

A legal analysis of the relationship between Land Property Rights and Investment in Uganda

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Abstract: (Property rights if rightly secured, play a greater role in economic development. This paper analyzes the relationship between property rights, investment and resource exploitation. The relationship between land property rights (where the people have the security of tenure) and natural resource exploitation has been proven by economic theory and literature. Sadly, rather than being concerned more with the use rights, the analytical studies have so far focused on the security of tenure, and transfer rights with the argument that, use rights are often implied by transfer rights. Yet property rights can be a critical obstacle to the economic development of any country because it may limit people to invest if others can easily seize the fruits of their investments. Therefore, the absence of formal property rights may constitute a severe limitation for the rural poor to invest and impedes land use. The study finds that attention to property rights has the potential of improving natural resource outcomes, management policies, and projects in terms of efficiency, equity, sustainability, and empowering resource users. The risk of expropriation is limited through secure land rights thereby improving the efficiency of resources and fostering investment. Possession of land titles can encourage and improve the transferability of land holdings, thus increasing investment, and it can improve resource allocation efficiency and facilitating market exchange. Secure land rights reduce the risk of alienation and expropriation of property which may translate into higher productivity and earnings and can improve the collateralization of assets in credit markets.)

Keywords— Property rights, Land tenure, Investment, Uganda

1. INTRODUCTION

Uganda depends on natural capital in several ways. Fishermen, peasants, and cattle keepers owe allegiance to the use of natural resources such as water, land, air forests grazing, irrigation, plant, and animals. However, these resources face the threat of increasing unsustainable exploitation, pollution, and conversion to other bad uses. Yet, studies have always argued that the degradation of natural sources poses a danger to humanity, the ecosystem, and biodiversity and leads to climate change.¹ Therefore, it is paramount to have an understanding of property rights to guide the development policy, land reforms, land titling, forest regulation, farming and grazing policy, fisheries, and water management. It has been hypothesized that, where there is no ownership of common resources, it will be doomed to overexploitation.² This is so because when everybody owns, the resource, everybody will be interested in harvesting as soon as possible before other users do so. Thus, nobody has the motivation to conserve it for future use, there is a tendency to free-riding and in absence of property rights there will not be sustainability and the consequence are so adverse. Therefore, all these may result in under-investment in common property such as failure to maintain an irrigation

system (the case of the Doho irrigation project in Butaleja, Eastern Uganda) and replant forests (Mabira rain forest). This led to a common hypothesis of the 'tragedy of common' imploring the governments through policy to either privatize (individual property rights) or nationalize (state property rights) the resource, with the belief that the state or individual makes better resource managers than communities.

Property rights if rightly secured, play a greater role in investment and economic development, where the right to use, regulate and manage resources is based on state law, customary institutions, or local norms in any given country. Property land rights are said to be endogenous and exist as a network of interests that often play a crucial role in people's social relations, livelihoods, and ecological functions but the way in which are arranged and managed is paramount. The relationship between land property rights (where the people have the security of tenure) and natural resource exploitation has been proven by economic theory and literature.³ Sadly, rather than being concerned more with the use rights, the analytical studies have so far focused on the security of tenure, and transfer rights with the argument that, use rights are often implied by transfer rights. Yet property rights can be a critical obstacle to the economic development of any country because it may limit people to invest if others can easily seize the fruits of their investments.⁴ Therefore, the absence of formal

¹ 'PROPERTY RIGHTS AND NATURAL RESOURCE MANAGEMENT IN' (2002) 16 189.

