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# Land Acquisition, Resettlement and Compensation in Uganda

By;

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# Outline of Presentation

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- Introduction and Objective of the Training
- Introduction to land tenure systems in Uganda.
- Communal Land Rights in Uganda.
- land rights
- Expropriation
- Compensation



# Introduction to Session 3 - Land Rights

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objective of the training

- ❑ To equip policy actors with knowledge of best practices and standards in natural resource management to influence policy-making in their country to reduce harms and maximize positive outcomes for women and communities affected by mining, oil and gas industries.



# Why the training.

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- ❑ This session will examine the relationship between land rights and land acquisition.
- ❑ The impact of land acquisition on land rights and associated concepts of appropriate compensation.
- ❑ To consider the nature of communal and individual land rights in this context.
- ❑ To discuss the appropriate compensation and resettlement for people whose land rights are affected.
- ❑ To explore dispute resolution mechanisms and practices in addressing disputes arising out of land rights.



# Land Tenure Systems in Uganda

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The four (4) tenure systems namely Freehold, Mailo, Leasehold and Customary. (Article 237 (3) of the 1995 Constitution of Uganda and Section 2 of the Land Act)

## Freehold Tenure

- ❑ Land held/owned by an individual registered on the certificate of title as the land owner for life. This land is granted by District Land Boards or purchased from one who received it from such Boards.
- ❑ The owner of Freehold land is free to develop the land, enter into land transactions, take possession and use the land, give away the land to any person in a will. (Section 3 (2) of the Land Act)
- ❑ Leasehold and customary land can be converted to freehold land. (Sections 28 and 29 of the Land Act)



# Land Tenure Systems in Uganda.

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## Mailo Tenure

- ❑ Land held by a land owner which has its roots from the 1900 Uganda Agreement and 1928 Busullu Envujjo Law. It is mainly in the Buganda region, currently central Uganda.
- ❑ Both the land owner registered on the certificate of title and tenants by occupancy and Kibanja holders have interests on this land.
- ❑ Mailo land owners have the same rights as freehold land owners, but they must respect the rights of lawful and bona fide occupants and Kibanja holders to occupy and live on the land. (Section 3 (4) of the Land Act).
- ❑ In matters of compulsory acquisition of mailo land, the land owner, tenants by occupancy and Kibanja holders are entitled to adequate and fair compensation.



# Land Tenure Systems in Uganda.

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## Leasehold Tenure

- ❑ Land on which a land owner allows another person to take exclusive possession for a specific period of three years or more in exchange for rent.
- ❑ A lease may be created either under a contract between the parties or by law.
- ❑ The person granted a lease must use the land for the specific purpose as agreed with the land owner. (Section 3(5) of the Land Act).
- ❑ A Ugandan who holds land in freehold and mailo tenure loses their citizenship, their land automatically changes to a lease of 99 years. (See S. 40(6) The Land Act as amended 2004. This is because a non-citizen can only own land in leasehold tenure. (Section 40 of the Land Act).
- ❑ During the process of compulsory acquisition of leasehold land by the government, the law recognizes two interests over the property in question: i) The rights of the person granted a lease; and ii) The interest of the land owner. Therefore, both these parties are entitled to compensation from the government in the event of compulsory acquisition.





# Land Tenure Systems

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## Customary Tenure

- ❑ Land is owned based on the norms and traditions of a given society or community. One can even own land individually under customary tenure as long as it has been handed down from generation to generation using that society's customs.
- ❑ Special protection is accorded to the rights of women, children and persons with a disability to own, occupy or use customary land. (Section 27 of the Land Act)
- ❑ In 2015, the government of Uganda introduced Certificates of Customary Ownership (CCOs) for owners of customary land.
- ❑ A customary land owner can apply for a CCO as proof of ownership of the land. This tenure is the most common form of land holding in Uganda with almost 80% of the total land held.



# Communal Land Rights in Uganda.

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- ❑ Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land. (Section 4 of the Land Act.
- ❑ The Uganda National Land Policy was adopted and published in February 2013, driven in part by the need to address poor implementation of the Land Act.
- ❑ The fact that constitutional and legal recognition of customary land tenure has not had the intended impact of securing customary land rights is due in large measure to poor implementation of the Act.
- ❑ The Policy seeks to create coherence in the land sector by reconciling the competing demands from different land uses.
- ❑ To harmonize and streamline the tenure regimes for equitable access to land and security of tenure;
- ❑ to redress historical land injustices in order 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;



# Communal Land Rights in Uganda

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## Customary communal land

- Where persons or communities share ownership or use of land for common purpose. A particular group of people in a particular area for purposes like grazing, water source, and firewood collection, wild fruits and vegetables, fishing, harvesting honey and white ants, cutting papyrus etc, communally owns the land. In most cases, rights to access this land are inherited.

## Customary family land

- Where the head of the family or clan may be said to 'own' the land. Its utilization is usually controlled by family head, elders, clan heads or a group in its own well-defined administrative structures. The heads are responsible for protecting the land and ensuring that every family member gets rights to use some part of the land. Family land is inherited within the family and the management of the land is passed on from parents to children and their family members but kept within the family.



# National framework for communal land rights

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- ❑ The Constitution of the Republic of Uganda
- ❑ The Land Act as amended 2004.
- ❑ The National Oil and Gas Policy
- ❑ The Mining and Minerals policy
- ❑ Land Acquisition and Resettlement Framework
- ❑ The Petroleum (EPD) Act, 2013
- ❑ The Mining Act, 2003
- ❑ Land Acquisition Act, 1965
- ❑ The Land Policy.



