individuals and then were able to buy it back, improved with new houses, at a favourable price.

Some displaced people took up charcoal burning as an alternative source of income, but were later affected by a government ban on cutting trees to preserve the environment. Many invested part of the compensation money in educating their children, hoping they would secure well-paid jobs outside agriculture, but often the children dropped out of school and those who did finish struggled to find jobs that paid enough to cover the basics for their families.

In the case of Kidepo National Park, local communities displaced for tourism were cut off from access to their traditional sources of water, wood and pasture, and were not helped to find alternative sources of income such as agriculture, pushing them further into poverty. All these experiences point to the need to think beyond the value of the land from which people are displaced, and consider what is needed to achieve the same or a better lifestyle in a new area.

## 2.5 Weaknesses of dispute resolution mechanisms

The most frequent causes of disputes around land relate to boundaries, rights of way or access (36%), ownership or use (25%), land grabbing (22%) and missing or unclear land titles (4%).<sup>51</sup> There is a large backlog of court cases on land disputes – 3,846 cases waiting to be heard at the High Court in Kampala alone.<sup>52</sup> Figure 4 gives an indication of the prevalence of land disputes, many involving high-ranking individuals.

Figure 4. Media reports



The inadequacy of land dispute resolution mechanisms is a major contributor to inequality. Several institutions and mechanisms exist, with little or no coordination framework, including Chief Magistrate's Courts, Local Council II and III Courts, family and clans, Resident District Commissioners and District Land Boards.

Laws are unclear on which forum should be used when. For example, the Land Act Amendment of 2004 gives Local Council II courts jurisdictions over customary land matters.<sup>53</sup> The Land Act also permits customary clan systems to determine disputes of a customary nature.<sup>54</sup> The Magistrates Court Act Cap 16 and the Judicature Act Cap 13 permit the filing of cases in Magistrates Court or High Court, depending on the pecuniary value. Wealthy litigants commonly "forum shop", choosing the mechanism most likely to rule in their favour.<sup>55</sup>

Trust in dispute resolution mechanisms is undermined by interventions of the Office of the President in cases that are already in court. Poor communities, frustrated by the difficulty of obtaining legal redress, have sometimes instead resorted to violence.

Conflict is both a cause and result of inequality, and it impacts on economic growth. The Northern region has a particularly disruptive recent history of conflict, in part over land – recently, for example, women in Amuru district protested by stripping in a bid to protect their land from investors and government.<sup>56</sup> Conflict is reflected in poor economic performance: the region's growth rate is 0.8 percent, compared to nearly 4.5 percent in the Western region, and the economy in some subregions in the north is shrinking.<sup>57</sup>

Attempts have been made to create a special land tribunal with flexible rules for ordinary litigants, but these have failed because of lack of funding. Most litigants lack the knowledge, money and will to engage in protracted court processes. This is especially true of vulnerable groups such as women, youth, orphans and the elderly. Most land conflicts are treated as civil rather than criminal cases, unless some additional offence such as trespass or murder is involved, which means litigation is up to individuals rather than the state.

The government has responded by setting up various commissions of inquiry, specialized units in the police and State House (the seat of the president) to handle land matters, and the Land Division of the High Court (LDHC). An ongoing Commission of Inquiry into the Effectiveness of Laws, Policies and Processes of Land Acquisition, Land Administration, Land Management, and Land Registration in Uganda, headed by Justice Catherine Bamugemereire, is reviewing land administration structures, laws, policies and practice.

These responses have not yet provided a sustainable solution. For example, the LDHC mostly handles cases with a high financial value and matters of appeal, which are expensive to pursue. The LDHC's slowness in resolving land-related matters is one cause of the backlog of cases, along with stress on the judicial system caused by the volume of other cases not related to land.

Interventions of government institutions such as the Ministry for Lands, Housing and Urban Development and District Land Tribunals (DLTs) have also not been effective in resolving the numerous land conflicts. The activities of the DLTs were suspended in 2007 and their power vested in the Magistrates' courts – but this did not speed up the resolution of cases, and removed an option for seeking justice at local level.