² Hardin, G. J. (1968) The Tragedy of the Commons. Science, 162, 1243±8. H

³ Besley, Tim (1995). "Property Rights and Investment Incentives: Theory and Evidence from Ghana." Journal of Political Economy, 103(5), 903–937

⁴ Acemoglu, Daron, Simon Johnson, and James Robinson. 2001. The Colonial Origins of Comparative Development: An

property rights may constitute a severe limitation for the rural poor to invest and impede land use.⁵

Seemingly, Property rights evolution can be traced from Demsetz work in the 1960s where he explored why property rights evolve as they do, and specifically what causes the changes in property rights regimes. He explained that evolution was a result of changes in 1). Technology (that a state's criminal justice system and social control may be organized depending on literacy and engineering advances and innovations which has the possibility of building courage among the villagers against the land raiders or snatchers); 2). Compactness, 3). Productivity, and Organizational Complexity,⁶ and 4). Modernity⁷ also plays a role in the desire for inalienability in diffuse societies and land becomes more valuable with population increase that causes land scarcity but there must be a group of winners with potential large enough to bear the cost of instigating change. That there will be less regime change and if it does, then it will be more democratic where the benefits of change are spread more diffusely in bigger numbers. Subsequently, groups will tend to lengthen their standards of land ownership but also traditional restrictions on transfers relax with modernity.⁸ However, property rights regime change and transition may occur regardless of whether it leads to social gain where the group's benefit outweighs the transaction cost because property rights regime changes have to move in a greater efficient direction and as driven by internal forces. Certainly, at play in directing the development of property rights are the gains to be realized from a more efficient allocation of resources.⁹

Noteworthy, the endogenous nature of property rights makes it difficult to a single particular effect on investment without mentioning the cost. The literature argues that factors like wealth, individual efforts, family status, investment levels and laws, culture, and history of a country are crucial when talking about and formulating and securing property rights.¹⁰ Further, literature has proven that internal social, and political structures, community relationships, and interaction with the outside world may be responsible for property rights development. For instance, the desire to protect the local leaders' interests tends to cause insecurities regarding land tenure in a given community.¹¹ By implication, property

rights can easily be directed by a powerful elite for its own gain.¹²

2. THE RELATIONSHIP BETWEEN LAND PROPERTY RIGHTS AND INVESTMENT IN UGANDA

Property rights are considered as key determinants of income, productivity, efficiency, and investment and a salient feature of the social-economic and political economy of a country. so, property rights are claims over future income from assets. Therefore, property rights to land comprise of various claims such as use rights (to cultivate the land) and transfer rights (the right to sell, rent, gift, mortgage, pledge or bequeath). Thus, the type of land tenure system is directly linked to the possibility of using land and investment. Legal ownership is usually tied to titling which gives the holder various advantages such as transferability, collateralization, and freedom from unlawful expropriation.¹³ The property rights school argues that guiding incentives to achieve a greater internalization of externalities is the primary function of property rights. Thus, in regard to property rights, it implies that individual property rights will evolve when the gains from individual title exceed the cost of land titling and enforcement. The desire for development can be deduced from the land tenure system of Uganda recognized in the constitution. The desire to put all land on the market where investors can be able to invest without obstacles is key to the NRM government. However, there is prevailing fear of complexities of acquiring land and preventing development that has kept many Ugandans in poverty.

Deplorably, exploitation of natural resources is hampered by the laws, culture, beliefs and political economy. These natural resources are located in remote rural places where the land tenure system is communal ownership (customary-unregistered interest) and extraction of such natural resources is done by international oil companies (IOCs) who need to displace people from their land to enable them to construct production plants. There is no doubt that the discovery of oil or any other natural resources tends to raise the country's expectations ranging from land owners (property rights), to harvesting hefty compensation from the land where the oil or natural resource has been discovered.¹⁴ For example, in Buliisa the district where oil was discovered in Uganda, the

Empirical Investigation. *American Economic Review* 91: 1369–1401.

⁵ Working Paper and others, 'Property Rights for the Poor: Effects of Land Titling'.

⁶ Demsetz, Harold (2002) 'Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership', *Journal of Legal Studies* XXXI (2) (Part 2): S653-S672, June

⁷ Ellickson, Robert C. (1993) 'Property in Land', *Yale Law Journal* 102 (6): 1315-400, April.

⁸ Denise Hare and Denise Hare, 'The Origins and Influence of Land Property Rights in Vietnam' (2008) 26 339.

⁹ Hare and Hare (n 8).

¹⁰ Sebastian Galiani and others, 'Land Property Rights and Resource Allocation' 54 329.

