



# A Memorandum on the Draft National Land Policy for Uganda: Policy gaps and proposals

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## Background

Environmental Alert (EA) is a development Non Governmental Organization founded in 1988. Her vision is *'a poverty and hunger free society that is able to manage and sustain its natural resource base for attainment of sustainable livelihoods.'* Since then, EA has diligently strived to improve the food security and nutritional situation in the country but also contribute to the development of conducive natural resource policy environment. To this end EA implements a Land, Land use and Soils program with over all objective of contributing to sustainable land and soils resource management through policies and practice changes for improved food security and livelihoods for communities in Uganda (EA Land, Land use and Soils Issues paper, 2006). EA is also a member of the Uganda Land Alliance (ULA) which is a platform for galvanizing common voice on land issues for fair land laws and policies in Uganda. The EA Land, Land use and Soils program undertakes policy advocacy for sustainable land use and soil management at all levels including Community, Local, National and International. It also has a component for modeling appropriate practices for sustainable land use and soil management with communities in Wakiso, Tororo and Moyo districts through participatory approaches for improved productivity and food security.

In 2006, Environmental Alert together with other civil society organizations (ACODE, Concern Uganda, UWONET and VEDCO) under the auspices of the ULA organized regional consultations on the Draft 2 National Land Policy with objective of sensitizing key stakeholders about the policy making process but also generating their input into the process. Overall, the lessons and experiences generated from these activities inform our advocacy engagements and positions on policy issues relating to Land, Land use and Soils management in the Country.

The importance and contribution of Land to National development and livelihood is not disputed. Various literature has noted this, for instance Land is a key resource for production with agriculture contributing 43% of the total gross domestic product of the Country and over 90% of its total exports. It is also the main capital to the majority of the people particularly the rural folks who depend on subsistence agriculture for their livelihoods (EA Land, Land use and Soils Issues paper, 2006). In this regard among others, the Government of Uganda through the Ministry of Lands, Housing and Urban Planning is spearheading a process to develop a National Land policy for Uganda. Currently they have developed the third draft and are as well organizing regional consultations all over the Country to build consensus on the issues and strategies to address them.

It is upon this basis that EA is interested in contributing to the development of the National Land Policy for Uganda. We appreciate the Ministry's efforts towards the development of this important policy to guide growth and development in the Country. This memorandum was produced after a review and analysis of Draft 3 of the National Land policy to identify policy gaps and shortcomings. The proposed strategies for addressing the policy gaps in Draft 3 of the National Land policy for purpose of improving it were informed by earlier interactions of Environmental Alert with communities and key stakeholders in Land, Land use and Soils in Uganda. Some of such interactions include: regional consultations on the Draft 2 National Land Policy conducted in 2006 but also modeling appropriate practices for sustainable land use and soil management with communities in Wakiso, Tororo and Moyo districts as described above.



What Draft 3 of National Land Policy (NLP) draft 3 says	Reference in Draft 3 NLP	Proposed suggestions for consideration in the National Land Policy draft 3
<p>In the inventory of specific issues for the National Land policy leaves out the following important issues:</p> <p>(i) Inadequate land information generation, storage and access at all levels (community, local and National) - this has implications ranging from forgeries in land titles and certificates resulting into disputes; to business fraud most especially in the banking sector where various land titles can be secured as collateral but yet they are of a similar piece of land or were the same piece of land is sold to a number of people. All this is counter productive to sustainable national economic growth and development.</p> <p>(ii) High population growth</p> <p>Uganda's current population is 27.7 million and is projected to explode to 130 million by 2050 (Population Reference Bureau, 2007). It is growing at the rate 3.3% per annum (UBOS, 2002) making it the third highest in the World, after Niger and Yemen (Uganda Population Report, 2005). Given that land is a fixed resource, the current annual population growth rate will increase pressure on land resources to meet the demands of the population in</p>	<p>Section 1.3.2 paragraph 24</p> <p>Section 1.3.2 paragraph 24</p> <p>Section 5.2.16, paragraph 115</p>	<p>The following issues with corresponding strategies to address them in the respective sections should be included:</p> <p>(a) Inadequate land information generation, storage and access at all levels (community, local and National)</p> <p>This issue should be addressed by the following strategies:</p> <ul style="list-style-type: none"> <li>✓ Development and operationalization of a computerized land registry and recording system that can link land transactions at local (community and district) and National levels</li> <li>✓ Capacity enhancement for key stakeholders in land information systems management</li> <li>✓ Efficient monitoring and evaluation of policy land implementation</li> </ul> <p>(b) High population growth</p> <p>This issue should be addressed by the following strategies:</p> <ul style="list-style-type: none"> <li>✓ Promoting intensive land production systems in agriculture, industries, construction</li> <li>✓ Winning people off land by creating alternative livelihood and employment opportunities such as agro and cottage industries</li> <li>✓ Equitable distribution and development of infrastructure and services to the public in various regions of the Country.</li> <li>✓ Integrating demographic concerns into human settlement and resettlement policies.</li> </ul>