# Individual Land Rights in Uganda

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## Individual customary land

- ❑ Where an individual is said to 'own' land because the land was allocated to them, to use or own permanently, or they inherited the land, or purchased the customary land as an individual. This will include the right to allocate portions of the land to the next generation.

## Individual Registered Land

- ❑ Where an individual owns mailo, freehold or leasehold land on which his name was entered on the register of titles as a Registered Proprietor. His ownership is guaranteed and he is protected against ejectment under the Registration of Titles Act.



# National framework for individual land rights

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- ❑ The Constitution of the Republic of Uganda
- ❑ The Land Act as amended 2004.
- ❑ The National Oil and Gas Policy
- ❑ The Mining and Minerals policy
- ❑ Land Acquisition and Resettlement Framework
- ❑ The Petroleum (EPD) Act, 2013
- ❑ The Mining Act, 2003
- ❑ Land Acquisition Act, 1965
- ❑ The Land Policy.



# Land Acquisition: Legal and Regulatory Frameworks in Uganda.

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ARTICLE 26 (2) of the Constitution of Uganda.

No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied

- (a) The taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
- (b) The compulsory taking of possession or acquisition of property is made under a law which makes provision for
  - (i) prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
  - (ii) a right of access to a court of law by any person who has an interest or right over the property



# Definitions

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## What is compensation.

- ❑ Compensation This is money paid to a person with an interest in land to make up for the loss suffered when the government takes their land through compulsory acquisition. It must be fair and adequate and should be paid in time, before the land is taken. (MOLHUD, “Guidelines for Compensation, Assessment under Land Acquisition,” June 2017)

## Definition of Public Interest

- ❑ In order for the government to acquire private land through compulsory acquisition, it must prove that it is doing so on the grounds of “public interest.” Public interest may arise where: i. acquisition is necessary for public use; ii. acquisition in the interest of defence; iii. acquisition for public safety; iv. acquisition for public order; v. acquisition for public morality and vi. acquisition for public health.





# Procedure for Land Acquisition.

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- Consultation and determination whether land is suitable for public purpose
- The acquisition of land must be for public purpose
- Minister must issue a statutory instrument declaring that land is needed for public purpose.
- Drawing a scheme for compensation and resettlement( Resettlement Action Plan)
- Notice to persons having an interest.
- Assessment of compensation or resettlement package if any.
- Right of an aggrieved person to petition court for redress
- Government to take possession of land after full compensation or resettlement



# Law on Land Acquisition.

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Section 7(1) of the Land Acquisition Act states:

*“Where a declaration has been published in respect of any land, the assessment officer shall take possession of the land as soon as he or she has made his or her award under section 6; except that he or she may take possession at any time after publication of the declaration if the Minister certifies that it is in the public interest for him or her to do so.”*

***The above provision was nullified by Supreme Court to confirm the right to property.***



# Law on Land Acquisition.

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## Uganda National Roads Authority -vs- Irumba Asuman and Peter Magelah SCCA No. 2 of 2014

*“In this case it is common ground that the government indeed has taken over the second respondent’s property under Statutory Instrument Number 5 of 2013, The Land Acquisition (Hoima-Kaiso – Tonya road) Instrument issued under Section 3 of the Land Acquisition Act Cap 226, and dated 8<sup>th</sup> February 2013. The issue in this petition is whether Section 7(1) of the Land Acquisition Act Cap 226 is a law that is in conformity with Article 26(2) of the Constitution. We have already set out the provisions of Section 7(1) of the Land Acquisition Act above. Clearly that Section does not provide anywhere for prior payment of compensation before government takes possession or before it acquires any person’s property. To that extent therefore **we find that Section 7(1) of Land Acquisition Act Cap 226 is inconsistent with and contravenes Article 26(2) (b) of the Constitution”.***



# Procedure for Land Acquisition

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## **The Proposed amendment of Article 26 of the Constitution.**

- The cabinet subcommittee on Electoral and Constitutional Reforms had proposed that Article 26 should be amended to include that, where parties are unable to agree on fair and adequate compensation, the Government may take over the land, deposit any amount valued by the Chief Government Valuer, pending determination by the courts of law.



# Courts' decisions on land acquisition

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## Uganda National Roads Authority (UNRA) v Irumba Asumani and Magelah Peter Supreme Court Constitutional Appeal No. 2 of 2014

The Government acquired land compulsorily for purposes of upgrading the Hoima-Kaiso-Tonya Road. UNRA took possession of the land prior to compensating the deprived persons. This case challenged Section 7 of the Land Acquisition Act, 1965, which allowed the Government to take possession of such land without payment of prior compensation.

❑ **Holding:** The Supreme Court of Uganda stated that Section 7(1) of Land Acquisition Act which permitted the government to take possession of private land before compensation is inconsistent with Article 26 (2) (b) of the Constitution. Compensation is key and must be paid to persons with an interest in the land before the government takes possession, both physical and legal.

## Buran Chandmary v The Collector under the Indian Land Acquisition Act (1894) 1957 EACA 125

❑ **Holding:** The market value of land is the basis on which compensation must be assessed. Market value of land is the price which a willing vendor might be expected to obtain from a willing purchaser. A willing purchaser is one who although may be a speculator is not a wild or unreasonable speculator.



# Institutional Challenges

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- Execution of Court Judgements.
- The Role of RDCs, State House.
- Delay in delivery of Court Judgments.
- Absence of Land Tribunals.
- Mediation.
- Arbitration and its restrictions, are land disputes arbitral in law?
- Customary law.
- Police.

