

RESOLVING THE MULTIPLE, OVERLAPPING, AND CONFLICTING RIGHTS ON MAILO AND NATIVE FREEHOLDS

A POLICY BRIEF FOR THE MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

RELAPU

Responsible Land Policy in Uganda

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BACKGROUND

1. The National Land Policy of Uganda, as adopted in 2013, gives a clear policy statement in paragraph 44: "The Government shall resolve and disentangle the multiple, overlapping and conflicting interests and rights on Mailo Land Tenure and Native Freehold Tenure". This position of the NLP was taken in response to,
 - a) tackling the persistent Uganda's land question contributed to by colonial legacy that resulted in multiple and conflicting tenure rights.
 - b) continued contestation of the definition of rights accorded to bonafide occupants in the Land Act (Cap 227) by the registered mailo owners.
 - c) unsuccessful statutory protection accorded to the bonafide and lawful occupants and their successors against arbitrary evictions for failure to pay prescribed nominal ground rent in the Land Amendment Act (2010). A rent that was largely ignored by the registered landowners.
 - d) escalating evictions, land disputes, and conflicts created a land use deadlock between the tenants and registered landowners, as the prescribed tenant-landlord relationship regulated by law failed to take hold.
2. The NLP therefore proposed four options to resolve these issues,
 - a) Land sharing - the landlord and tenant agree to share the occupied land. The tenant relinquishes part of the occupied land to the landlord in exchange for a land title for the remaining land.
 - b) Buyouts - either party buys out the rights of the other party to obtain exclusive ownership of the land. Either the tenant buys out the landlord's rights and acquires a Mailo title, or the landlord buys out the tenant's occupancy rights.
 - c) Leasing - the tenant enters into a formal agreement with the landlord to obtain a lease for the specified period on terms and conditions agreed. The registered landowner offers the tenant rights that are limited to the duration of the lease. The tenant pays the premium and ground rent for the lease period.
 - d) Certificate of Occupancy for which the registered land owner consents to grant occupancy rights through a formal legal document reflected as an encumbrance on his/her Mailo land title. The tenant pays the landowner an annual nominal ground rent set by the district land board.
3. In these four options, the NLP anticipated attaining the lowest political, social, and economic costs,
 - a) an amicable and harmonious relationship in which the tenant and the registered land owner co-exist by legally and formally splitting the bundle of rights into occupancy-use rights and ownership rights.
 - b) gradual or progressive restoration of the integrity of Mailo tenure by supporting either of the parties (landlord or tenant) to reach a point of holding full and exclusive rights in a totality bundle of rights and interest over the land they occupy or in their possession.

CURRENT STATUS, ISSUES AND RECOMMENDED ACTIONS

4. Four NLP Options in Practice

4.1 Status: Of the four options proposed by the NLP:

- i. Buyouts are the most popular, well-known, appreciated, and applied option. They are ranked highly because they resolve the tenant-registered landowner relationship, disentangle the multiple rights, and result in full and exclusive land rights to either party that executes the buyout.
- ii. Land sharing is moderately practiced, and its benefits are not well known, although it is preferred by the landowners. It is most suitable for tenants who hold 5 acres or more of land and is considered fair by tenants as it does not require cash to transact.
- iii. Certificates of Occupancy (CoOs) have only been issued in the GIZ project districts of Mityana, Mubende, and Kassanda, resulting in improved compliance with ground rent (busuulu) by tenants (including arrears) as they regularize their stay with registered land owners and payment of recognition fees ('kanzu') in the process of securing consent for the issuance of Land Use Inventory Protocol (LIP) preceding the CoOs.
- iv. Leaseholds on mailo are the least understood, practiced, and appreciated option by both tenants and landowners, except the Buganda Land Board.