¹¹ Rozelle, Scott and Li, Guo (1998) 'Village Leaders and Land-Rights Formation in China', *American Economic Review* 88 (2): 433-8, May.

¹² Brandt, Loren, Rozelle, Scott and Turner, Matthew (2004) 'Local Government Behavior and Property Right Formation in Rural China', *Journal of Institutional and Theoretical Economics* 160 (4): 627-62, December

¹³ 'PROPERTY RIGHTS AND NATURAL RESOURCE MANAGEMENT IN' (n 1).

¹⁴ Article 26 of the constitution of Uganda 1995

customary land tenure prevails mostly. However, there have been landed battles where outsiders with inside information about oil discovery purchased the land and changed the tenure and land use status. Consequently, the ownership of land in Buliisa started to shift to new landowners before the oil companies could start their activities. The Balalo who were the true owners of the land in Buliisa became victims of land expropriation by powerful forces unleashed by a very vicious process of capitalist accumulation.¹⁵ This leaves the question as to whether the property rights guaranteed in the constitution of Uganda are respected at all. Unless property rights are strengthened and enforced, the security of tenure by titling customary land will be the country's undoing for it will rubricate 'the gravy train of the land mafias'.¹⁶

The land system, policies, and laws in Uganda tend not to put into consideration the cultural and historical aspects that govern land across the country. Besides, there is a tendency of political elites riding on low literacy levels, poverty, and gender disparities, to use the potential of resource capture relying on public budgets and programs to cheat out on the rural poor by buying their lands in advance at small sums of money compared to what they would get from the compensation from the investors and if such lands had legal land titles and thus are deprived of the possibility of getting valuable insurance and protection during such a bad time of eviction. All attempts by the government of Uganda to open all land to investment are perceived by many as a scheme to grab their land and lose their land through the land marketplace to the rich and the politically well-connected who can sell the same land at big profits to foreign investors. Behind the move to register and title customary land is the security of tenure aimed at delivering and enabling access to credit institutions with mortgageable land titles. Regardless of the good intentions is the fear that land titling will create a land market and eventually lead to landlessness for the masses that can in the long run have dire consequences such as slums and criminality. Thus, there is an ongoing debate about non-registered versus titled customary land. The argument is that land in Buganda that has mailo and freehold systems has faced many evictions of people is construed as 'the Devil's handwork'.¹⁷

Ill-defined property rights may lead to inefficient exploitation of natural resources¹⁸ which may be protected by state laws for example land belongs to the citizens but the natural resources belong to the government.¹⁹ Therefore, it is

expected that proper implementation of the laws would encourage investment and increase efficiency. In land management, generate social benefits, improve resource allocation by limiting illegal expropriation and facilitating market transactions, and eventually will lead to economic growth²⁰

The African commission on human rights clearly explained in its landmark case of, *Centre for Minority Rights Development (Kenya) and Minority Group International on behalf of Endrois Welfare council vs. Kenya* (2009), the commission while addressing violations resulting from forceful eviction and displacement of the Endrois community from their ancestral lands, noted that 'the right to development requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, overarching themes in the right to development.' The African Commission further enumerated the duties of the Kenyan government, stating that; it 'bears the burden for creating conditions favorable to a people's development. Is obligated to ensure that the Endorois are not left out of the development process or benefits. that the failure to provide adequate compensation and benefits, or provide suitable land for grazing indicates that the Respondent State did not adequately provide for the Endorois in the development process.

Literature has proven that; property rights are a crucial and fragile obstacle to economic development in any given country. creating, specifying, and enforcing property rights, though costly is pertinent in the new institutional approach to development. This has become the new institutional approach to development where positive transaction cost can be understood as representing the resources used to establish the main property rights and hence significantly affecting resource allocation. It is argued that when rights are perfectly defined with fewer transaction costs it makes resource allocation and exploitation independent of the pattern of ownership and more efficient.²¹ However, the reality is that there are transacting costs (that play in shaping the institutions that make up the economic system), it is costly to enforce those rights (costly institutions and resources) and sometimes they are affected by the system of property rights adopted by a given community. Besides, due to the costliness of measuring all of the attributes of the asset, the delineation of rights may not be fully realized, and consequently, property may be in danger of appropriation by others.²²

