

# **WALKING THE TALK: ARE LAND EVICTIONS IN UGANDA IN LINE WITH HUMAN RIGHTS STANDARDS?**

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## LIST OF ABBREVIATIONS

DPSP	Directive Principles of State Policy
ESTA	Extension of Security of Tenure Act
FHRI	Foundation for Human Rights Initiative
FIAN	Food first Information and Action Network
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
KCPL	Kaweri Coffee Plantation Limited
PIE	Prevention of Illegal Eviction and Unlawful Occupation of Land Act
UDHR	Universal Declaration of Human Rights
UIA	Uganda Investment Authority
UPDF	Uganda People's Defence Force
UWA	Uganda Wildlife Authority

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## *Summary*

In Uganda there has been evidence of land evictions over the past years which has left many people landless and homeless. This study sets out the national standards with the major emphasis on the some of the provisions of the 1995 Constitution that deal with land rights and the 1998 land Act. In addition to the above, it tackles some international standards found under ICESCR, ICCPR and the Basic Principles and Guidelines on Development-Based Evictions and Displacement that have to be followed either before or after land evictions. Despite the fact that Uganda is a dualist State, there is need for it to take into consideration international standards that cater for land evictions since it is a member State to both ICESCR and ICCPR. Furthermore, the study discusses only three cases among others of land evictions that have occurred in Uganda and it analyses them against the national and international human rights standards. This study is of the view that most of the land evictions that are carried out in the country are not in line with national and international human rights standards. Therefore, there is need to ensure that people's human rights are protected through the implementation of the existing national and international human rights standards.

## Chapter 1

### Introduction

This chapter gives an overview of the study. It sets out the research questions that will be answered and the literature review that will be used. Lastly, it provides an overview of the chapters that will follow.

#### 1.1 Background to the study

Land is the main source of livelihood in Uganda, as 80% of the country's employment comes from land use.<sup>1</sup> Land also comprises 60% of the total assets of a household,<sup>2</sup> contributes 43% of the gross domestic product and 85% of the total export earnings.<sup>3</sup> In Uganda, there are two major laws that deal with the land rights, namely the Constitution and the Land Act of 1998.

Article 273(1) of the 1995 Constitution of Uganda provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the Constitution. In addition to the above, Article 26 of the Constitution guarantees protection from deprivation of property and provides that every person has a right to own property either individually or in association with others. It further provides that no person shall be compulsorily deprived of property or of any interest in or right over property. Despite the fact that the Constitution is the supreme law of Uganda and has binding force over all authorities and persons, there have been several land evictions that have occurred, either carried out by the government or the private individuals, leaving several people homeless and without land.<sup>4</sup>

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<sup>1</sup> Foundation for Human Rights Initiative, Land Rights, The Ugandan Experience, Report for the Period of January – June 2008

<sup>2</sup> Deininger et al 'Legal knowledge and economic development: a case study of land rights in Uganda, World Bank Policy Research Working Paper 3868 (2006) p 13.

<sup>3</sup> Ministry of Lands, Housing and Urban Development, Drafting the National Land Policy. Working Draft 3 (January 2007).

<sup>4</sup> Among others Kaweri Coffee: the human cost of investment, where about 400 families were evicted, The Northern Bypass ; Land acquired for development purposed in which even a school was demolished, eviction of the Benet from Mount Elgon National Park where more than 4,000 people were evicted, kirubo-Garilayo-Kayunga District; A camp for the landless in which a total of 17,000 people were chased off from a land owned by landlord, These are a few of those documented cases, see [www.face-it-now.org](http://www.face-it-now.org) (accessed 04-09-2009).



However, it is important to take note of the fact that land rights are not absolute and therefore can be limited under certain circumstances. Article 26(2) and 237(2)(a) of the Constitution allow the government to deprive an individual of his property for public purpose or in the interest of defence, public safety, public order, public morality or public health. The reasons listed are open to very wide interpretation, and cover several instances when the state can acquire land from people. Furthermore, chapter 226 of the Land Acquisition Act of 1965 empowers the government to take over land for public or other related purposes and there is a procedure set out before eviction can take place. It remains a question whether the procedures laid down in law are indeed followed when evicting a person from a piece of land.

In addition to the above, there is the Land Act of 1998. Among its main objectives are to provide security of tenure to all land users including the customary tenants on public land, lawful or bona fide occupants on registered land; to resolve land conflicts between registered owners and the lawful and bona fide occupants; to provide for government and local government to acquire land compulsorily for public interest, public safety, public order and public use. Due to arbitrary evictions that were taking place and still occur, in 2007 the government proposed a Land Amendment Bill of 2007, amending and aiming to address the loopholes in the Land Act.

The purpose of the 2007 Bill is to enhance security of occupancy of the lawful and bona fide occupants on a registered land and thus prevent arbitrary evictions.<sup>5</sup> This Bill has been controversial as it is intended to protect tenants from unlawful evictions and it has met opposition from members of the Buganda kingdom who considered it as a way for the government to use the Bill to allow people to illegally settle on their land.<sup>6</sup> As at 25 August 2009, the Bill has not become law and more evictions are still taking place in Uganda.

At the international level there is no specific reference to land rights in international instruments. However, land forms part of property and the right to property is omitted from the United Nations human rights instruments except in the Universal Declaration

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<sup>5</sup> The Land Amendment Bill 2007 published in the New Vision on 15 January 2008 (assessed 04-09-09)

<sup>6</sup> Kalinaki, D K and Oluka, B H 'Uganda: Controversial land bill may cost Museveni critical support base' *The East African*, 02-06-2008, [www.allafrica.com](http://www.allafrica.com) (accessed 04-09-09).

of Human Rights (UDHR).<sup>7</sup> On the regional level, the right to property is guaranteed under Article 14 of the African Charter on Human and Peoples' Rights. However, the provision has a claw-back clause under which the right may be encroached upon.<sup>8</sup> This provision is similar to Article 26(2)(a) of the 1995 Ugandan Constitution. Under the European Convention on Human Rights, the right to property is tackled in one of its Protocols.<sup>9</sup> Article 1 of the Protocol makes provision for the peaceful enjoyment of a person's possession, however, again with a claw-back clause.<sup>10</sup> Under the American human rights system, Article 21 of the American Convention on Human Rights provides for the right to property but also provides for a claw-back clause.<sup>11</sup> From the analysis of regional systems conclusion can be reached that the right to property of which land forms part is not an absolute right, which often leaves people at the mercy of States.

Despite the existence of laws dealing with land rights in Uganda, there have been several arbitrary evictions being carried out by the State, private individuals and entities and this threatens the right to property. These evictions are arbitrary in two ways. They are procedurally arbitrary simply because the procedure through which they are carried out is unfair; and they are substantively arbitrary because the reasons for eviction are not sufficiently well-founded.

## **1.2 Statement of the research problem**

The Constitution of Uganda guarantees the right to property, but at the same time limits this right under certain circumstances.<sup>12</sup> Most of the evictions pursuant to acquisition carried out in Uganda are done with much force and with the help of the army and the police.<sup>13</sup> This clearly violates people's rights. Although there are laws that prescribe the procedure that has to be followed before any eviction is carried out,

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<sup>7</sup> Article 17 of the UDHR.

<sup>8</sup> In the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

<sup>9</sup> Enforcement of certain Rights and Freedoms not included in Section 1 of the Conventions Article 1

<sup>10</sup> See above

<sup>11</sup> Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

<sup>12</sup> Article 26(2) and 237(2)(a) of the Ugandan Constitution.

<sup>13</sup> See fn 3.

there are still many evictions being carried out by the State and the private individuals without fully following these procedures.

Based on the above research problem, this study raises the following questions:

What national laws in Uganda are in place to protect land rights and how effective are they in case of evictions?

What international instruments are in place to ensure that land evictions take place in terms of the human rights standards and what lessons can be drawn from other jurisdictions with regards to how evictions are carried out?

How land evictions are being conducted in Uganda and do they meet the national and international human rights standards and what more should be done to ensure that human rights are protected in the case of evictions?

### **1.3 Objectives of the study**

The laws in Uganda on land rights have often been violated by the authorities. This has led to the violation of several human rights that have an inter-connection with the right to land. The aim of the study is therefore to examine the extent to which the laws protect land rights. It will examine the efficiency of the laws in place to uphold land rights in Uganda. In particular, it will examine some of the eviction cases that have so far occurred and will question whether the right procedure as set out in the law is being followed and will offer suggestions about the way forward.

### **1.4 Significance of the study**

This study will provide an analysis of the existing laws on land rights applicable in Uganda and their implementation. It will further provide suggestions on how the law can be used to protect people from arbitrary evictions that are so rampant in the country by drawing lessons from South Africa

### **1.5 Research methodology and limitations**

The study will be based on desk research. An analytic approach will be adopted to ascertain the practical application of the laws; references will be made to internet-based resources such as electronically based news papers and the reports of the Non-

Governmental Organization such as the Foundation for Human Rights Initiative.<sup>14</sup> Furthermore, the study will draw some lessons from other jurisdictions which have laws that are applied in terms of the evictions though it is not meant to be a comparative study. This study extends to evictions pursuant to acquisition of land by both the government and the private individuals. The study will use scholarly material such as books, journals and Acts of Parliament and it is up dated as at 30 September 2009.

### **1.6 Clarification of terms**

In this study, land will mean as commonly understood as a ground, soil or whatsoever including fields, meadows, pasture above it. In this case, a land owner owns the air space above it and everything above it.<sup>15</sup> Furthermore, the term land eviction in this study means the act or process of legally dispossessing a person from land either through legal process or in an unlawful way. In the study, land eviction can be carried out by either a private person or the state or its entity. In the case of land eviction, there is loss of both possession and ownership of that land and there is a possibility of non compensation.

In addition to the above, the other term that will be encountered in the study is land acquisition which means the gaining of possession or control of land by the state or its entity. Section 2 of the Land Acquisition Act, Chapter 226 empowers the Minister of land to enter any piece of land and examine it for purposes of acquiring it. Furthermore, in case of any damaged caused in the process of examining the land, the government shall pay compensation to the affected person. It is also important to note that once the land needed for public purpose, a declaration is made in that regard in terms of Section 3(1) and (2) of the Act and a copy is served on the registered proprietor of the specified land before any acquisition can take place.

In terms of Section 6, no acquisition takes place before an inquiry into the claims and objections made in respect of the land and consideration of the compensation to be

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<sup>14</sup> This is an independent, non-governmental, non-partisan, non-profit human rights organisation whose mission is to enhance the knowledge, respect and observance of human rights. Its website is [www.fhri.org.ug](http://www.fhri.org.ug).

<sup>15</sup> Mugambwa, J ‘ Source Book of Uganda’s Land Law’, (2002) Fountain Publishers Limited, Pg 134.

paid in respect of that piece of land to be acquired. In addition to the above, land in Uganda belongs to the state in terms of Article 237 of the Constitution and therefore, the state has power to acquire a given piece of land even if it is occupied. However acquisition does not necessarily led to displacement unless the land is required for developmental purposes.

### **1.7 Literature review**

Mugambwa deals with the application of Article 26(2) of the Uganda Constitution and the protection of private property.<sup>16</sup> He argues that there is no provision in the constitution that expressly allows the State to deprive someone's property. However, this power is implied in Article 26(2). He also discusses what deprivation means and the circumstances under which it can take place in terms of the Constitution.<sup>17</sup> However, he does not tackle other instances under which property and in particular land can be taken away besides the compulsory deprivation provided for under the Constitution.