4.2 Issues: The practice of the four options is constrained by the following:

- i. For buyouts and land sharing,
 - a. the power imbalance between parties leaves room for exploitation by either party through over-pricing or underpricing on offers for the first right of purchase.
 - b. the high risk of probable loss by tenants when the terms of sharing or sale agreements are not respected by landowners.
 - c. in negotiations registered landowners omit the costs associated with survey and registration leading to disagreements and low rates of completion of transactions.
- ii. For CoOs, the registered landowners are reluctant to have their land titles encumbered with tenancy interests. There is a need to provide an additional layer of cadaster in the CoOs registry in which transactions are recorded.
- iii. Land sharing is limited by, the absence of stipulated ratios to guide the sharing between the registered landowner and the tenant.
- iv. For leasehold tenants are reluctant to accept a move from the enjoyment of perpetual rights to time-limited rights with set terms and conditions.
- v. Land Act Cap 227 and NLP envisage a registry for Certificates of occupancy at the recorder's office in the subcounty. In the GIZ project, the registries were set but are challenged with updates on subsequent transactions on CoOs and Land use Inventory Protocols (LIPs) and the technical services needed to maintain such a register, which are available at the District Land Office.

4.3 Recommendation: Review paragraph 44 of the National Land Policy to provide for the following:

- i. In administrative guidelines,
 - a. institute negotiation (or mediation) committees in respective locations to support the registered land owners and tenants in reaching terms or conditions for buyouts or land sharing.
 - b. prohibit the disposal of shared or purchased Kibanja land until transfers to tenants are concluded.
 - c. Provide land valuation lists to guide transactions at the district level.
- ii. Provide for a cadaster layer for the CoOs register at the sub-county and revise the responsibilities of the recorder to include the update of the CoOs transactions in the register at the subcounty.
- iii. Require the Registrar of Titles to recognize CoOs as ‘interests of non-caveat’ nature on mailo land titles. To accomplish this MLHUD will explore possible alternative ‘statutory notices’ that accurately reflect COOs, not as statutory impediments but as instruments to showing perpetual tenancy rights in respect of COOs issued. This could be akin to how roads, rivers, and wetlands are logged in the Land Information System (LIS).
- iv. Regulate land sharing ratios either in favor of tenants at the ratio of 70:30, following the precedents set by government agencies for compensation in respect of public works; or as equal shares between tenants and registered land owners at a ratio 50:50; or in favor of registered land owners at the ratio of 60:40. Different focus: land developments versus land rights.
- v. Draw lessons from the Buganda Land Board on automatic reversion to tenancy status when leaseholds in respect of Kibanja expire.

5. Definition of Kibanja and Tenant

- 5.1 Status: Seventy-six percent (76%) of tenants claim to be legal either as lawful or bonafide occupants of registered lands, 37.5% are facing eviction threats by registered landowners while 13% of those claiming to be tenants fall outside of the legal definition (GIZ Study, 2023), but are protected by presidential orders on non-eviction to the detriment of the landowners. Due to low rates of ground rent paid by legal tenants, registered landowners are making attempts to recapture the value of their lands by reverting to the 1928 Busuulu and Envujjo Law’s definition of Kibanja which is considered a homestead, two acres for home use and extra areas for production, as different segments of a tenancy estate. Consequently, registered landowners;
- i. excluding resource tenure rights such as “sand, wetlands, murram, and valuable wood trees from the definition of a tenancy (Kibanja).
 - ii. limiting land use rights by restricting tenants from carrying out certain activities such as grazing, brickmaking...etc., such limitations continue to breed disagreements, conflicts, tensions, and sometimes evictions.
- 5.2 Issues: To support the continuing application of the four options prescribed in the NLP, the following issues need to be addressed:
- i. Current definition of a lawful and bonafide occupant as per the Land Act Cap 227 and the Constitution 1995 is still contested by registered landowners.
 - ii. The Land Act Cap 227 and the 1995 Constitution do not define the limits of a tenancy (Kibanja) on registered tenures.

5.3 Recommendation: The NLP, must offer clarity on tenants and tenancies in respect of the following.

- i. Amending the Land Act Cap 227, to define a tenancy with clarity on the size of land holdings for different purposes, taking into consideration the observance of physical planning regulations.
- ii. In regulations, delineate resource tenure rights and use rights for tenants and registered landowners.
- iii. In the revised NLP provide for a special initiative for the systematic mapping of tenant's interests on mailo tenure for a peaceful co-existence and a cordial-workable relationship between the parties.

6. Ground Rent (Busuulu)

6.1 Status: The practice of paying ground rent(busuulu) is more widely known for maintaining amicable and harmonious relations between the tenant and registered land owner. The National Land Policy and the Land Act 227 provide for payment of annual nominal ground rent set by District Land Boards and MLHUD to registered land owners by tenants in respect of their tenancies.