¹⁵ Hon. Stephen Mukitale told the 8th parliament in October 2011 that from 2004, the ownership of land in Buliisa

¹⁶ farmlandgrab.org | [Contextualizing customary land registration in Uganda](#)

¹⁷ farmlandgrab.org | [Contextualizing customary land registration in Uganda](#)

¹⁸ and Agnes R Quisumbing Ruth Meinzen-Dick, Lynn R. Brown, Hilary Sims Feldstein and Food, 'GENDER, PROPERTY RIGHTS, AND NATURAL RESOURCES'.

¹⁹ Constitution of Uganda 1995 Articles 237 and 244

²⁰ Hare and Hare (n 8).

²¹ Coase, R. H. 1960. The Problem of Social Cost. *Journal of Law and Economics* 3:1-44.

— — —. 1988. *The Firm, the Market, and the Law*. Chicago: University of Chicago Press.

²² Barzel, Yoran. 1989. *Economic Analysis of Property Rights*. New York: Cambridge University Press.

Literature has revealed that land rights are weakly defined in developing countries yet land is considered the main production asset in economic development. Because of its immobility and indestructibility nature, it is taken as a source of wealth and collateral. However, land rights remain lightly defined partly due to the historical, political, and economic reasons of a country. Thus, this lack of clearly defined rights will definitely lead to a potential loss in a developing economy in several ways; for instance, people will fear to invest for fear that others will seize the fruits of their investments,²³ it is also reflected by the many people living in urban dwellings but without formal titles of the land, they occupy.²⁴ Resource allocation and exploitability may be affected due to parcel transferability obstacles. Finally, credit access may be limited due to a lack of titling that reduces the collateralization of land.²⁵

Substantially, ill-defined property rights are said to be a vital cause behind inefficient natural resource exploitation and the problem is cited to be more acute in developing countries. For example, Uganda's oil pipeline construction has faced a lot of court challenges and most of them coming from property rights. There was a class between the traditionalist Baganda from the Lugave clan with the Road Authority that wanted to bring down a tree estimated to be 200 years old along Busega-Mpigi Expressway. The tree was said to house one of their spirits known as Nabukalu and some of their clanmates pay monthly homage to it. The *Canarium Schweinfurthii* (omuwafu) is a species of large trees native to tropical Africa. This ancestral tree was believed to be a provider of blessings but the battle between modernity and culture led to the eventual destruction of the tree. The traditionalists claimed that the tree was worth five hundred million Uganda shillings if it had to be cut down but UNRA and the high court of Mpigi dismissed the case and only awarded 4,661,800 Uganda shillings as compensation for the cultural site. This was a result of ill-defined property rights in Uganda.

The situation prompts questions such as why are property rights deficient on some natural resources and why it seems more difficult to protect those rights in developing economies. Theoretical inquiries have explained that the ill-defined property rights in these economies are based on the different tenure systems across the country and periods and more specifically are related to a society's culture, religion, and legal institutions.²⁶ Local conditions play a big part in understanding property rights, for instance, Women currently face a challenge of male exclusivity compounded by colonial governments and indigenous cultures that promote the patriarchal nature of property ownership and exclude women.²⁷ These gender discrepancies are still present in Uganda regardless of the constitutional provisions on the right to hold property. Women in rural areas and those with limited education have limited property rights and access to productive assets. Research has further proved that there is a discrepancy between the law and its implementation,²⁸ which are hampered by customary norms and culture that give land and other natural resources to men or male heads of extended families, while women only enjoy secondary rights such as usage through their fathers or husbands, brothers and male relatives.²⁹ Such practices have undoubtedly affected women's rights to land and related resources because, it is true that, to own something is to assert every authority as deemed fit.³⁰

In order to be concise on the effect of land property rights, it is also important to consider the existence of supporting institutions, and ways in which these rights are exercised. Therefore, it is the duty of every democratic government to ensure everyone's property rights,³¹ because it is a guarantee of a fair production resource as a basis for managing one's affairs.³² And ideally, the land, and environment are the source of man's livelihood, and knowing that there is a link between the environment and women and social roles, the

²³ Demsetz, Harold (2002) 'Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership', *Journal of Legal Studies* XXXI (2) (Part 2): S653-S672, June

²⁴ Deininger, Klaus and Jin, Songqing (2003) *Land Sales and Rental Markets in Transition: Evidence from Rural Vietnam*. World Bank Policy Research Working Paper No. 3013. Washington, DC: World Bank, April.