In her report, Rugadya provided a historical perspective on land reform on Uganda and the challenges with the implementing the Land Act of 1998.<sup>18</sup> This is of importance to the study as it will help trace the origins on land law. The land originally belonged to the State until the adaptation of the 1995 Constitution which reversed the situation. However, she does not deal with impact of the Constitution and the Land Act to ensure that people's land rights are protected when it comes to evictions.

The research by the Foundation for the Human Rights Initiative<sup>19</sup> analyses the conceptual fram work of the right to property and it gives a historical perspective on land system in Uganda. In addition to the above, it tackles the national laws that are used to protect the right to property in particular land. It further gives an overview of

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<sup>16</sup> Mugambwa, J ' Article 26(2) of the 1995 Constitution of Uganda and the right to property' (1997) 4 *East African Journal of Peace and Human Rights* pg 70-81.

<sup>17</sup> Section 26(2)(a) and (b)

<sup>18</sup> Rugadya, M 'Land use and villisation 'Workshop held at Hotel de mille collines , Kigali 20-21 September 1999, Land Reform: The Ugandan Experience.

<sup>19</sup> Foundation for Human Rights Initiative, Land Rights, The Ugandan Experience, Report for the period of January- June 2008.

some of the evictions that have occurred in some parts of the country. However, the report does not tackle the implementation of national and international standards towards the protection of people against land evictions in Uganda.

Hunt provides an understanding of the 1998 Uganda Land Act.<sup>20</sup> She discusses the main aims and provisions of the Act and further highlights the consequences that would arise from the Act. She furthermore gives the historical background of land ownership in Uganda. Even though the author discusses the Land Act, she does not deal with security of tenure to all land users that is the bona fide and lawful occupants on a registered land as set out in the Act and the protection can be afforded to them in terms of the Land Act.

### **1.8 Overview of chapters**

The study is divided into five chapters. Chapter one sets out the background to the study and the research problem. Chapter two explores the historical background to the land rights in Uganda. Furthermore, it will look the national laws that are in place to protect land rights and how effective they are in cases of eviction. Chapter three will deal with the international instruments in place to ensure that land evictions take place in terms of human rights standards. In addition, it will deal with the national standards of South Africa when it comes to land evictions. Chapter four explores the main cause of land evictions and looks at a few land evictions case and whether the right procedure as set out in national and international law was followed. Chapter five will give a general conclusion, observations and recommendations to the study.

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<sup>20</sup> Hunt, D 'Unintended consequences of land right reform: The case of the 1998 Uganda land Act' (2004) 22 2 *Development policy Review* pg 173-191.

## Chapter 2

### **Historical background on the land rights and the national laws to protect people against land evictions in Uganda**

#### **2.1 Introduction**

This chapter tackles the historical background to land rights in Uganda by looking at the different periods. The historical survey starts with the pre-colonial era (before 1900); a period characterized by societies and kingdoms with chiefs and clan leaders. The second period is the colonial period; from 1962-1995, that is from the start of colonial settlement up to Uganda's independence. Thereafter the post-colonial era and finally, the current situation since the 1995 Constitution was adopted to present. The study will deal with these periods separately in order to trace the origins of land rights in Uganda. To understand the history of land rights, it is important to look at the different land tenures regimes that apply in Uganda. Furthermore, the study will deal with the current laws in place that protect people from land evictions mainly the Constitution, the Land Act of 1998, with its amendments and will investigate how effective they are.

#### **2.2 Pre-colonial era (before 1900)**

During this period it is not easy to identify one specific land tenure system that was used as Uganda was divided into kingdoms and centralized societies. These included among others the Buganda, Bunyoro, Ankole and Toro kingdoms, which were divided into clans headed by chiefs like Acholi, Karimojong, Bakiga, Iteso, Langi, Lugbar among others.<sup>21</sup> Practices of customary tenure ranged from one ethnic group to another and it is thus not possible to identify a single land tenure system during this period.

In Baganda, for example, there were at least four categories of rights of control over land:

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<sup>21</sup> Mwebaza, R, Land Reform in Uganda: problems and challenges: a paper presented at a training of trainer workshop for tribunals, Kampala 19 April 1999.

- (i) Rights of clans over land which comprised of ancestral grounds and therefore could not be sold to anyone.
- (ii) Rights of the Kabaka (king) who held paramount title to all the land in the kingdom and therefore could give it to his chiefs at any time.
- (iii) There were also individual hereditary rights coming from the long undisputed occupation or originally granted by the Kabaka.
- (iv) Lastly, the peasants' rights which entitled them to choose a chief under to live.<sup>22</sup>

In the other parts of the country, customary practice varied from one place to another. Despite the differences, the general feature is that land during this period was owned communally under customary tenure. However, there was recognition of various individual rights to possess and use land but subject to sanction by a peasant's family, clan or community.<sup>23</sup> From the above, it can be seen that during this period, customary tenure recognized both individual and communal holding of land.

### **2.3 Colonial period (1900 to 1962)**

Since 1900, when the colonialists came to Uganda, they brought about many changes. Among the major changes was on land rights or ownership where they changed the way land was owned in Uganda by introducing different land tenures. They introduced four tenures: *Mailo* land, freehold title, leasehold and customary.<sup>24</sup> To understand the history of land rights, it is important to look at the different land tenures regimes that applied in Uganda. The term land tenure refers to the institutional arrangements including social, economic and political through which individuals or groups are able access to land.

#### **2.3.1 *Mailo* land**

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<sup>22</sup> See above.

<sup>23</sup> Land Reform: The Ugandan Experience, Margaret A. Rugadya, Programme officer, Uganda Land Alliance, 20<sup>th</sup> -21<sup>st</sup> September 1999.

<sup>24</sup> See above.



The *Mailo* land tenure stemmed from the Baganda Agreement of 1900. Under this agreement, indirect rule was established in which the Buganda chiefs were rewarded for assisting the British to extend their frontiers.<sup>25</sup> Under Article 15 of the Buganda Agreement, the total land of Buganda assumed to be 19,600 square miles was divided between the Kabaka and other notables in the protectorate.<sup>26</sup> The royal family of the Buganda kingdom and other ranging officials received 958 square miles as private *mailo* or official estate, 1000 chiefs and private notables each received 8 square miles, 92 miles was given to existing governments. The 1500 square miles which comprised of forests, uncultivated land and wasteland was vested in the queen of England as crown land. The landless became *bibanja* holders,<sup>27</sup> who were under the mercy of the *mailoland* owners and the protectorate government.<sup>28</sup> However, they were later recognized after the riot in 1927 by the *Busuulu* (ground rent) and *Envujju* (commodity rent) reform law of 1928 which specified the rights of *mailo* owners and peasants who had become peasants.<sup>29</sup> These laws guaranteed protection to the tenants up to 3 acres provided they continued growing exports crops. This law catered for the rights of the *Mailo* owners and the peasants who had now become tenants. However it did not grant the tenants full ownership as they remained tenants despite the nominal rent that they paid.<sup>30</sup> *Mailo* land tenure has been criticized for making peasants who are on these lands to be ‘refugees on their own land’.<sup>31</sup>

### 2.3.2 Freehold tenure title

This tenure system was used by the then kingdoms of Toro and Ankole in the Western part of Uganda and was set up by the agreement between the kingdoms and the British as native freehold. The terms of this tenure between the tenants on this land

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<sup>25</sup> The word *Mailo* emerges from the English word ‘mile’ and in this connotation it means that the land that was given to the Baganda chiefs was measured in square miles. In total 8,000 square miles were given to the Baganda chiefs and 1003 square miles were given to the king (Kabaka). Mukwaya, A B, *Land Tenure in Buganda: Present day Tendencies*. Kampala: Eagles press pg 15.

<sup>26</sup> Area that was colonised by the British.

<sup>27</sup> This is land belonging to a *mailo* owner. *Kibanja* is a single plot or piece of land owned by the *mailo* owner.

<sup>28</sup> *The New Vision*, 24 January 2007, pg 2, How land was shared in Buganda Agreement ( Source: Ministry of Lands, Housing and Urban Development).

<sup>29</sup> See above.

<sup>30</sup> Elliott, D G ‘ethnicity and the politics of land Tenure Reform in Central Uganda’, Development Studies Institute, London School of Economics and political science, working paper , April 2005.

<sup>31</sup> Kayemba, E ‘Who will bail out the landless peasants?’ *National Analyst*, 7 March 1995, pg 12, 18-19.

and the titleholders were not negotiable and were fixed by law in 1937.<sup>32</sup> Under the Crown Ordinance of 1803, the British also issued adjudicated freehold to a small number of people and churches or religious institutions.<sup>33</sup>

### **2.3.3 Leasehold**

Leasehold tenure was introduced by the British as an inferior form of land tenure to freehold. This is an interest of land created by the agreement between the lessor and lessee, that the lesser will enjoy exclusive possession of the land for a specific and certain duration by making a payment which could either be in the form of private or statutory payment for a period of 5, 49, 99,999 year from the state. Since this land belonged to the state, there was a tendency by those in authority to manipulate the rules thus acquiring as much as land as they wanted thus displacing peasants.<sup>34</sup>

### **2.3.4 Customary tenure**

Despite the existence of all the above tenure, customary tenure was still being used in areas like the Northern and Eastern parts of the country. This form of tenure has being used for centuries and it varies from society to society. Until two decades back, a person would 'claim' land by settling and using a peace of land that was not originally occupied.<sup>35</sup> This form of land tenure had not being recognized legally until recently in the 1995 Constitution.

## **2.4 Post-colonial era (from 1963-1995)**

After independence, the issue of land tenure especially the *mailoland* had to be addressed by the post-independence government. There were several acts that were passed to ensure protected of land ownership and these will be discussed briefly.

### **2.4.1 The Public Lands Act of 1962 and 1969**

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<sup>32</sup> See fn 18.

<sup>33</sup> See fn 29.

<sup>34</sup> Nyangabyaki, B 'Politics, legal land reform and resource rights in Uganda' (2002), paper presented at the Pan African Conference on land rights in Cairo.

<sup>35</sup> Adoko, J and Levine, S, Land Matters in Displacement: The importance of land rights in Acholiland and what threatens them 4 (December 2004).

This Act brought about changes from the earlier land treasure system. For example crown land was converted to public land under the control of Uganda Land Commission (ULC) and Land Boards.<sup>36</sup> In Buganda, the 9,000 square miles of the crown land taken under the 1900 Buganda Agreement was returned to the Kabaka and vested under the Buganda Land Board.<sup>37</sup> However, in 1966, the then Prime Minister of Uganda, Apollo Milton Obote, abolished the Buganda Kingdom and the land that belonged to the kingdom vested in the Uganda Land Commission (ULC). During this period, public land ownership and powers vested in the ULC. However, the Public Land Ordinance was repealed and replaced by the Public Lands Act of 1969. By this time the ULC was set up but not operational.<sup>38</sup> Later on, *bibanja* holders were encouraged to purchase residual rights from the owners and register their titles. This increased the number of small registered mailo owners who both owned and occupied land.<sup>39</sup>

#### **2.4.2 Land Acquisition Act 1965 (Chap 226)**

This Act deals with Land acquisition carried out by the state. Section 2 to 7 of the Act makes provision for the compulsory acquisition of land for public and other related purposes. Section 3 of the Act empowers the Minister if satisfied that any land is required by the government for public purposes, he or she may make a declaration to that effect. Thereafter, a notice is published in the Gazette and exhibited at convenient places or near the land, stating that the government intends to take possession of the land and that claims to compensation for all interest in the land may be made to the Minister.<sup>40</sup> An inquiry is then held into the claims and objections made in respect of the land and awards and compensation can be determined in accordance with the outcome achieved.<sup>41</sup>

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<sup>36</sup> The Public Lands Ordinances of 1962.