- i. The prescribed rates are decried as low by both parties, who have resorted to agreeing on 'negotiated rates' rather than paying nominal or economic rates.
- ii. The receipts and consent documents issued to tenants by registered land owners and their agents (abasigire) to tenants are varied and dissimilar with risky acknowledgment.
- iii. More than 40% of the ground payments (busuulu) are collected by land agents 'abasigire' appointed by the registered land owners, or nominated by tenants with the consent of the registered land owner (GIZ Study, 2023).
- iv. The provisions for consent by registered landowners are routinely ignored in up to 30% of land transactions and the right of first offer to purchase by both landowner and tenants is not observed in practice, yet at least 75% of tenants know their landlords (GIZ Study 2023).

6.2 Issues:

- i. Prescribed nominal ground rent is not in operation. Since the rates are negotiated, they vary from location to location and differ between registered landowners.
- ii. Receipts issued to acknowledge payments and other documents to grant consents to land transactions by registered landowners are lacking in durability, uniformity, distinct security features...etc. for transparency and accountability.
- iii. It is necessary to guide the appointment of 'abasigire' by registered land owners, given their essential roles, akin to powers of attorney, which are often abused or misused in transactions with tenants.
- iv. Courts of Law have set a precedent by declaring all land transactions by tenants executed without the consent of the registered land owner as null and void.

6.3 Recommendation: It is recommended that the NLP provides,

- i. For the review of the provisions for setting ground rents in consideration of ‘negotiated rates’ rather than nominal or economic rates.
- ii. In regulations, oblige registered land owners (including Buganda Land Board) to standardize receipts for acknowledging payments for ground rent (busuulu), for recognition fees (Kanzu), and other charges related to consents granted by the registered land owner to endorse land transactions with formats, features, details of land in question – size, location, etc.
- iii. Regulates the procedures for the appointment of ‘abasigire’ by registered land owners clearly describing the appointment in writing, the roles, responsibilities, and powers granted to an appointed agent.
- iv. For measures (such as public education) to enhance tenants’ compliance to mandatory consents from the registered land owner on land transactions.

7. Land Use Impasse

7.1 Status: More than 80% of tenants on Mailo effectively use their land, whose average sizes fall between 0.9 – and 1.3 acres. The “land use impasse” assumed in NLP, is locking the landowner out of land use but not the tenant. Rather than a ‘land use impasse,’ there is a ‘land development impasse,’ in which registered landowners are locked out of their land and cannot secure other forms of benefits from holdings, a status they consider unjust. The issuance of Land Use Protocols (LIPs) preceding the grant of Certificates of Occupancy (CoOs) led to an increase in loanable amounts (from banks and SACCOs) for tenants by more than 180%; an increase in the value of the land by at least 75%; and improve the plough back of income by tenants per acre (not credit) by at least 42% (GIZ Study, 2023). Leasehold expires (automatic renewal/revert to tenancies)? Integration of BLB with LIS (National).

7.2 Issues: Two of the four policy options of NLP 201 resolved the overlapping and multiple rights through buyouts and land sharing;

- i. However, the issuance of CoOs creates a co-ownership between the registered landowner and the tenant.
- ii. Whereas the tenants have overcome the land use impasse, the registered landowners lack specified policy alternatives for resolving their ‘land development impasse’

7.3 Recommendation: The revised NLP must provide for:

- i. Prescription of alternatives for registered land owners to venture into partnerships with tenants for utilization of land, including but not limited to joint investments with land equity as shares and condominiums in urban areas.
- ii. Promotion of public awareness and adoption of leaseholds on private mailo to improve land utilization for shared benefits between tenant and registered landowners.

8. The Land Fund

8.1 Status: The 1995 Uganda Constitution and the Land Act Cap 227 set up a Land Fund operationalized under the Uganda Land Commission. The Land Fund Regulations were

issued in 2014. It was envisaged to support tenants and registered land owners to acquire their interests on land and resolve historical land injustices on mailo and native freehold. The Land Fund envisaged as a revolving loan scheme has never been operationalized; the Uganda Land Commission receives support within its development budget and compensates registered land owners using its retooling budget on a willing buyer and willing seller basis, and the current purchase is 40% of the land value.