²⁵ Feder, Gershon; Oncham, T.; Chalamwong, Y. and Hongladaron, C. (1988) *Land Policies and Farm Productivity in Thailand*. Baltimore, MD: Johns Hopkins University Press.

²⁶ North, Douglass. 1990. *Institutions, Institutional Change, and Economic Performance*. New York: Cambridge University Press.

²⁷ Daniel S (1995) *Social Aspects of Sustainable Dryland Management*. John Wiley and Sons. UNEP, Nairobi.

²⁸ Cynthia Grant Bowman & Akua Kuenyehia, *Women and Access to Land, in WOMEN AND LAW IN SUB-SAHARAN AFRICA* 128 (2003)

²⁹ Embassy of Sweden Uganda. October, 2013. Gender Analysis. Chris Coulter and Ashnaut Okille. Citing the report 'Women's Land Rights and the Law,' Uganda Land Alliance (ULA).

³⁰ Kisubi Esther Christine and Adungo Jephther, 'Environmental Protection Efforts, Women's Rights, and Ecofeminism in Uganda' (2022) 6 171.

³¹ Rawls 2001, 114.

³² Rawls, J. (1999), *A Theory of Justice*, revised edition, Cambridge/MA (2001), *Justice as Fairness*, E. Kelly (ed.), Cambridge/MA (2005), *Political Liberalism*, expanded edition, New York (2007), *Lectures on the History of Political Philosophy*, Cambridge/MA

denial of property rights, denies the people the right to food and a healthy environment.³³

3. LAND TENURE SYSTEM IN UGANDA

The constitution of Uganda vests land in the citizens,³⁴ 'Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for' and provides for different types of land tenure systems, Land in Uganda shall be owned in accordance with; 1). Customary; 2). Freehold; 3). Mailo; and 4). Leasehold land tenure systems.³⁵

3.1 CUSTOMARY TENURE

This is a form of tenure applicable to a specific area of land and a specific description or class of persons governed by rules generally accepted as binding and authoritative by the class of persons to which it applies; applicable to any persons acquiring land in that area in accordance with those rules; characterized by local customary regulation; applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land; providing for communal ownership and use of land; in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and which is owned in perpetuity, as was stated in the case of *Bunyoro Kitara Reparation Agency Limited v Masindi District Land Board and 6 Others*.³⁶

The court further noted that, under S.4 of the land Act, All Uganda citizens owning land under customary tenure may acquire a certificate of ownership." And "Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land." Also, SS.6 and 7 thereof provide for the procedure for applying for a certificate of customary ownership and mandate the Defendant District Land Boards to approve the issue of a certificate of customary ownership, with or without conditions, restrictions, or limitations as they deem fit. According to S.8 of the Land Act, a certificate of customary ownership shall be taken to confirm and is conclusive evidence of the customary rights and interests specified in it, or the land to which the certificate refers shall continue to be occupied, used, regulated and any transactions in respect of the land undertaken and any third-party rights over the land exercised in accordance with customary law.