In response to weak political will and gaps in enforcement, some local leaders have come up with their own initiatives to try to increase the voice and participation of citizens. One interesting example comes from Mukono, a rapidly urbanizing district close to Kampala. Community leaders sought to strengthen their relationship with the police and judiciary by forming a WhatsApp group to alert the relevant authorities to suspicious land-related activity.

## 2.6 The effect of gender and cultural norms

Inequality disproportionately affects women, who are more likely to be poor and vulnerable. Most people in unpaid subsistence agriculture are women. Women often bear the brunt of climate-related shocks, and the health effects of indoor pollution. As land, forest and water resources are increasingly compromised, women's livelihoods are particularly marginalized. Gender equity and equality in land tenure, access and control is essential to improve food security, education, health and economic development.

The Constitution, the Land Act and the National Land Policy are clear that women have property rights. For example, Section 28 of the Land Act makes it illegal for anyone to discriminate against women and children in respect of ownership, occupation and use of land, while Section 40 requires spousal consent for the transfer of household land. The NLP is supposed to "redress historical injustices to protect the land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability".

However, other laws – such as the Divorce Act and Succession Act – continue to discriminate against women in matters which affect land rights, such as marriage, divorce and inheritance. Proposed reforms that would more fundamentally challenge societal perceptions about gender have not received the necessary support. NLP proposal to guarantee gender equality in the rules of transmission of land rights under customary land tenure remains shelved.<sup>60</sup>

Both harmonization and implementation of laws is required to close existing gaps in legal frameworks. As noted in the Gender Strategy for Implementation of the Land Policy, many provisions "have largely remained on

"I believe that black has been oppressed by white; female by male; peasant by landlord; and worker by lord of capital. It follows from this that the black female worker and peasant is the most oppressed. She is oppressed on account of her color like all black people in the world; she is oppressed on account of her gender like all women in the world; and she is exploited and oppressed on account of her class like all workers and peasants in the world. Three burdens she has to carry," Ngũgĩ wa Thiong'o

paper and have drawn limited practicability on the side of policy and legal implementation. There is a glaring gap between policy and legal text and the reality of implementation on the ground.” The NLP notes that women are unable to effectively own or inherit land in some parts of the country because customary practices continue to override statutory law.

Legal provisions are yet to be fully translated into practice because of weak institutions, lack of finances and political support. No government institution at central or local level is exclusively mandated to protect women, children or other vulnerable people.<sup>61</sup> The DLBs control only the allocation of public land, not private or customary land, and their composition has in most cases been less than 30 percent women, violating the legal requirement.

Reform efforts have stalled for years, reflecting a lack of commitment in social, legal and political circles. Under the NLP (paragraph 65), the government committed to legislate the protection of women’s and children’s right to inheritance and ownership of land, and ensure equal rights to land for men and women before, in and after marriage and at succession. The government pledged to review and regulate the relevant customary laws and practices.

Most of these pledges are yet to be implemented. Some form part of a bill proposed in 2018 that would, for example, better provide for a surviving spouse when a person dies intestate, and more clearly protect the right of a surviving spouse to continue living in her house when her husband dies. The bill has not yet been passed.

Delays in designing and operationalizing solutions to gender-related problems are not new. Issues such as co-ownership of land in monogamous and polygamous marriages have been discussed since the drafting of the Land Act in 1998. The state needs to take a more proactive approach – committing more resources to protecting women’s land rights, ensuring institutions have enough women representatives, and working through bodies such as the Uganda Human Rights Commission to sensitize people to challenge and change negative social norms.

The Ministry of Agriculture Animal Industry & Fisheries recently adopted an action plan which prioritizes improving the security of women's land rights. For example, it states that while decisions about land should be taken "in accordance with the custom, traditions and practices of the community", any decision "which denies women or children or persons with disability access to ownership, occupation or use of any land" violates the Constitution and should be considered null and void.

In practice, women's rights over land are often still contingent on their relationships with parents and spouses. Even when communal systems provide security of tenure for a family, the land women produce on may be taken away from them by divorce or the death of their husband. Historical beliefs remain potent.<sup>62</sup> Recently cultural leaders showed outrage when a Ugandan professor died and left a woman as his heir.<sup>63</sup> Even when women have the wealth to buy land, cultural norms may hold them back from developing it in the ways they would like, as illustrated by Figure 6.