8.2 Issues:

- i. The Land Fund is currently deployed as a political reward to voters in the form of free giveaways, prioritizing locations that voted favorably to the government in general elections.
- ii. Tenants have received free giveaways/grants instead of loans for payback to the government under favorable terms to contribute to a revolving fund.
- iii. Except for those in identified areas for historical redress, registered landowners in non-prioritized locations lack information and procedures on how to voluntarily access the Land Fund.
- iv. The 2014 Guidelines did not provide for procedures for:
 - a. selecting individual tenants as beneficiaries (to access credit and repay the government on affordable terms) and
 - b. individual registered landowners to access the fund by voluntarily surrendering their mailo/native freehold titles to the government to purchase and redistribute interests to tenants, beyond political rewards.
- v. The Land Fund is challenged with low funding given the demand and scope of claims that qualify for purchase.

8.3 Recommendations:

- i. Amend the law to exempt the Land Fund from political directives and set its operations to be an independent statutory commission.
- ii. In law, set the criteria for locations to qualify for application of the Fund with respect to redressing historical injustices.
- iii. Amend regulations for the Land Fund to provide for a revolving fund accessed by both tenants and registered landowners on stated terms and conditions.
- iv. Develop for adoption and implementation a justification for public investment in the Land Fund, clearly articulating the rationale, priorities, and costed remedy alternatives for both tenants and registered land owners.

9. **Succession Registers and Outdated Land Registry**

9.1 Status: The Succession register is based on “blue pages” or paper acres or Parcels of Unascertained Portion -PUPs.” It was previously held by the Buganda Kingdom until 1967 when traditional institutions were abolished. The Administrator General’s Office was entrusted to take over the Succession Registers, but lost responsibility with the repeal of the local government law in 1993 and 1997 (Local Government Statute (Resistance Council) and Local Government Act (Cap.243) which did not save the functions entrusted to the Administrator General. However, until 2016 the AG’s office continued to issue ‘letters of no objection’ for grant of letters of administration to

claimants of blue pages. There is a need to amend the law, assign responsibility, verify, and restart the succession register to support the update of the land registry. It is also necessary to reflect the contents of the succession register in the LIS – these parcels are not surveyed and need a special project to survey them. Descendants of beneficiaries of mailo estates now in the 4th to 5th generation, have not transferred their land titles and interests to current successors over the decades, thus failing to unlock consents and approvals for land transactions, as the land registry is outdated.

Despite concerted efforts, some tenants are unable to locate their registered landowners for at least 25% of land parcels (GIZ Study, 2023). Administrative offices such as local councils play a prominent role in mobilizing and sensitizing the tenants on the four options. They are also the first point of call involved in all transactions on land.

9.2 Issues:

- i. All the four NLP options on Mailo for tenants require, as a first step to identify the rightfully registered landowner.
- ii. Illegal transactions by false claimants and land dealers (brokers or grabbers) in connivance with staff in the land registries are on the rise, due to unchecked impunity in the conduct of land transactions and loopholes in the transfer of responsibility over the succession register.
- iii. Illegal claims over estates of deceased persons are on the rise. The services of the office of the administrator general are needed in facilitating successors of mailo titles to transfer their proprietries to beneficiaries thus updating the land registry.
- iv. An urgent response to the Blue Pages (PUPs) to verify claimants is necessary and making special provisions for updating the mailo registry under a special initiative between the Ministry of Lands, Housing and Urban Development and the Administrators General Office.
- v. The charges by the local councils to witness land transactions at 10% of value is not legislated but an accepted and respected practice that deserves to stay out of legal regulations.

9.3 Recommendation: NLP should provide for

- i. A special time-bound initiative referred to in (i) above between AG's Office and MLHUD to facilitate the update of the land registry and unlock transactions on mailo tenure with specialized services available (including IT message alert systems) at subsidized costs for land services, and a consideration for waiver of stamp duty and fees.
- ii. Improve compliance with regulation and standards for land professionals to curb corruption and impunity – Surveyor, Valuers, Lawyers, etc.
- iii. Individual liability for technical staff of the lands ministry and state employers involved in fraudulent acts and transactions as interdiction, reprimand, caution, and suspension by the public service commission is ineffective.
- iv. Penalizing registered land owner who by omission or commission do not avail themselves to their tenants to facilitate land transactions.