That, a certificate of customary ownership confers on the holder rights not limited to leasing the land or part of it, mortgaging or pledging the land or a part of it, selling the land or a part of, transferring the land or a part of it to any person in response to an order of the court and disposing of the land either as a gift inter vivos or by will; S.8 (2) of the Land

Act.S.9 (1) of the Land Act provides further that; "Any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure." Court noted further that, the ultimate aim of the above provisions of the law was to transfer customary tenure into individually owned estates. This was essential to meet the demands of socio-economic developments in Uganda to wit; security of tenure since land collectively owned as it were by the indigenous peoples in the pre-colonial days is difficult to be used as collateral for credit offering institutions, breeds disputes and hampers the rights to sale yet in the course of time, the land had become a tradable commodity. Consequently, over time, there has been an evolution of tenure in Uganda and land has been undergoing individualization and change through post-independence legislation; Public Lands Act 1962 and 1969, the Land Reform Decree 1975, the 1995 Constitution of Uganda, and the Land Act 1998.³⁷

Similarly, S.42 of the Land Act read together with Articles 26 & 237(2) of the Constitution empowers the Government or a local Government to compulsorily acquire land in the public interest for example for public use, public order, public morality, public health and in the interest of defense. However, this has to be subject to the constitutional provisions in Article 26(b)(i) of the Constitution which provides for "prompt payment of fair and adequate compensation, prior to taking of possession or acquisition of the property"

Undoubtedly, there seem to be inadequacies of these provisions of the law and challenges in their implementation aside, the present state of affairs points to one thing; despite the fact that the indigenous people of Bunyoro and Uganda at large may have owned land customarily, historical and political, social-economical changes have dictated that they do move from that form of land holding to a more convenient tenure that ensures sustainable utilization of land. This dictated a corresponding land management policy.

In a bid to streamline the ownership and management of land, the constitution of Uganda established the Uganda Land Commission under Article 238 thereof and the District Land Boards under Article 240. Under the Land Act, they are established under SS.46 and 56 respectively, decentralizing land administration with a District Land Board with the mandate to inter alia;"(a) hold and allocate land in the district which is not owned by any person or authority. (b)facilitate the registration and transfer of interests in land. As was held in *Alcohol Association of Uganda & Ors Vs A.G & Anor*,³⁸ "public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to

³³ Tilo Wesche, 'The Right to Property in Productive Resources' (2013) 2013 99.

³⁴ Article 237 of the 1995 constitution and section 2 Land Act of Uganda

³⁵ The Land Act, 'CHAPTER 227' (2010) 1998 1.

³⁶ (Civil Suit 44 of 2016) [2022] UGHCCD 100 (02 June 2022)

³⁷ (Civil Suit 44 of 2016) [2022] UGHCCD 100 (02 June 2022)

³⁸ H.C.M.A No.744/2019,

have taken the decision or adopted a measure in the exercise of powers which it is meant to use for the public good.”

3.2 Freehold tenure

This is a form of tenure deriving its legality from the Constitution and its incidents from the written law which— (a) involves the holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition;

(b) enables the holder to exercise, subject to the law, full powers of ownership of land, including but not necessarily limited to— (i) using and developing the land for any lawful purpose; (ii) taking and using any and all produce from the land; (iii) entering into any transaction in connection with the land, including but not limited to selling, leasing, mortgaging or pledging, subdividing creating rights and interests for other people in the land and creating trusts of the land; (iv) disposing of the land to any person by will. A freehold title may be created which is subject to conditions, restrictions, or limitations that may be positive or negative in their application, applicable to any of the incidents of the tenure, as was in *Justice Anup Singh Choudry v Wakiso District Land Board & 2 Ors*,³⁹

3.3 Mailo tenure

This is a form of tenure deriving its legality from the Constitution and its incidents from the written law which— (a) involves the holding of registered land in perpetuity; (b) permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant and (c) enables the holder, subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land at the time that the tenure was created and their successors in title, to exercise all the powers of ownership of the owner of land held of a freehold title set out in subsections (2) and (3) and subject to the same possibility of conditions, restrictions, and limitations, positive or negative in their application, as are referred to in those subsections.

in *Musinguzi Jackson v Tumuheirwe and 12 Others*,⁴⁰ and in *Ponsiano Katamba V Cotilda Nakirijja*,⁴¹ the Hon. Justice Christopher Madrama, JA, considered the definition of a *Kibanja* extensively. He held that; ‘A **Kibanja** holding does not fall under the tenure system known as ‘customary’ under Article 237 (3) (a) of the Constitution but fall under article 237 (3) (c) that recognizes mailo tenure. It is a special form of tenure known as a *Kibanja* that is recognized within another tenure of a registered owner known as a mailo owner. A *Kibanja* is by definition under the Land Act Cap 227 a

lawful occupancy falling within registered land particularly described as Mailo land...