Figure 7. Facebook post



In poor rural families with little land, boys typically take priority over girls. The case of Rose is typical: she came to work as a domestic worker in Kampala at 19, after her father gave land to her four brothers but not to Rose or her sisters. "My father said the boys were more important and he gave his land to them," says Rose. "He then called his friend who took me, raped me and tried to force me to be his wife. That is when I ran to Kampala. I earn little money and I never got land, but my father still expects me to send money home to support them."

As these experiences illustrate, legal provisions do not on their own address complex gender aspects rooted in culture, politics and history. They can be effective only if they are socially and politically accepted and enforced.



# RECOMENDATIONS





### 3. Recommendations

There is a clear link between unjust land systems and rising inequality. But this points to an opportunity: better laws, policies and practices could turn land from a driver of inequality to a vehicle out of poverty.

“Africa does not need strong men, it needs strong institutions.”

Barack Obama

Drastic measures are necessary to address the growing tensions and mistrust between ordinary Ugandans and their government, which is seen as wanting to legalize land grabbing to benefit corporations without due compensation for poor citizens. The government needs to revisit its ability and willingness to protect citizens and their land, and enable them to fully contribute to and benefit from development.

Reforms need to focus on the most vulnerable – the poorest people, women and youth. That requires a willingness to challenge negative cultural norms and practices.

### Review and reform unfair land laws and policies

Existing land laws and policies must be brought into line with the Constitution, and with regional and international standards.

More commissions of inquiry will not be enough. Relevant bills already put before parliament should be enacted urgently, notably the Succession Amendment Bill and the Marriage and Divorce Bill, which both address the continuing practice of discrimination against women.<sup>64</sup> Gaps in land acquisition policies and laws should be filled to ensure they protect the right to prompt, fair and adequate compensation.<sup>65</sup>

Bodies such as the Human Rights Commission should invest in sensitizing people about land laws, translating them into local languages in easily understandable terms to be disseminated at local level. This would help to correct erroneous assumptions, such as that registered land interests always trump unregistered interests, and encourage change in cultural norms to accept more land rights for women and young people.

## Put ordinary people before wealthy investors

The government should see ordinary Ugandans as drivers of growth, not passive beneficiaries of large-scale projects headed by foreign investors.

In particular, emphasis should shift from commercial agriculture<sup>66</sup> to equipping small-scale farmers with the skills, knowledge and technology they need to improve the productivity of their land. Less than 4 percent of the national budget is allocated to agriculture. The government should honour its Maputo Protocol commitment to allocate at least 10 percent to Agriculture.

## Improve dispute resolution mechanisms

Land tribunals should be revived and properly funded. LCs should also be better funded. Government should reform the Land Fund to be more transparent and inclusive. The Bamugemereire Commission's recommendation that judges should always visit land before issuing eviction orders should be implemented.

The judiciary should invest in technology to expedite processing the backlog of land cases and improve access to justice. Listening to cases via teleconference, for example, will reduce costs of litigation and enable access to justice from any location. Technology can also improve coordination among the various mechanisms that handle land disputes, avoiding duplication of efforts.

## Train judicial officers in gender, social norms and inequality

Even the most well-meaning judicial officers might have their decisions influenced by social norms. Judicial officers should be trained on issues such as how social norms affect women's property rights, so their decisions uphold women's rights and contribute to the gradual replacement of harmful social norms with more progressive ones.

## Improve land valuation processes

The government should build the capacity of institutions involved in valuation of land to ensure fair and timely compensation for displaced people. New procedures should be developed and reference values frequently updated annually.

Compensation should also account for social capital and cultural attachments to historical lands, and the impacts of relocation on psychological health and wellbeing. The government should consider the need for medium-term arrangements to enable displaced households to transition to a new form of livelihood, such as business and financial management counselling.

A comprehensive social impact assessment should be carried out before land is assigned for large-scale projects, considering the long-term costs for local communities and the environment.

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