- v. In witnessing land transactions for tenants, local councils should require consent from the registered landowners.

10. Public Awareness and Mediation on Mailo/Native Freeholds

10.1 Status:

- i. There is evidence that the extent of use or application as well as the success of any of the four policy options on Mailo in the NLP 2013 depends largely on the degree of awareness and understanding by both tenants and registered landowners. In public awareness and sensitization, emphasis should be placed on the rights and duties of tenants (lawful or bonafide occupants), and the rights, and the duties of registered landowners, in addition to the benefits of regularization with registered landowners as well as opportunities with financial institutions.
- ii. Political offices prioritize the directives of the executive on land matters over legal provisions concerning tenants and registered land owners. Their messages have an immense influence on how tenants interact with the four policy options.
- iii. The NLP 2013 only anticipated mediation in land sharing, however with a modified composition (combining the area land committee, the community development officer, local council chairpersons, and the parish chief), mediation committees set up in the GIZ project successfully mediated tenants and registered land owners on all the 4 options.

10.2 Issues:

- i. Registered landowners are concerned that awareness-raising efforts and messages are skewed in the favor of tenants rather than a balanced emphasis on the interests, rights, and obligations of both parties in the tenancy.
- ii. Political leaders fail to coordinate with technical land offices for guidance and provide inconsistent information to tenants to the disfavor of registered landowners.
- iii. There is a need to review the roles and functions as well as the composition of the mediation committee on Mailo and Freehold tenures.

10.3 Recommendations: The revised NLP should provide for;

- i. Provide a program of initiatives on sensitization and public awareness creation by all stakeholders in the sector with balanced messaging targeting both tenants and registered landowners.
- ii. Public education initiatives led by political leaders call for co-existence rather than war between tenants and registered landowners and involve technical staff of the Ministry of Lands for guidance.
- iii. Review of the composition of the mediation committees, their roles, and functions to facilitate all four options concerning tenants and registered landowners in specific locations given their performance under the GIZ project.

11. Abolition of Mailo Tenure

- 11.1 Status: There is consistent public messaging to tenants and registered landowners from the political leadership of the Ministry responsible for lands on the proposed

abolition of Mailo tenure. The proposal is espoused on the failure to resolve the multiple and overlapping rights as legislated by the 1995 Uganda Constitution and the Land Act Cap 227. However, the proposed abolition is introduced as a change of name without addressing the underlying issues that fail the peaceful co-existence of tenants and registered landowners on this tenure. Any attempts to abolish Mailo will cause social unrest, escalate land disputes, and cause chaos as both tenants and registered landowners will be equally aggrieved. It is observed that most of the challenges of Mailo tenure pertain to private Mailo where evictions are rampant, whereas Buganda Land Board does not evict tenants (GIZ study, 2023). Registered landowners advise that an arbitrary abolition of Mailo is not possible under the current constitutional order given Article 26 of the Constitution and will cost the government billions of shillings in compensation (Uganda Land Owners Association, 2023).

11.2 Issues:

- i. The proposed abolition of Mailo tenured is viewed by both tenants and registered landowners as an attempted land grab intended to punish the Kabaka and the Mengo establishment, which is the largest landowner in Buganda by the political class.
- ii. Both tenants and registered landowners accept that Mailo is a feudal freehold, therefore a change of name would not resolve the overlapping and multiple rights which is also evident in other registered tenures such as freehold or customary land.

11.3 Recommendation:

- i. Resolving a colonial and legal question by political pronouncements might further escalate the issue.
- ii. Further refinement and implementation of the provisions of the National Land Policy on the 4 options and the Land Act Cap 227, specifically on the Land Fund and the definition of Kibanja/Bonafide and Lawful tenants will resolve the issue.
- iii. The GIZ study 2023 shows an uptake of land sharing and buyouts as effective in resolving the multiple and overlapping rights on Mailo tenure. The assumption that tenants are poor and cannot afford buyouts or land sharing is false. Registered landowners can be incentivized with considerations of land development and inclusive policy.