

2. Development, Land and Rights

What does the law say?

People's rights to land are guaranteed by law. If the land is customary land, meaning there is no title to the land. Then the law guarantees the rights which customary practice (or customary law) gives people. Where customary practice meant that an individual household had exclusive use over a piece of land, and could not be evicted by anyone else in the community, the 1995 Constitution and the 1998 Land Act recognise those rights to the land, and this land cannot be treated as 'communally owned'. Where land is managed on behalf of the whole community (e.g. village grazing land), then State law recognises this as private, communal land. The people who manage the land cannot treat this land as their own, and outsiders from the community cannot make claims that the land should be open to anyone. These same laws apply whether the land is in rural areas, or if the areas become designated as a trading or urban centre. Gazetting land as an urban area does not change ownership rights.

If the law is so clear, why is there a problem?

There are several areas which have created confusion or misunderstanding.

- Most people don't know their rights or the rights of the State.
- Many public officials do not know the correct procedures to follow, and indeed many may not even be aware that there are laws regulating what they can do.
- Many people believe that land in a trading or urban centre ceases to be customary land or to have customary owners.
- People wrongly believe that the rights of the local authorities to make planning regulations gives these authorities ownership over the land.
- Customary law follows principles which have never been written down. Public officials or NGOs may not realise what is meant by someone offering to 'give' their land for a project.

In normal circumstances, no-one can be forced to give up their land rights or be forced to sell land if they wish to keep it. However, if the State needs to use the land 'for the public good', then it can purchase the land it needs from the owner, even if the owner is reluctant to sell it. This applies if the land is for public use, or needed for defence, public safety, public order, public morality or public health. A special Act of Parliament, the Land Acquisition Act, was made in order to lay down the conditions and procedures for doing this.

When can the State take land for 'development'?

Article 26(2) of the Constitution of Uganda says that compulsory acquisition can only be made if the State wants to use the land "for **public use** or in the interest of defence, public safety, public order, public morality or public health". Development only means general public services such as roads, health centres, schools etc.

Private investment is a good thing for the country and for people, but it is not included as 'public use', even if many people will benefit from the private investment. Although some people argued that this kind of 'development' should be helped by allowing the Government to acquire land, Parliament did not agree, and rejected the proposed amendment to the Constitution in 2006.

There is a further difficulty that compulsory acquisition is a very long and difficult process. Most local authorities do not have the resources to follow it through every time they want to develop their areas. Alternatives therefore have to be found where possible, that are based on the mutual agreement of the local authorities and the landowners. If this is possible, the Government

can implement its development plans, communities can enjoy the infrastructure and services which they need and people can also be secure that their Government is protecting their rights.

This information pack is an attempt to help achieve this situation.