<sup>37</sup> Section 12(a) of the 1962 Ordinance provided that “ All crown land in Buganda other than that allocated to towns or land over which government had put its installations shall be vested in Buganda Land Board on freehold to be held and enjoyed, used for recovered, maintained, dealt with and disposed of in the manner determined by Mengo”.

<sup>38</sup> Obol-Ochol, J ‘The implications of the Common man’s Charter for the existing land tenure institutions in Ugands’ (1971) *East Africa Journal*, pg 17-25.

<sup>39</sup> See fn 35.

<sup>40</sup> Section 5(1) of the Land Acquisition Act Chap 226.

<sup>41</sup> See above Section 6(1).

As soon as an award is made, then the government takes possession of the land. The only exception to the procedure is when the Minister certifies that it is for the public interest for him or her to do so. Despite the fact that this Act dates back to the post colonial era, it is still in operation, however, it remains a question whether the procedure set out under this Act is applied in any case before the government carries out land evictions and this will be analyzed in depth later in the study.

### **2.4.3 The 1975 Land Reform Decree**

In 1975, the then president of Uganda, Idi Amin, announced the Land Reform Decree which made radical changes to land tenure. The Decree declared that all land in Uganda belonged to the State in trust for the people, to be administered by the ULC to facilitate its use for economic and social development. It abolished freehold interest in land except the land vested in the State through the ULC. All *mailo* ownership, which existed immediately before the enactment of the decree, was converted into leasehold for the period of 199 years for public bodies and 99 years for individuals.<sup>42</sup>

The Decree further empowered the state to lease out any land occupied by the customary tenants to any person including the occupants themselves without their consent.<sup>43</sup> It furthermore abolished the right that was enjoyed by the indigenous people of Uganda to occupy land in accordance with their customary law without the prior permission.<sup>44</sup> The Decree made the occupation of public land without the necessary consent a criminal offence and any agreement that involved transfer of the customary tenure void and punishable by up to two years imprisonment.<sup>45</sup>

In addition to the above, the Decree altered the fundamental legal status of tenants by abolishing the Busuulu and Envujju law of 1927, the Ankole Land Lord and Tenant Law and the Toro landlord and Tenant law of 1937. It turned the customary land tenure into tenants at sufferance. These tenants did not have transferable interest in the land; only developments on land could be passed on only after giving notice of three months to the controlling authority. Section 5 of the Decree provided that no person

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<sup>42</sup> Section 2, Land Reform Decree of 1975.

<sup>43</sup> Mugambwa J 'A comparative analysis of the land tenure law reform in Uganda and Papua New Guinea' *Journal of South Pacific Law* (2007) 11(1) pg 39 at 43.

<sup>44</sup> Section 3(1) of the Decree.

<sup>45</sup> Section 4 of the Decree.

was to occupy public land by customary tenure except with written permission of the prescribe authority. This situation went on until the 1995 Uganda Constitution which abolished the alluvial or radical title to land in Uganda. The major land reforms are enshrined in the Ugandan Constitution and the Land Act of 1998

## **2.5 Current position: developments since 1995 to protect land rights and their effectiveness to curb land eviction**

The main laws currently in place to ensure the protection of the people against land evictions are the 1995 Constitution and the Land Act of 1998 with its Amendment Bill of 2007 although it is not yet enacted. Firstly the study will deal with the Constitution; where after the Land Act will be tackled in depth.

### **2.5.1 The 1995 Constitution**

In terms of Article 2, the Constitution is the supreme law of the land. It provides that the Constitution shall have binding force over all authorities and person throughout the country. It goes further by stating that if any law or custom is inconsistent with any of the provisions of the Constitution, the Constitution shall prevail. However, it remains a question as to what extent this provision is being upheld when it comes to the eviction laws or cases in Uganda. Despite the supremacy of the Constitution, there are still problems in implementation when it comes to issues of land evictions.

The Constitution abolished the 1975 Land Decree and restored the land tenure that was in place at the time Uganda obtained its independence in 1962. Article 237(1) of the Constitution provides that land belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the Constitution. It is important to note that the coming into operation of the Constitution changed the previous situation, where land belonged to the state and was controlled by the state. The Constitution went as far as providing security to the people who owned land in terms of the customary tenure by allowing them to acquire certificate of ownership in a manner prescribed by the parliament.<sup>46</sup>

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<sup>46</sup> Article 237(4) (a) of the Ugandan Constitution.

Furthermore, the Constitution also provides security to the lawful or bona fide occupants of *mailo* land, freehold or leasehold land.<sup>47</sup> However, it is not clear how this provision is being implemented in line with the widespread evictions that are taking place in Uganda. The study argues that there is a need to implement the law if at all any protection is to be given to the people who have been evicted or those who are threatened by evictions, either by the state or the private individuals.

In addition to the above, Article 287(9)(a) makes provision for the Parliament to enact a law within two years of the parliament elected under the Constitution to regulate the relationship between lawful or bona fide occupants on the different land tenure systems and the registered owners of that land. Although the passing of the law was met to protect occupants, it is close to 14 years since the adaptation of the Constitution and there is still no law that protects occupants. This has left very many people at the mercy of the land owners thus causing widespread land evictions by the state and the 'land lords'.<sup>48</sup>

Article 26 of the Ugandan Constitution guarantees protection from deprivation of property of which land forms part. However, this protection is not absolute as there are cases when a person can be compulsorily deprived of his land under certain circumstances.<sup>49</sup> But this is not so clear whether these conditions carry much weight especially considering the rampant land evictions that have been carried out by the state or private individual as it shall be discussed in chapter four of the study.

### **2.5.2 The 1998 Land Act and the Land Amendment Bill of 2007**

One of the major objectives of this Land Act was to provide security of tenure to all land users who among others included customary tenants on public land and the lawful or bona fide occupants on a registered land. Section 29(1) of the Act refers to the 'lawful occupants' as a person who occupying land by virtue of the repealed Busuulu and Envujjo Law of 1928, Toro Landlord and Tenant Law of 1937 and the Ankole Landlord and Tenant Law of 1937. From this definition, it appears that Land

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<sup>47</sup> Article 237(8) of the Ugandan Constitution.

<sup>48</sup> 'Land lords' is a term that is commonly used in Uganda to refer to the people who own land and leasing it out.

<sup>49</sup> Article 26(2)(a).

Act had an objective to protect these lawful occupants who occupied law in terms of the above law. However, it not clear whether those occupants are still alive and taking into consideration the fact that the *mailo* land was abolished in 1975 it is not easy to establish which interests the tenants acquired during that period.

The second meaning of ‘lawful occupant’ is a person who entered land with the consent of the registered owner, including a purchaser or a person who had occupied land as a customary tenant but whose tenancy was not disclosed or compensation for by the registered owner at the time of acquiring the leasehold certificate.<sup>50</sup> This provision means that if a person occupied land with the consent of the registered owner, then their relationship would be governed by the terms of the agreement. This means that in case of any dispute among others eviction, they have to be resolved in terms of the agreement.

In addition to the above, Section 29(2) of the Act gives a definition of a ‘bona fide occupant’ as a person who before the coming into force of the Constitution had occupied and utilized or developed the land unchallenged by the registered owner for the 12 years or more or a person who has been settled on land by government before 1995. From the eviction cases that have so far happened, the victims have been either bona fide occupant or lawful occupants and which means that some protection should have been given to them in terms of the Land Act. There is need to implement the laws as set out in the Act rather than leave it just on paper if any protection is to be given to the people being evicted by the government or private individuals.

In terms of the Land Act, a person can only be evicted on grounds of non-payment of rent for more than two consecutive years and only after the Land Tribunal has given the order. Section 31 of the Land Act 1998, as amended by the Section 14 of the 2004 Land Amendment Act, provides that land tenants have to pay a nominal rent which is to be determined by the Land Tribunal with the approval of the Minister. Before any eviction, the land owner has to follow a certain procedure. These include sending a notice to the land tenant and the Land Committee, and give the tenant six months in which to response as to why tenant may not be evicted from the land. Only after that

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<sup>50</sup> Section 29(1)(b) of the Land Act 1998.

can the owner apply to the Land Tribunal for an order to allow him or her evict the occupant.<sup>51</sup> Much as there is a set procedure, from what actually happens in practice, as it shall be seen later, there are clearly problems in the implementation of these laws. For example as much as the law provides for the establishment of the Land Tribunal, no such tribunal has yet been set up. In addition, the land boards are non-functional and land mediators as provided for under Section 30 of the Land Act are non-existent.

Despite the existence of the Land Act of 1998 and the Constitution, there is still 'illegal' evictions being carried out by some people who are politically connected to the government as it will be seen later and thus leaving many people landless. Although the state itself has been involved in evicting people, in 2007 the Legislature decided to pass a Bill to amend the Land Act. The Bill was read for the first time on 5 February 2008 and referred to the Committees of Physical Infrastructure and Legal Parliament Affairs for consideration in accordance with Rules No.116 and 133(a) of the Rules of Procedure of Parliament. It is close to two years and the Bill has not yet been passed as law.

The Bill generated strong opposition from landlords, parliamentarians and the general public. The government argued that the Bill was meant to protect the poor people who have suffered endless evictions by land owners.<sup>52</sup> However, the people against the Bill argued that it was a way for the government to facilitate the grabbing land to benefit some individual and foreign investors.<sup>53</sup>

Some regions especially the Buganda Kingdom opposed the Bill from the start of its first reading in parliament. It went as far as sensitizing its subjects to oppose the Bill to prevent its land from falling into the hands of 'foreign' people.<sup>54</sup> According to the Kingdom officials, they argue that the laws already exist to protect tenants from

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<sup>51</sup> Section 31(6) and (7) of the Land Act of 1998 and Section 14(c) of 2004 Land Amendment Act.

<sup>52</sup> 'Controversy surrounds Uganda's proposed Bill' February 1 2008, [www.kas.de](http://www.kas.de) (accessed on 2009-23-07).

<sup>53</sup> See above.

<sup>54</sup> Kalinaki DK and Oluka BH 'Controversial Bill may cost Museveni critical support base' *The East Africa*, 02-26-2008, [www.allafrica.com](http://www.allafrica.com) (accessed on 2009-07-24).



illegal evictions and that what is required is only to enforce the laws already in place rather than trying to create a new law.<sup>55</sup>

In addition to the above, there was opposition among the Parliamentarians concerning the Bill. In one of the National Resistance Movement (NRM) parliamentary caucus meeting the NRM president, Yoweri Museveni, threatened to fight and fail NRM members if parliament who do not support the Bill and yet want to come back to parliament in 2011.<sup>56</sup> According to the weekly observer, the government of Uganda went as far as dishing shs 500 million to the NRM Parliamentarians and local leaders to popularize the controversial Bill before its debate in parliament.<sup>57</sup> The media was also used to sell the Bill, close to Ugandan Shillings 22 million was channeled through the media centre to help the NRM supporters who call into radio stations to participate in talk shows surrounding the Land Amendment Bill. From this trend, it appears that the government wanted to use all the means to sell the Bill to the person which has since failed. The Bill has not been brought back to parliament since its first reading in 2007 and more evictions are still occurring across the country as it shall be seen in the following chapters.

One of the major objectives of the 2007 Land Amendment Bill is to try to address the problem of evictions and this attracted criticism from the public especially those who owned land as they saw the Bill was meant to grab their land.<sup>58</sup> The Bill was to amend the Land Act to ensure that there is security of occupancy of lawful and bona fide occupants and occupants on customary land from the rampant evictions from land without considering their land rights provided for in the Constitution and the Land Act.<sup>59</sup> The Bill proposed to insert new Sections 32A and 32B, which were to deal with the rampant evictions that were taking place in the country. Section 32A sets out

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<sup>55</sup> See above.