Section 1(t) of the Land Act provides as follows; Mailo land tenure means the holding of registered land in perpetuity and having roots in the allotment of land pursuant to the 1900 Uganda Agreement and subject to statutory qualifications, the incidents of which are described in section 3. Section 3(4)(c) of the Land Act makes the rights of the Mailo holder subject to the customary and statutory rights of those persons, lawful or bona fide in occupation of the land at the time the tenure was created and their successors in title.

3.4 Leasehold tenure

This is a form of tenure— (a) created either by contract or by operation of law; (b) the terms and conditions of which may be regulated by law to the exclusion of any contractual agreement reached between the parties; (c) under which one person, namely the landlord or lessor, grants or is deemed to have granted another person, namely the tenant or lessee, exclusive possession of land usually but not necessarily for a period defined, directly or indirectly, by reference to a specific date of commencement and a specific date of ending; (d) usually but not necessarily in return for a rent which may be for a capital sum known as a premium or for both a rent and a premium but may be in return for services or may be free of any required return; (e) under which both the landlord and the tenant may, subject to the terms and conditions of the lease and having due regard for the interests of the other party, exercise such of the powers of a freehold owner as are appropriate and possible given the specific nature of a leasehold tenure.

4. SUMMARY OF THE EFFECTS OF SECURE LAND PROPERTY RIGHTS

- The risk of expropriation is limited through secure land rights thereby improving the efficiency of resources and fostering investment.⁴²
- Possession of land titles can encourage and improve the transferability of land holdings, thus increasing investment.
- Secure land rights reduce the risk of alienation and expropriation of property which may translate into higher productivity and earnings.⁴³
- When property land rights are secured, it can improve resource allocation efficiency and facilitates market exchange. For instance, land can easily transfer into the hands of producers and consumers.⁴⁴
- Secure property land rights can improve the collateralization of assets in credit markets, where

³⁹ (Miscellaneous Cause 129 of 2019) [2019] UGHCCD 223 (20 December 2019)

⁴⁰ (Land Civil Suit 36 of 2016) [2021] UGHCLD 59 (19 January 2021)

⁴¹ Civil Appeal 169 of 2017

⁴² Besley, Tim (1995). “Property Rights and Investment Incentives: Theory and Evidence from Ghana.” *Journal of Political Economy*, 103(5), 903–937

⁴³ Galiani and others (n 10).

⁴⁴ Galiani and others (n 10).

land assets can be used as collateral as it improves the ability of borrowers to pledge their land but the use of land as collateral can be impeded by the lack of property land titles.

5. CONCLUSIONS

Property land rights are said to be endogenous and exist as a network of interests that often play a crucial role in people's social relations, livelihoods, and ecological functions but the way in which are arranged and managed is paramount. This paper analyzes the role of the state, the market, and the private sector, and the risk of excluding legitimate claimants in formalization processes and resource exploitation, and why property rights may be difficult to define. The study finds that there are multiple claims that the minorities such as women, youths, and seasonal land users are victims of property rights management. Attention to gender differences in property rights has the potential of improving natural resource outcomes, management policies, and projects in terms of efficiency, equity, sustainability, and empowering resource users. The risk of expropriation is limited through secure land rights thereby improving the efficiency of resources and fostering investment.⁴⁵ Possession of land titles can encourage and improve the transferability of land holdings, thus increasing investment. Secure land rights reduce the risk of alienation and expropriation of property which may translate into higher productivity and earnings.⁴⁶ When property land rights are secured, it can improve resource allocation efficiency and facilitates market exchange. For instance, land can easily transfer into the hands of producers and consumers.⁴⁷ Secure property land rights can improve the collateralization of assets in credit markets, where land assets can be used as collateral as it improves the ability of borrowers to pledge their land but the use of land as collateral can be impeded by the lack of property land titles

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