<sup>56</sup> Auma, J 'Uganda's Land Bill: Let the people decided' [www.africanexecutive.com](http://www.africanexecutive.com) (accessed 2009-03-27).

<sup>57</sup> Ssemujju N 'Government throws cash to MPs to sell the Bill' *The weekly Observer*, 24 April 2008, [www.allafrica.com](http://www.allafrica.com) (accessed 2009-07-23).

<sup>58</sup> Omara A D, the then Minister of Lands, Housing and Urban Development 'Uganda: Land Amendment Bill to protect tenants from evictions' 11 March 2009, <http://allafrica.com/stories> (accessed on 2009/04/03).

<sup>59</sup> Article 237(8) of the Constitution which calls on the parliament to enact an appropriate law to give security to the occupants on a piece of land and Section 31 of the Land Act.

procedure to follow before any eviction can be carried out. Section 32A(1) provides that a lawful or bona fide occupant shall not be evicted from a registered land except upon an order of eviction issued by a court and only for non- payment of the annual nominal ground rent. Much as this provision is intended to give protection to the occupants, on the other hand it is in conflict with the Constitution which provides for other condition under which a person can be deprived of his property in terms of Article 26(2). It is clear that it can not only be failure to pay ground rent that can lead to land evictions but also other factors.<sup>60</sup>

In addition to the above, Section 32A(2) of the Bill provides that before the court makes an order of eviction, it shall take into consideration the matters specified in Section 32(1) of the Land Act. Section 32A(3) sets out the time to be given before a person can be evicted after the order has been granted by court. It provides that a period of not less than six month after that date of the order should be given to the person before evicting him or her. The Bill goes further to criminalize the act of evicting a person without a court order to be liable on conviction to imprisonment not exceeding seven years.<sup>61</sup> If a person is convicted under sub-section 4, then the court may order him or her to pay compensation or damages to the person who was evicted or make an order for restitution in favour of the person who was evicted.<sup>62</sup>This Section has promises of protecting occupants against illegal eviction. However it is not clear from the Bill rather this Section will apply equally between the state also involved in evictions o and the private individuals.

Furthermore, Section 32(B) of the Bill makes provision for the protection of person claiming interest in land under the customary tenure to be evicted only by court. It further provides that the conditions under which the court may issue an order of eviction and among others includes: the court first hearing from the person claiming interest in the land, adequate compensation has been paid to the person claiming the interest in the land, except where the person has abandoned the occupancy, the court has visited the locus in quo and conducted a hearing and finally the court has received a report from the land committee of the area on the status of the occupant on the land.

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<sup>60</sup> Public use, in the interest of defence, public safety, public order, public morality and public health.

<sup>61</sup> Section 32(4) (4) of the Land Amendment Bill 2007.

<sup>62</sup> Section 32(A)(5)(a) and (b) of the Bill.

If a person carries out an eviction without following the right procedure, it shall be an offence and liable to a conviction to imprisonment not exceeding seven years. However, this Section does not give protection to a person who has been allowed to occupy or use land under the customary tenure as the court order is not required to evict that person.

Despite the existence of the Bill which is not yet law, the study is of the view that this Bill will not be the solution to the rampant evictions being carried out by the state and the private individual. This is because there are already laws that guarantee security of tenure for lawful and bona fide occupants that is the Constitution and the Land Act as seen above but the problem is with the impunity and non-implementation of the existing laws.

## **2.6 Conclusion**

As discussed above, the protection of people's land rights in Uganda have largely been determined by the different eras from colonial to post-colonial times. Despite the shift from land being owned by the state to private ownership in the 1995 Constitution, there have been several evictions being carried out by the state or private individuals. The Constitution and the Land Act have provisions that guarantee security to the lawful and bona fide occupants. However, there have been problems with the implementation of these laws. Although the new proposed Bill promised providing security to the people to protect them from the rampant evictions taking place, this Bill will not be of any effect until the major causes of these land evictions are dealt with. It is on this background that the study is of the view that it is not the absence of the laws that had led to the widespread land evictions but the lack of implementation of the existing laws. Therefore, there is need to first deal with the existing laws that guarantee security to the occupants on land before suggesting an amendment to the Land Act.

## Chapter 3

### International and selected comparative national standards in respect of land evictions

#### 3.1 Introduction

This chapter explores the international human rights instruments that are in place to ensure that evictions are carried out in terms of the human rights standards. It will then look at the key human rights instruments in place that set out the procedure to be followed when evicting a person. Furthermore, it will deal with the national standards that are in place in South Africa in the case of evictions.

#### 3.2 Position of international law in Uganda

Uganda is dualist State which means international law does not form part of the recognized sources of law unless it has been domesticated by legislation or enacted by an Act of the Ugandan Parliament.<sup>63</sup>

Under the constitutional frame-work dealing with national objectives and the Directive Principles of State Policy (DPSP), number XXVIII (b) provides for one of the foreign policy objective being the principle of respect for international law and objectives. In addition to the above, Article 8(A) of the Ugandan Constitution provides that Uganda shall be governed on principles of national interest and common good enshrined in the national objectives and DPSP. This provision can be interpreted as making the foreign policy objective to be justiciable.

The adaptation of the 1995 Constitution did not affect any earlier treaties, agreement or convention that Uganda had with any international organisation or country on or after 9 October 1962 when Uganda got its independence and was still in force immediately before the coming into force of the Constitution.<sup>64</sup> This provision means that those agreements or treaties would still be binding on Uganda. However, it is not clear from this provision how international law can be applied in the domestic courts.

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<sup>63</sup> See for example the Arbitration and Conciliation Act (Chapter 4), The Foreign Judgements Reciprocal Enforcement Act (Cap 9), Atomic Energy Act (Chapter 143).

<sup>64</sup> Article 287(a) of the Ugandan Constitution.

In addition to the above, Article 27 of the Vienna Convention on the Law of Treaties provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Therefore, Uganda's failure to have laws on the land evictions does not preclude it from failing to enforce or have laws in line with international law or treaties.

### **3.3 International instruments**

One of the important international instruments is the Universal Declaration of Human Rights (UDHR), which was adopted on the 10 December 1948 by the General Assembly of the United Nations. Article 17 of the UDHR guarantees the right of everyone to own property alone as well as in association with others and prohibits arbitrarily deprivation of property. However it is important to note that UDHR is not a legally binding declaration though it has persuasive force when being referred to in courts. Section 15 of the Judicature Act provides that “nothing in this Act shall deprive the High Court of the right to observe or enforce the observance of, or shall deprive any person of the benefit of, any existing custom, which is not repugnant to natural justice, equity and good conscience and not incompatible either directly or by necessary implication with any written law”. This implies that any law which is not against principles of natural justice and equity is applicable in the court of law.

Furthermore, it is important to take note of the fact that once a person is evicted from land, there are rights that affected which include among others; the right to property, the right to adequate housing, the right to live somewhere in security, peace and dignity.<sup>65</sup> Although the Constitution of Uganda does not provide for the right to adequate housing as a right per se, there is a provision that could be interpreted as encompassing this right. Article 45 of the Constitution provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in chapter four shall not be regarded as excluding others not specifically mentioned. If this provision is interpreted, it implies that even the rights not mentioned under the Constitution do not mean that they can not be

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<sup>65</sup> General Comment No.4, UN Committee on Economic, Social and Cultural Rights, Sixth Session, 1999.

claimed once infringed by another person or state. It is on this background that the study argues that considering the fact that land evictions affects rights like right to housing though not stated in the Constitution, it does not mean that a person can not approach the court on that basis of his right being infringed once evicted from a piece of land that he owns a house on.

### **3.3.1 International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights**

Uganda is a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>66</sup> The ICESCR does not have a provision dealing with land eviction. However, Article 11(1) provides for the right to adequate housing. It states that “the State party to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”. It is important to note that much as this provision does not refer to land evictions, once a person is evicted from land; his or her right to adequate housing is affected. This should not be interpreted in the narrow sense but rather this right should be seen a right forming part of the right to leave in peace and dignity<sup>67</sup> and these rights are violated when it comes to land evictions.

Under General Comment 4 on the right to adequate housing which was adopted on 12 December 1991, different factors must be taken into consideration in determining whether the shelter can be considered as ‘adequate housing’ for the purpose of the ICESCR,<sup>68</sup> one of the factors is legal security of tenure which encompasses protection against illegal eviction. The Committee on Economic, Social and Cultural Rights (CESCR) calls upon State parties to consequently take immediate measures aimed at affording protection to those people lacking it.<sup>69</sup> It goes further to provide that the right not to be subjected to arbitrary or unlawful interference with one’s privacy,

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<sup>66</sup> Uganda ratified the ICESCR on 21 January 1987 and ICCPR on 21 June 1995, [www.ohchr.org](http://www.ohchr.org) (accessed on 25-08-2009).

<sup>67</sup> See fn 64.

<sup>68</sup> Par 8 of the General Comment 4.

<sup>69</sup> See fn 64 Para 8(a).

family, home or correspondence constitutes a very important dimension in defining the right to adequate housing. Although the study does not look at the right to adequate housing per se, when it comes to land evictions, a person's or his family's right to housing or shelter is affected once a person is evicted from a piece of land. Therefore, there is need to protect a people against illegal or unlawful eviction carried out either by the State or private individuals.

In addition to the above, the General Comment 7, which was adopted on the 16 May 1997, deals especially with forced evictions.<sup>70</sup> It provides in more detail what the government, landlords and institutions should do to prevent forced evictions. Article 2(1) of the ICESCR calls upon state parties to use “all appropriate means” including the adaptation of legislative measures to promote all the rights protected under the Covenant.<sup>71</sup> Such measures should include measures which (a) provide the greatest possible security of tenure to occupier of a house or land, (b) conform to the covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out.<sup>72</sup> Furthermore, the Comment provides that the State parties must ensure that legislative and other measures are adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private people or bodies.<sup>73</sup>

Furthermore, the General Comment provides for the appropriate procedural protection to be applied in relation to forced evictions which includes (a) an opportunity for genuine consultation with those effected; (b) adequate and reasonable notice for all affected persons prior to the set date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those effected; (d) government officials or their representative to be present during an eviction especially where a large group of people are involved; (e) all people carrying out the eviction should be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons give consent; (g) there

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<sup>70</sup> UN Doc.E/1998/22/ Annex IV.

<sup>71</sup> See above 8 para 9.

<sup>72</sup> See above.

<sup>73</sup> See above.

should be legal remedies; and lastly provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.<sup>74</sup>

In addition to the above, article 17(1) and (2) of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence, nor to unlawful attacks on his honour and reputation. It further provides that everyone has a right of protection of the law against such interference or attacks. This provision means that one should be protected against interference with ones home or shelter. In other words, there should be security of tenure against unlawful evictions from land which are carried out by either the state or the private individual.

### **3.3.2 Basic Principles and Guidelines on Development-Based Evictions and Displacement**

The Basic Principles and Guidelines are contained in the report presented by the Special Rapporteur on the right to adequate housing to the Human Rights Council in 2007.<sup>75</sup> The guidelines apply to acts or omission involving the coerced or involuntary displacement of individuals, groups and communities from homes or lands which affect the ability of the individual, or group to continue living or working on that particular dwelling without the provision of and access to legal or other protection.<sup>76</sup> In addition to the above, these guidelines are not laws that have to be followed strictly but, they do have a persuasive force in the courts and this also applies in the similar way in Uganda. Land evictions constitute gross violations of a number of internationally recognized human rights, which include among others; adequate housing, food, water, health, education, work, security of person, security of home, freedom from cruel and freedom of movement.<sup>77</sup>

For land eviction to occur, they must be carried out lawfully, only in exceptional circumstances and in accordance with relevant provisions of international human

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<sup>74</sup> See above, para 15.

<sup>75</sup> UN Doc. A/HRC/4/18, 5 February 2007, Annex 1.

<sup>76</sup> See above para 4.

<sup>77</sup> See fn 74 para 6.



rights and humanitarian law.<sup>78</sup> However, these guidelines shall not be interpreted as limiting, altering or otherwise prejudicing the rights recognized under international human rights law or humanitarian law and related standards, or rights consistent with the laws and standards recognized under any national law.<sup>79</sup>

The Basic Principles and Guidelines sets out the steps that have to be followed by states before evictions, during and after evictions. Before evictions the following are the steps to be followed: (a) Give appropriate notice to all the people who are likely to be affected by the eviction and that public hearing will be held on the proposed plans and alternative; (b) effective dissemination by the authorities of relevant information in advance, including land records and proposed comprehensive resettlement plans specifically addressing efforts to protect vulnerable groups; (c) give reasonable public review of, comment on and or objections to the proposed plan; (d) providing opportunities and facilitating the provision of legal, technical and other advice to the affected persons about their rights and options; (e) holding public hearings that provide the affected people and their advocates with opportunities to challenge the eviction decision and to present alternative proposals and to articulate their demands and development priorities.<sup>80</sup>

During evictions, the following guidelines should be followed:

- (a) The mandatory presence of governmental officials or their representative on site during evictions. The officials or their representatives and persons implementing the evictions must identify themselves to the people being evicted and present formal authorization for the eviction action.<sup>81</sup>
- (b) Allow access of neutral observers, including regional and international observers, to ensure transparency and compliance with international human rights principles during the carrying out of any eviction.<sup>82</sup>
- (c) Evictions should be carried out in the manner that does not violate the dignity and human rights to life and security of those affected, and ensuring that

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<sup>78</sup> See above.

<sup>79</sup> Para 74.

<sup>80</sup> para 37.

<sup>81</sup> Para 45.

<sup>82</sup> Para 46.

women are not subjected to gender base violence in the course of evictions, and that the rights of the children are protected.<sup>83</sup>

- (d) Ensuring that any legal use of force is in line with the principles of necessity and proportionality, as well as the Basic Principles on the Use of Force and Firearms by the Law Enforcement Officials and any national or local code of conduct consistent with the international law enforcement and human rights standards.<sup>84</sup>
- (e) Ensuring that evictions do not take place during bad weather, at night, during festivals or religious holidays, prior to elections, or during or prior to school examination.<sup>85</sup>
- (f) It is the obligation of the state to take steps to ensure that no one is subject to direct or indiscriminate attacks or other acts of violence, especially against women and children, or arbitrary deprived of property or possession as a result of demolition, arson and other forms of deliberate destruction, negligence or any form of collective punishment. Property and possession left behind involuntarily should be protected against destruction and arbitrary and illegal appropriation, occupation or use.<sup>86</sup>
- (g) The people evicted should not be forced to demolish their own dwelling or other structures by the authorities or their agents. However, the option to do so must be provided to affected people so as to be able to salvage their possession and building material.<sup>87</sup>

After evictions the following guidelines should be followed:

- (a) There should be immediate provision of just compensation and sufficient accommodation or restitution when feasible by the government and other parties upon eviction.<sup>88</sup>
- (b) Competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves have safe water and secure access to: essential food, potable water and sanitation; basic shelter and

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<sup>83</sup> Para 47.

<sup>84</sup> Para 48.

<sup>85</sup> Para 49.

<sup>86</sup> Para 50.

<sup>87</sup> Para 51.

<sup>88</sup> Para 52.

housing; appropriate clothing; essential medical service; livelihood sources; fodder for livestock and access to common property resources previously depended upon; and education for children and childcare facilities. States should also ensure that members of the same household are not separated as a result of eviction.<sup>89</sup>

- (c) Making special efforts to ensure participation of women in all planning processes and in the distribution of basic service and supplies.<sup>90</sup>
- (d) Evicted persons who are wounded and sick, as well as those with disabilities, should receive the necessary medical care and attention they require to the fullest extent practicable and with no delay. This is intended to ensure the protection of the human rights to the highest attainable standard of physical and mental health.<sup>91</sup>

In addition to the above, the Basic Principles on Development-Based Evictions and Displacement provides remedies for evictions. These remedies include among others: fair hearing, access to legal counsel, legal aid, return, restitution, resettlement, rehabilitation and compensation.<sup>92</sup> Where evictions is unavoidable and necessary for the promotion and the general welfare, there should be just compensation for any losses of personal, real or other property, including rights and interests in property . However, cash compensation should under no circumstance replace real compensation in the form of land and common property resources.<sup>93</sup> In the case where land has been taken, the evicted should be compensated with land commensurate in quality, size and value or better.<sup>94</sup> All the evicted people irrespective of whether they hold title to their property should be entitle to compensation for the loss, salvage and transport of their properties affected and land lost or damaged in the process.<sup>95</sup>

### **3.4 National standards in South Africa**

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<sup>89</sup> See above.

<sup>90</sup> Para 53.

<sup>91</sup> Para 54.

<sup>92</sup> Para 59.

<sup>93</sup> Para 60.

<sup>94</sup> See above.

<sup>95</sup> Para 61.

In the South African context, there is law that deals with evictions from the houses and land. The major focus under this sub-section is with the laws that deal with land evictions in South Africa. Section 25 of the South African Constitution provides for the right to property. It provides that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.<sup>96</sup> This right is not absolute as property may be expropriated in terms of law of general application. Section 25(3) subjects the power of the state to expropriate property to two constraints; firstly, an expropriation is allowed only for public purposes or in the public interest. Secondly, such expropriation is subject to payment of compensation for property that has been taken.<sup>97</sup> The term public purpose include expropriation by the state for purposes of carrying out its obligations such as building a school, hospital or a road.<sup>98</sup> As for public interest in terms of section 25(4), it includes the nation's commitment to land reforms and reforms to bring about equitable access to all South Africa's natural resources. As for payment of compensation, Section 25(2)(b) provides that the amount of compensation has to be agreed upon by either the affected people and if no agreement can be reached then it has to be decided or approved by the court.

In addition to the above, the compensation has to be 'just and equitable' in its amount, timing, and in the manner of payment reflecting the balance between the public interest and the interest of those affected. To achieve this balance, the Constitution requires the Court to consider all the relevant factors as provided for in Section 25(3)(a)-(e). Furthermore, Section 26(3) of the Constitution provides that 'no one may be evicted from their home, or have their home demolished, without a court order made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.' In the case of *Port Elizabeth Municipality v Various Occupiers*,<sup>99</sup> the Court established the relationship between Section 25, dealing with property rights and Section 26, dealing with right to housing.<sup>100</sup> It held that property rights and the

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<sup>96</sup> Section 25(1) of the South African Constitution Act 108 of 1996.

<sup>97</sup> Currie I and Dewaal J 'Bill of Rights Hand book' 5<sup>th</sup> ed (2005) pg 531 at 554.

<sup>98</sup> The Expropriation Act 63 of 1965 defines 'public purposes' to include 'any purposes connected with the administration of the provisions of any law by an organ of State'.

<sup>99</sup> 2005 (1) SA 171 (CC).

<sup>100</sup> See above para 19.

right not to be arbitrary evicted from a home were closely intertwined and that the stronger the right to land, the greater the prospect to a secure home.

More so, there is the Extension of Security of Tenure Act (ESTA).<sup>101</sup> This Act provides protection to occupiers of land against unfair evictions by a land owner and sets out the rights and duties of occupiers and owners of land.<sup>102</sup> The Act goes further to criminalise unlawful evictions by either paying a fine or imprisonment for a period not exceeding two years or both punishments.<sup>103</sup> Furthermore, it sets out the procedure to be followed before an eviction takes place. In terms of the Act, the court can make an order for eviction of an occupier if; the occupier's right of residence has been terminated in terms of the Act; the occupier has not vacated the land within the period of notice given by the owner or person in charge; the condition for an order of eviction in terms of the Act has been complied with and the owner or person in charge has after the termination of residence, given a notice to the occupier on a given piece of land, the municipality where the land is located and to the head of the relevant provincial office of the Department of Land Affairs.<sup>104</sup>

In *Mkangeli and Others v Joubert and others*,<sup>105</sup> the issue concerned the applicability of the provisions of the ESTA. In this case, a vacant piece of land had been occupied by the appellants. Upon moving to the land, they had set up informal dwellings with the consent of the trustees being the Itsoseng Community Development Trust. Later on the respondent, property owners in the area brought an application in a Local Division for an order compelling the removal of the appellants and their informal dwellings from the property. They brought the application on two grounds. Firstly, that the appellants had occupied the land contrary to the provisions of the applicable township planning scheme and secondly, that appellants causes unlawful nuisance to the respondent which was of such a nature that it could be avoided by the removal of the appellants from the area.<sup>106</sup> The Court *a quo* found in favour of the respondents and therefore ordering the trustees to break down all the structures erected on the

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<sup>101</sup> Act 62 of 1997.

<sup>102</sup> Section 6 and 7.

<sup>103</sup> Section 23(3).

<sup>104</sup> Section 9 (2) (a) – (d).

<sup>105</sup> 2002 (4) SA 36 (SCA).

<sup>106</sup> See above pg 37.

property and for the appellant to vacate the area.<sup>107</sup> The appellant appealed against the decision arguing that the High Court had no Jurisdiction as the ESTA was applicable in their situation.<sup>108</sup> This had the implication that since the Act was applicable to them, then their right of residence could only be terminated on lawful grounds and only if it was just and equitable to do so.<sup>109</sup> The Supreme Court of Appeal further held that where an occupier's right of residence was terminated, his refusal to vacate the property is unlawful, but that did not mean that the remedy of eviction was necessarily available.<sup>110</sup> The Court concluded that it could only issue the eviction order if certain conditions as stipulated in Section 9(3) of the Act were met and among others included the occupier's right of residence being terminated in terms of Section 8.<sup>111</sup>

Furthermore, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) also sets out the procedure to be followed before evicting a person from a piece of land occupied unlawfully without the consent of the owner.<sup>112</sup> It is important to note that this Act does not apply to business premises unless where at the same time it is used as a home.<sup>113</sup> This Act deals with evictions instituted by an owner or person in charge and eviction instituted by an organ of state. It sets out the procedure to be followed by the two groups separately.

Section 4 of PIE, provides a procedure that has to be followed by the owner of a piece of a piece of land before evicting an unlawful occupier. It states that before the hearing of the proceeding, the court must serve written and effective notice of the proceeding to the unlawful occupier and the municipality at least 14 days before.<sup>114</sup> Furthermore, the notice must state that the proceedings are being instituted in terms of Section 4(1) for an order for the eviction of the unlawful occupier; indicating the date and the time for the court proceeding; setting out the grounds for the proposed

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<sup>107</sup> See above.

<sup>108</sup> See above.

<sup>109</sup> See fn 104 pg 43E-H.

<sup>110</sup> See above par 12.

<sup>111</sup> See above par 13.

<sup>112</sup> Act 19 of 1998

<sup>113</sup> *Ndlovu v Ngcobo; Bekker and Another v Jika* 2003 (1) SA 113 (SCA) para 20.

<sup>114</sup> Section 4 (2) of the PIE Act.

eviction and lastly stating that the unlawful occupier is entitled to appear before the court and defend the case, where necessary, has a right to apply for legal aid.<sup>115</sup>

In the case of *Van Niekerk and another N Favel and another*,<sup>116</sup> the appellants appealed the grant of an eviction order against them, in the magistrate's court, in terms of the PIE. The respondents as the owners and sellers of the immovable property concerned, alleged that the appellants were in breach of the various terms of the contract of sale and therefore demanded for the rectification of the alleged breaches within 30 days.<sup>117</sup> After the lapse of the 30 days, the respondent approached the court to evict the appellants. The application had been served to the relevant local authority by the Deputy Sheriff.<sup>118</sup> Thereafter, the appellants appealed against the order on three grounds and among others were that the respondent had failed to comply with the provisions of Section 4(2) of PIE in that the notice of the proceedings given to the relevant local authority had not been served by the Court, but by the Deputy Sheriff. The Court held that, that the fact that it had not caused the notices to be served on the relevant parties was not fatal as the local authority had nonetheless been made aware of the proceedings and the appellants had been made aware of their rights under Section 4(5)(d). From this notice that was served, the Court came to the conclusion that Section 4(2) had been complied with and therefore, the Court was entitled to evict the appellants.<sup>119</sup>

In addition to the above, the Act provides that the court may grant the order of eviction if it is of the opinion that it is just and equitable to do so against an unlawful occupier who has occupied the land in question for a period of less than six months at the time the proceedings are initiated.<sup>120</sup> This has to be done after considering all the relevant circumstance including the rights and the needs of the elderly, children, disabled people and households headed by women.<sup>121</sup> Where an unlawful occupier has occupied the land the land in question for more than six months, then other circumstances have to be considered by the court before granting the eviction order.

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<sup>115</sup> Section 4(5) (a)- (d).

<sup>116</sup> 2006(4) SA 548 WLD.

<sup>117</sup> See above pg 549.

<sup>118</sup> See above.

<sup>119</sup> See fn 112 par 39-40 and 44 at pg 574.

<sup>120</sup> Section 4(6).

<sup>121</sup> See above.

One of the circumstances is whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier.<sup>122</sup>

In *Dauids and Others v Van Straaten and Others*,<sup>123</sup> one of the issues before the Court was the application of Section 4(6) of the PIE. In this case, the Magistrate Court had granted a default judgement for the eviction of the applicants from the premises owned by the respondent. Although the case does not refer to land per se, but the premises were erected on the land and therefore evicting the applicants meant evicting them from the piece of land. Before the default judgment was granted against the applicant, they had been served with the notices in terms of Sections 4(2) and 4(5) of the PIE. The respondents' case was that the applicants had remained on the premises despite the fact that their lease had been cancelled by the respondents and they were later evicted.<sup>124</sup>

Later on the applicants obtained the *rule nisi* in the High Court calling on the respondents to show why the eviction should not be set aside, in addition an order restoring possession of the premises to them pending the outcome of the appeal.<sup>125</sup> Later on, the applicant approached the High Court for a final interdict and confirmation of the rule. They claimed that the magistrate had granted default judgement without having regard to 'all the relevant circumstances' as provided for in Section 26(3) of the Constitution and Section 4(6) of the PIE. However when the matter was brought on appeal, the Court held that from the case before the *court a quo*, the magistrate had before him all the relevant circumstances to make a proper finding, including the fact that the respondents were the owners of the premises, that the lease had been terminated in accordance with the provisions of the Rental Housing Act<sup>126</sup> and the PIE. In addition to that, he had before him information about the personal circumstances of the applicants.<sup>127</sup> Taking into consideration the personal circumstances of the applicants of which the study does not look at in depth, the Court

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<sup>122</sup> Section 4(7).

<sup>123</sup> 2005 (4) SA 468 CPD.

<sup>124</sup> See above pg 470.

<sup>125</sup> See fn 122.

<sup>126</sup> Act 50 of 1999, Section 19(1)(a)(ii).

<sup>127</sup> See fn 122 pg 484 F-G.



came to the conclusion that the respondents had been indirectly expropriated of their land by the conduct of the applicant.<sup>128</sup> Finally after considering all the relevant circumstances, the Court held that it was just and equitable that the occupation by the applicants of the respondents' property had to be terminated and the applicants evicted from the premises.<sup>129</sup> From this case, the study comes to the conclusion that in any case of eviction before the court, all the relevant circumstance have to be weighed against each other that is those of the land owner and those of the occupiers before the court can grant the eviction order.

Turning to Section 6 of the Act which deals with evictions being carried out by an organ of state there is also a set procedure to be followed. This section provides that an organ of state may institute proceedings for eviction of an unlawful occupier from land which falls within its area of jurisdiction, except where the unlawful owner is a mortgagor and the land in question is sold in execution. For the court to grant an eviction order in such a situation, certain circumstances have to be considered. These include; the circumstances under which the lawful occupier occupied the land and erected the building or structure, the period the unlawful occupier and his or her family have resided on the land in question and the availability to the unlawful occupier of suitable alternative accommodation or land.<sup>130</sup>

In *Port Elizabeth Municipality v Various Occupiers*,<sup>131</sup> concerned about an eviction application by the municipality against 68 unlawful occupiers of the land within its area of jurisdiction. This application was based on Section 6 of PIE, which allows an organ of state to institute proceedings for eviction of an unlawful occupier within its area of jurisdiction. The occupiers had been living on the land for periods ranging between two and eight years. These occupiers were willing to vacate the land on the condition that the municipality was to give them alternative land to which they would move to. However, the municipality had offered them alternative land on the basis of lack of security of tenure and this implied that they would still be evicted later on. The problem with this case was that the Municipality had not discussed the circumstances

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<sup>128</sup> See above pg 485E.

<sup>129</sup> See above.

<sup>130</sup> Section 6(3).

<sup>131</sup> See fn 98.

or the needs of the people before evicting them. In other words, there had been no meaningful engagement to solve the matter.<sup>132</sup> The Constitutional Court has held that PIE and Section 26(3) requires the Court to consider the requirement of meaningful engagement between the parties before granting an eviction order.<sup>133</sup> However, this requirement can work only if both the parties act reasonably and in good faith.<sup>134</sup>

### 3.5 Conclusion

Although Uganda is a dualist state, its Constitution provides that one of the foreign policy objectives is the principle of respect of international law and objectives. Therefore, it is the duty of the legislature to draw up legislations that incorporate international standards to ensure that land evictions take place in terms of international human rights standards recognized. Turning to other national standards, lessons can be drawn from South Africa which has legislations setting out the procedure to be followed before carrying out an eviction. Several cases have come before the courts as discussed above and these legislations have been applied thus ensuring that the people's rights are respected before the court can issue an eviction order.

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<sup>132</sup> See above para 45.

<sup>133</sup> See *Fort Elizabeth case*, para 45, *Occupiers of 51 Olivia Road, Berea Township and 197 Main street, Johannesburg v City of Johannesburg and Others* 2008(3) SA 208, para 18, *Resident of Joe Slovo Community western cape v Thubelisha Homes and Others* 2009 ZACC 16 (10 June 2009) para 338.

<sup>134</sup> See *Occupiers of Olivia Road case* para 20, *Joe Slovo case* para 407.

## Chapter 4

### Causes of eviction and case studies on the land evictions in Uganda

#### 4.1 Introduction

In Uganda there has been evidence of land evictions over the past years which have left people landless and homeless.<sup>135</sup> In this chapter the study will look at the main causes of land evictions and a few land evictions case that have occurred by looking at those that have been conducted by the state and private individuals. It will further analyse from the case studies whether the right procedure as set out in the national and international standards was followed.

#### 4.2 Main causes of land evictions

The main causes of land evictions range from historical, political, developmental, and social and investments factors. From a historical perspective, the Buganda Agreement of 1900 has contributed to land evictions especially in the Baganda Kingdom. As it may be recalled from chapter 2 of the study, the colonialists had given land to the Kabaka and chiefs and the remaining uncultivated land vested in the Queen of England as Crown Land.<sup>136</sup> It is important to take note that the land that was originally distributed belonged to other people who were left landless. These people become *bibanja* holders and therefore at the mercy of the *mailo* land owners. The largest *mailo* land lords is the Baganda Kingdom which owns large chunks of land and the people who are on pieces of land consider themselves as the owners and hence causing conflicts between the land owners and the tenants. For example, there where over 200 families neighbouring Ranch on the Lake Victoria Hotel who were evicted from the Baganda Kingdom land without notice and with inadequate compensation.<sup>137</sup>

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<sup>135</sup> Omara AD 'Land Amendment Bill to protect tenants from evictions' Among the cases include; Bugolobi Eviction where 200 families were evicted, in Makindye 200 families evicted, Kisenyi were 1000 tenants were evicted; Kayunga district, 400 families were evicted, *New Vision*, 11 March 2009 (accessed on 03-04-2009).

<sup>136</sup> See Fn 18.

<sup>137</sup> Mboizi, M ' Buganda's economic pillar- land' *HURINET-U News Letter*, Volume 1, issue 1, January 2008.

The political situation in the country has also been one of the major causes of land evictions. This political situation is firstly manifested in the existing laws that protect tenants from evictions. The 1995 Ugandan Constitution provided that land belonged to the people and guaranteed protection to the bona fide occupants. The bona fide occupant is the person who occupies a given piece of land for the period of 12 years and can only be evicted with a court order.<sup>138</sup> However, it is not easy for a person to easily vacate a person of land with the request of the land owners and this in the end makes the owner to use force or the authorities to evict a person from his or her piece of land.

Furthermore, the government of Uganda always wants to portray itself as in support of the people and since being in power depends on the number of votes, this often makes them to compromise with the illegal tenants who are often many in number thus making them to have more support to be able to survive politically. This move by the government undermines the rights of the minority land owners who stand to lose on the 'dark side' of democracy their land to many squatters.<sup>139</sup> From the evidence, it is not clear what the stand of the government is when it comes to land evictions as it is the same government that turns a blind eye when the police and senior officers evict the helpless masses for selfish ends.<sup>140</sup> Recently, the President was encouraging tenants to resist evictions in Mpigi District and assured them that no amount of intimidation and coercion could erode their constitutional right to own land.<sup>141</sup> This illustrates the politics surrounding the issue of land evictions in Uganda.

The lack of knowledge of the law on the rights of land owners and tenants has also led to land evictions. In Uganda people are not aware of the laws that are in place to protect both sides when it comes to the issue of land eviction. More so, there is no

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<sup>138</sup> Section 29(2) of the 1998 Land Act.

<sup>139</sup> Lubwama, S 'Causes of land wrangles and the solutions' [www.connectuganda.com](http://www.connectuganda.com) (accessed on 04-03-2009).

<sup>140</sup> Take the example of the Mubenda case and Benet Community who were evicted with the help of the UPDF soldiers and the authorities.

<sup>141</sup> Mukasa, H 'Resist eviction, Museveni tell tenants in Mpigi' *New Vision*, 4 August 2009, [www.newvision.co.ug](http://www.newvision.co.ug) (accessed on 05-08-2009).

proper land policy framework to address Uganda's land questions which include among other land evictions and mechanism for dispute resolution and appeal.

Furthermore, the registered land owners do not disclose to the purchasers that the specific land has tenants on and this often causes clashed between the purchaser and the tenants. Take the example of Kirubo parish, Garilaya-Bale County in Kayunga District were the land owner, Copriano Bisase, sold it to Kihungo John who later evicted then off the land with no notice, and no compensation.<sup>142</sup>

In addition to the above, the need to attract investors has led to widespread land evictions. Most of the evictions that have been conducted in Uganda have been done with the purpose to create land for the investors. Take the example of the Kaweri Coffee Plantation in Mubende where people were evicted from the land so as to create space for the setting up of the coffee plantation.

### **4.3 Land evictions by the State**

Article 2(2) of the Ugandan Constitution provides that that Constitution is the supreme law of the land and that it shall have binding force on all authorities and persons throughout. Uganda. This Article provides for the supremacy of the Constitution and this implies that the State is not above the law and therefore, it should abide by the provisions of the Constitution. Article 26(2) and 237(2) empowers the State to forcibly deprive an individual of his or her property under certain conditions.<sup>143</sup> However, the reasons for acquisition are not set out in an elaborate manner which leaves the State with an opportunity to interpret the conditions in the way that will justify them to deprive people of their land.

Furthermore, the Land Acquisition Act, Chapter 226 of 1965 makes provision for compulsory acquisition of law for public and other related purposes and it sets out the procedure to be followed before acquiring a given piece of land.<sup>144</sup> The study will look at only two evictions cases where the State has been involved either directly or indirectly.

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<sup>142</sup> See fn 18 pg 22.

<sup>143</sup> Public interest, interest of defence, public order, public safety or public order.

<sup>144</sup> Section 2-7 of the Land Acquisition Act, chapter 226.

### 4.3.1 Benet Community eviction

Benet Community is a historical term which was used to describe the contested area of Mount Elgon where Ndorobo and settlers currently reside for the purpose of pursuing the legal strategy.<sup>145</sup> The Benet people had for long decades struggled for recognition and for land rights from the government of Uganda without any success. With the help of the Uganda Land Alliance and in terms of Article 50(2) of the Ugandan Constitution, they managed to fill a case to the High Court in Mbale District against the Uganda Wildlife Authority (UWA) which wanted them to vacate the areas as it was declared a Wildlife area. They had the hope that this would reverse the situation.<sup>146</sup> The UWA is statutory body that was established by the Uganda Wildlife Act of 2000. It became operational in August 1996 after the merger of the then Game Department with the Uganda National Parks.<sup>147</sup> Its main responsibility is to manage Uganda's national parks through conserving and protecting wildlife protected areas in partnership with neighbouring communities and stakeholders for the benefit of the people of Uganda and the global community.<sup>148</sup>

This case was decided on the 27 October 2005 in the form of a consent judgement in which the agreement was arrived at between the parties to the case. Among the terms of the judgement was the recognition of the Benet Community as 'historical and indigenous' inhabitants of the area, their right to live and conduct agricultural activities in the area they currently inhabited and the right to immediate redress for imbalances in education, infrastructure, health and social services.<sup>149</sup>

Despite the agreement that was reached in the decision, three years later the Uganda Wildlife Authority decided to evict the people from that area. In February 2008, the Uganda Wildlife Authority and the Uganda People's Defense Force (UPDF) evicted more than 4,000 people from the Benet and Ndorobo Communities living in Mount

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<sup>145</sup> Okwaare S, and Hargreaves S 'The Benet Community: Mountain of Trouble' A story about a community's struggle in achieving land rights, identity and recognition, April 2007, [www.actionaid.org](http://www.actionaid.org) ( accessed 24-08-2009).

<sup>146</sup> *Uganda Land Alliance Authority Ltd v Uganda Wildlife Authority and Attorney General*, Case no:0001 of 2004 at Mbale High Court.

<sup>147</sup> [www.mtti.go.ug](http://www.mtti.go.ug) ( accessed on 21-09-2009)

<sup>148</sup> See fn 145.

<sup>149</sup> See fn 144.

Elgon National Park in Eastern Uganda. People's houses and crops were destroyed, cattle confiscated and the people were left homeless.<sup>150</sup> The eviction came as a result of the shooting and killing of a Belgian Tourist, Annick Van De Venster in Mount Elgon National park. According to the (UWA), cattle thieves were responsible for his death. UWA's executive director Moses Mapesa said 'We believe the people who shot at the tourist's group mistook him to belong to a rival camp of cattle thieves'.<sup>151</sup> After this tragedy, the UWA used this incident as a way to evict the Benet community from the area. "Following these incidents," Moses Mapesa, UWA executive director said "UWA found it prudent to address the issue of encroachment in the park, which is in any case is illegal as the boundaries of the park were redefined in 2002". Mapesa claimed that the eviction was "being undertaken humanely".<sup>152</sup> However, the study does not agree with the reason of the eviction as clearly there was no connection between the killing of the tourists and the reason why the Benet community was evicted from this area.

From this incident, it is clear that the UWA as an organ of State disregarded the order of the Court ruling by evicting the people from this area despite the fact that they had been recognized as the historical inhabitants of that area. One of the Chief UWA Joshua Masereka said that 'we have always given the Benet time to vacate. We do not need them in the Park.'<sup>153</sup> From his statement, it clearly shows that much as the Court had made a ruling, it was of no consequence to the UWA as still they wanted the people to vacate the area. It is on this background that the programme manager of the ActionAid Uganda, Chemisto Satya noted "Such disregard for the power of courts is what is making access to justice for the poor and marginalized communities in Uganda Unattainable."<sup>154</sup> In Societe General de Surveillance (SGS)'s 2007 Public Summary of the Certification Report, it was noted that UWA had accepted the Court ruling and that it was not going to evict the Benet from the park until either another

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<sup>150</sup> 'Benet under massive evictions by Wildlife Authority', [www.actionaid.org/uganda](http://www.actionaid.org/uganda) (accessed on 24-08-2009).

<sup>151</sup> Ssemopogo H 'Belgian tourist killed on Mt Elgon' *New vision*, 6 February 2008. (accessed on 4-04-2009)

<sup>152</sup> Tenywa G 'Guns recovered from park encroachers', *New Vision*, 25 February 2008.

<sup>153</sup> Lang, C 'Thousands of indigenous people evicted from FSC- certified Mount Elgon National park' *WRM Bulletin* 131, June 27 2008, [www.wrm.org](http://www.wrm.org) (accessed on 24-04-2009).

<sup>154</sup> See above.

piece of land outside the park could be found for them or that part of the park could be given to them to occupy it legally.<sup>155</sup>

Despite the above, when the UWA decided to evict the Benet Community from the park, they did not make a plan of finding an alternative land. Later on a group of people who had been evicted camped outside parliament in Kampala demanding that the government to allocate them land.<sup>156</sup> As a result of the eviction people did not have shelter or food which made the district Chairperson of Kapchorwa, near Mt Elgon to call for urgent food aid to save lives of more than 1,000 Benet people.<sup>157</sup>

#### **4.3.2 Kaweri Coffee Plantation in Mubende District**

On 11 June 2001, the residents of Kitemba, Luwunga, Kijunga and Kiryamakobe in the Madudu sub-county were given a notice to vacate their homes by the 31 August 2001. This notice had been given through the Local Council Chairperson.<sup>158</sup> As part of Uganda's aim of encouraging more foreign investors, it entered into negotiations with the German Neumann Kaffee Gruppe (NKG) in 2001 to establish a large coffee plantation and this required land for it to be established.<sup>159</sup> Despite the fact that the community had been given a notice to vacate, the government could not wait for the notice to elapse with no specific reasons. From the 17-19 August, 2001, the government deployed the UPDF and the police to evict the people from the area so as to create space for the Kaweri Coffee Plantation Limited (KCPL).<sup>160</sup>

The UPDF and the police burnt and demolished houses, cut down and uprooted crops and chased away the people from the land demarcated for the plantation and as a result, about 400 families were evicted.<sup>161</sup> In the process of the eviction, people were whipped, kicked and beaten especially those who were resisting the eviction.<sup>162</sup>

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<sup>155</sup> 'Forest Management Certification Report Section A: Public Summary, 9495-UG, UWA-FACE Mt Elgon National Park' pg 17, [www.uwa.org.ug](http://www.uwa.org.ug) (accessed on 28-08-2009).

<sup>156</sup> Tebajjukira, M 'Mount Elgon encroachers at Parliament' *New vision*, 9 May 2008, (accessed on 18-08-2009)

<sup>157</sup> Jaramogi, P '1,000 Benet face death over hunger' *New Vision*, 3 June 2008, (accessed on 18-08-2009).

<sup>158</sup> See fn 18 Pg 19.

<sup>159</sup> Rugambwa J 'Why the Madudu Community eviction?' April 16 2008, [www.actionaid.org/](http://www.actionaid.org/) Uganda (accessed on 01-06-2009)

<sup>160</sup> See above.

<sup>161</sup> See fn 18.

<sup>162</sup> See above



According to one of the evictees, Elisa Mbabazi she narrated how the eviction was carried as follows, ‘On the day of the eviction I was at home. Soldiers literally stormed our land, fired some shots in the air and drove us out. They then demolished our houses we had been living in for 17 years. We found shelter in the woods nearby. Our livestock ran away and our farmland was destroyed. Two of my children died as a consequence of this forceful eviction.’<sup>163</sup> From this narration, the study is of the view that the way the eviction was carried out involved a lot of force and brutality which caused a lot of harm to the people and destruction of their property and thus violating peoples rights such as the right to privacy, right to dignity and the right to property.

Furthermore, many of the people who were evicted were lawful customary tenants who are guaranteed security under the 1995 Constitution and the 1998 Land Act.<sup>164</sup> However the study argues that since the eviction was carried out on the orders of the state, this clearly shows how the government appears to be above the law yet it is the same that enacts the laws. Later, on 24 August 2001, the plantation was inaugurated by Mr. Neumann as the head of the Newumaan Kaffee Gruppe and the President of Uganda H.E Yoweri Museveni.<sup>165</sup> Many of the people who were evicted later on decided to work on the plantation as a means of survival. In 2002, the Madudu community supported by ActionAid Uganda decided to open up a case protesting forced eviction without compensation for the land that was lost and their property destroyed.<sup>166</sup> However, it is close to 9 years and the case has not been solved, so far two hearing have taken place and the final date for the judgement still waits at national level.<sup>167</sup>

In addition to the above, having failed to get legal remedies at national level, the FoodFirst Information and Action Network (FIAN) decided to file a complaint against the NKG on behalf of the 400 small-scale farmers in Madudu sub-county. The case was lodged on the 15 June 2009 to the Organisation for Economic Co-operation and

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<sup>163</sup> See fn 18. The same narration can be found on [www.face-it-act-now.org](http://www.face-it-act-now.org) (accessed on 24-02-2009).

<sup>164</sup> See Article 237(1) of the Ugandan Constitution and Section 29(1) of the land Act of 1998.

<sup>165</sup> See fn 18 pg 20.

<sup>166</sup> *Baleke Kayira Peter v Attorney of Uganda and Kaweri Coffee Plantation*, HCCS No.179 of 2002 In the High Court of Nakawa

<sup>167</sup> See above.

Development (OECD) arguing that the acts of NKG had violated the guidelines that govern the behaviour of multinational companies and this case has not yet been decided.<sup>168</sup> However, the Uganda Investment Authority (UIA) is not in agreement with the argument that the evictions were carried illegally.

The Director of UIA, Dr. Maggie Kigozi was arguing that the Neumann did not do anything wrong and she said; ‘The UIA bought land from the land owner and the landowner had been the one to resettle the bona fide occupants, or squatters, or whatever you want to call them’.<sup>169</sup> She admitted that given the size of the land and the conflicting claims over ownership, some people could feel that they were not properly compensated and that this does not make the investment faulty.<sup>170</sup> ‘Neumann has invested in a large coffee plantation’, she said; ‘They produce high-end coffee, they have huge out-grower schemes. The township of Mubende, which used to be a miserable little town, is now booming, because so many people are now employed, either in the plantation, or they are benefiting from being out-growers’.<sup>171</sup> From her statements, the study argues that investment appears to be more important than the rights of the people simply because they were evicted from the land without taking into consideration of their rights so as to create land for the investors.

#### **4.4 Eviction by private individual**

Under the Land Act of 1998, there is protection of occupiers referred to as tenants by occupancy and these include lawful and bona fide occupants.<sup>172</sup> In terms of the Act, these tenants enjoy security of occupancy and can only be evicted on ground of non-payment of the nominal ground rent for a period exceeding 2 years.<sup>173</sup> In addition to the above, these tenants are entitled to first option to buy the interest in the land should the land lord decide to sell the land.<sup>174</sup> However, despite the existence of these laws, the land lords have continued to evict the occupants without following the right procedure. The study will discuss only one of the cases of the land evictions that was

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<sup>168</sup> Devapriyo, D ‘Coffee investor accused of evicting 400 peasants’ *The Observer*, 22 July 2009, [www.observer.ug](http://www.observer.ug) (accessed on 24-08-2009).

<sup>169</sup> See above.

<sup>170</sup> See above.

<sup>171</sup> See above.

<sup>172</sup> Section 29 of the 1998 Land Act.

<sup>173</sup> See above Section 31(1), (2), (3), and (7).

<sup>174</sup> Section 35 (2).

conducted by the land lord because it illustrates the problems that arises where land ownership shifts without giving the tenants the option to buy the land they occupy and thus leading to evictions by the new land lord.

#### **4.4.1 Kirubo-Garilaya eviction**

The residents of Kirubo Parish, Garilaya-Bale County in Kayunga District had been living on plots of the land all their lives as Kibanja holders for more than 100 years ago.<sup>175</sup> Their land lord Samwiri Nyiki died in 1973 and the land was inherited by Copriano Bisase. In 2000, Bisase had told the tenants that he was going to sell the land, they offered to buy their plots and he agreed to it.<sup>176</sup> The tenants did not hear from him ever since 2000. In 2003, he came back with a man by the names of Kihungo John who was going to buy the land and become their land lord. Kihungo later informed them that he wanted them off the land immediately. The resident did not receive notice and they were not compensated in any way.<sup>177</sup> When the residents resisted the eviction, he brought cows that were set to destroy and eat their crops with the aid of the soldiers who applied force and some of the residents were arrested and as a result they were forced to leave the land. About 17,000 people were evicted with no option of buying their plots of land as required by the law.<sup>178</sup> As a result the people decided to camp at the edge of Lake Kyoga and as in 2008, about 950 people were still living in glass thatched huts at the edge of the lake with no food and clean drinking water.<sup>179</sup>

#### **4.5 Analysis of case studies**

Under this sub-section, the study analyses the case studies of land evictions as discussed above, and enquire whether they were carried out in terms of the national and international human rights standards.

The 1998 Land Act provides that eviction should take place only on the ground of failure to pay ground rent. However, in all the evictions that are discussed above, the reason for the eviction was not in any case failure to pay the nominal rent and this

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<sup>175</sup> See fn 18 pg 22.

<sup>176</sup> See above.

<sup>177</sup> See above.

<sup>178</sup> See above 38.

<sup>179</sup> See fn 18.

implies that the State and the private individuals should abide by the national standard as set out in the Act so as to ensure the respect of human rights.

All the land evictions case studies as discussed above were not in line with the ICESCR standards as set out under the General Comment 7. In all the cases there was no consultation and adequate reasonable notice before evicting the people. In the case of Kaweri Coffee Plantation where the government of Uganda tried to give notice, however, it was not of effect since the people were evicted before the expiration of the notice. In the other two case studies, there was no notice given and no consultation before evicting the people.

In addition, the State violated Article 2(1) of ICESCR by failing to take appropriate measures to provide security of tenure to the people. Take the example of the Benet community who had been declared as traditional inhabitants of the area by a court decision but the UWA and the soldiers as organs of the state decided to violate the Court ruling and evicted the people and the government did nothing to ensure the protection of the rights of the people.

The Basic Principles and Guidelines on Development-Based Evictions and Displacement set out the procedure to be followed before and after evictions. These Principles and guidelines form part of soft law and therefore as one of the international human rights documents. Although soft law is not per se a source of law, it remains legally relevant and is a matter governed by international law.<sup>180</sup> These principle and guidelines are intended to create pressure and influence the conduct of the states.<sup>181</sup> As discussed in the previous chapter, one of the principles before eviction is that they ought not to be carried in a manner that violates human dignity and if any force is to be used it should be in line with the principles of necessity and proportionality. As seen in the above case studies that of the Benet and Kaweri Coffee Plantation evictions which involved the state, there was significant force and brutality

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<sup>180</sup> Olivier, M 'The relevance of 'soft law' as a source of international human rights' 2002, 35, *CILSA* pg 289.

<sup>181</sup> Baxtre, RR 'International Law in her infinite variety' (1980) 29, *International and Comparative Law Quarterly* pg 549.

that was used with the help of the UPDF Soldiers or police thus violating the right to dignity, privacy and property of the people who were evicted.

In addition to the above, after eviction, there should be provision of just compensation and sufficient accommodation as provided for by the Basic Principles and Guidelines on Development-Based Eviction,<sup>182</sup> Article 26(2)(b) of the Ugandan Constitution and General Comment 7.<sup>183</sup> In all the above cases, there was no compensation to the people after eviction. For example, for the Benet Community, the people ended up camping in schools so as to have accommodation. As for the Kirubo- Garilaya resident, the people camped at the edge of Lake Kyoga. In both these cases, people were living conditions with no clean water for drinking and food as seen in the case studies.

#### **4.6 Conclusion**

As discussed above, there are several causes of land evictions in Uganda. These include among others; the political situation in the country which has been manifested in the existing laws protecting tenants from evictions, the government desire to portray itself as in support of the tenants and the lack of knowledge of the existing laws on protect both tenants and land owners. However, most of the causes rotate around the 1900 Buganda Agreement which created two classes of people with regard to land that is the landlords and the tenants. It is the relationship between these two classes of people that has often caused conflicts leading to various land evictions.

The land evictions have been carried out by either the state or the private individuals as seen above and with no respect for both national an international human rights standards. In all the three case studies there was no prior consultation and adequate notice and therefore not in line with General Comment 7. In addition to the above, the state failed to take appropriate measures to ensure security of tenure as provided for in the Article 2(1) of the ICESCR. As was seen above, the Benet community and the Kaweri Coffee Plantation land evictions was carried out by the state and its organs and this clearly shows how the State failed to provide protection to the people and instead it evicted the people from the land that thy had lived for years. Furthermore,

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<sup>182</sup> Para 52.

<sup>183</sup> Para 15.

in all the cases, there was no adequate compensation after the evictions had occurred as discussed above. People were not given any compensation to allow them look for an alternative piece of land to occupy.

## Chapter 5

### Conclusion and recommendations

#### 5.1 Conclusion

The study has dealt with the issue of land evictions which is currently one of the major problems being faced in the country. However, it is not that there are no laws to protect people from the evictions but the major problem is with the implementation of the existing law and until it is addressed, these evictions will continue. Several issues have been tackled in the study and which, among other include, the historical background to land rights in Uganda by highlighting the different periods in Uganda's history and the different land tenure regimes that prevailed under each period.

During the pre-colonial era (before 1900), a customary tenure system was practiced ranging from one ethnic group to another and it is not possible to identify a single land tenure system. In the colonial era (from 1900 to 1962), there were four land tenures: *Mailo* land, freehold title, leasehold and customary. These land tenures are still in existence in terms of Article 237(3) of the 1995 Ugandan Constitution. For the post-colonial era (from 1963-1995), different legislations were passed in line with land rights in Uganda, and these among others included: the Public Land Act of 1962 and 1969; the Land Acquisition Act of 1965 and the 1975 Land Reform Decree, which abolished private land ownership and declared all land in Uganda to belong to the state.

Furthermore, the study highlighted the current position as it evolved since 1995, by examining the 1995 Constitution, the 1998 Land Act and the specific provisions that are set out in those two statutes that deal with ensuring the protection of land rights and their effectiveness. The study has come to the conclusion that, it is not the absence of legislation that has led to the widespread land eviction in Uganda. Rather, the problem is with the implementation of the existing laws and until that issue is dealt with, land evictions will not stop.

It has further dealt with the new 2007 proposed Land Amendment Bill, focusing on some of its provisions that are intended to ensure protection of people against illegal

evictions. However, this Bill has been met with considerable opposition as most people view it as a way for the government to facilitate the grabbing of land to benefit some individuals especially those who are tenants. The study has argued that this Law will not have any effect until the major causes of land evictions are addressed. It appears that the government wants a new Law in place, yet it has failed to implement the already existing laws that could be used to protect people against land evictions.

In addition to the above, the study has dealt with the international and selected comparative national standards that ought to be followed in the case of land evictions. The international standards are set out in the ICESCR and the ICCPR and Uganda as a state party must abide by these standards. Uganda being a dualist state there need for it to incorporate these standards in its national laws to ensure human rights protection in the case of land evictions. The study has further dealt with the Basic Principles and Guidelines on Development-Based Evictions Displacement which sets out the procedure to be followed before and after evictions. Although these guidelines form part of soft law, they do have persuasive force in the courts of law in the issues of land evictions. The study has further looked at South Africa, which has laws that apply to land evictions. The way in which these laws have been enforced by courts of law in South Africa was also investigated. The study concludes that, there are lessons that Uganda can learn from South Africa in the implementation of land evictions laws if at all human rights are to be upheld. Firstly, the court's role in interpreting the existing laws that protect people against unlawful evictions is one of the mechanisms that Uganda can adopt to ensure the protection of human rights in the country in the case of land eviction. Secondly, the existence of the laws that deals specifically with evictions for example the PIE. Unlike in Uganda, where there is no single law that addresses evictions per se.

The study has also discussed some of the major causes of land evictions in Uganda and it has come to the conclusion that the existences of the different land tenure system dictated by the different political regimes and lack of knowledge or awareness of the existing laws by the public have been the major causes of land evictions. In addition to the above, the study has dealt with three case studies: the two carried out by the state or organ of the state, and one by a private individual (non-state actor).



The question was raised whether those land evictions were carried out in terms of national and international human rights standards. As discussed above, the study has come to the conclusion that, in all the three case studies, the standards were not followed. Firstly, in all the land evictions there was no consultation with the people to be evicted and no notice prior to the evictions. Secondly, there was no adequate compensation and lastly, the manner in which all these evictions were carried out involved unnecessary brutality and force with the help of the army and police, thus violating the people's human rights.

## **5.2 Recommendations**

In light of the above conclusion reached, the study makes the following recommendations:

Firstly, the adoption of the Land Bill should be accelerated as it has specific provisions dealing with land evictions. There is hope that it will grant protection to the occupiers against unlawful land evictions.

Secondly, a comprehensive national policy should be set up to address the problem of land evictions. This policy should incorporate a thorough social impact assessment for activities that may result in land eviction. It should also provide a mechanism for community participation to examine whether the evictions are necessary and whether there are alternatives before carrying out an eviction.

Thirdly, the courts should take an active role in interpreting the existing laws so as to ensure the respect of people's rights before granting an eviction order. In Uganda it is common that most of the land eviction cases are not taken to court for adjudication and if they are taken at all, the courts take a long time to address the matter. Take the example of the Kaweri Coffee Plantation case which is still pending before the court since 2002. The study further recommends that a judicial route should be taken further especially regarding this case possibly to the African Commission on Human and Peoples' Rights.

Fourthly, there is a need for law reform in order to harmonise the existing laws, namely the 1995 Constitution and the 1998 Land Act to suit the current needs. Some

of the laws that need to be revised are the Land Acquisition Act, which is currently inconsistent with the Constitutional requirements of compensation for land acquired by the government.

Fifthly, the government should ensure that victims of land evictions are provided with assistance in accordance with international human rights standards, including access to resettlement sites with effective access to basic services.

Lastly, there should be some form of sensitization of the public by the government to create a greater understanding of what is needed to secure and protect land rights so as to minimise on the problem of land evictions.

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