<p>terms of food, fiber and forage.</p> <p>Consequently, this would result in land fragmentation (<i>this is very common in the districts of Kabale, Rukungiri and Kisoro, Bushenyi, Mbarara and Ntugamo</i>); encroachment on fragile land/ecosystems (wetlands, montane areas); for soils in particular it means loss of arable land. All these result in environmental damage and poverty.</p> <p>Additionally, the high population growth is also linked to high rates of rural urban migration. By 1991, 14% of Uganda's population was staying in urban areas. The number is likely to increase due to increasing undeveloped rural infrastructure, unemployment, landlessness, insecurity and insurgency (especially in northern Uganda) (RURAL, 2006). This has implications such as establishment numerous slums in Kampala City and suburbs e.g Kalelwe, Kivulu, Kikoni, Kisenyi among others. The communities in slums lack good housing structures, effective sewage systems to mention but a few rendering their health at risk of cholera, malaria, HIV/AIDs among other ailments.</p>		

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<p>Policy development benchmarks</p> <p>Please note that some of benchmarks have been repeated or closely related under paragraph 44 as principles i.e. (i), (ii), (vi). This makes them redundant and increases on the bulk of the document</p>	<p>Section 2.1.2</p>	<p>It is better if one section on general principles under the Land policy is presented as opposed to have these principles presented under the different Chapters 3, 6.</p> <p>Include another principle, <i>'Land resources should be utilized productively and sustainably'</i></p>
<p>The goal for the National Land Policy, 'The overall goal of land policy development as it presented in the existing documentation is, 'to agree on a framework which will ensure the sustainable utilization of Uganda's land resources for poverty eradication.'</p> <p>It is narrow and limiting. It should be in line with the Poverty Eradication Action Plan (PEAP) and Land sector strategic plan goals reflecting aspects productive and sustainable utilization and management of land resources for poverty eradication, improved livelihood and sustainable development.</p>	<p>Section 2.2, Paragraph 36</p>	<p>It should be rephrased to read 'To contribute to poverty reduction, and equitable socio-economic development through productive, sustainable utilization and management of land resources in Uganda.'</p>
<p>The specific targets comprised in that goal are, therefore</p> <p>Target (v) promote land use activities that ensure sustainable utilization and management of environmental, natural and cultural resources for national social-economic development;</p>	<p>Paragraph 37</p> <p>Paragraph 37</p>	<p><i>Replace targets with objectives</i></p> <p>Rephrase target (v) to read, <i>'To ensure sustainable utilization and management of environmental, natural and cultural resources for national social-economic development.'</i></p> <p>Include another target:</p> <p>(i) <i>To facilitate land information generation, storage and access at all levels</i></p>



The methodological framework – This section describes the methodology and processes used in drafting the policy	Section 2.2.1 Paragraph 38	This section 2.2.1 should be deleted from the final draft or placed in annex. Also note that most policy documents do not have this section.
The policy document, presents a systematic diagnosis of these issues, and proposes the principles and strategies which are required to address them.	Section 2.2.2 Paragraph 41	This statement is not very clear, it should be rephrased to read, ' <i>The national land policy presents a systematic diagnosis of issues, policy statements and strategies to address the issues.</i> '
In order to ensure increased contribution of land to economic productivity, and commercial competitiveness, there is need to design and execute a paradigm shift from emphasis on land ownership to land development.	Section 3.2, Paragraph 45  Paragraph 46	This policy statement is not clearly highlighting the policy commitments in relation to productivity and sustainable management of land resources. The policy statement should be rephrased to read, ' <i>land must be productively used and sustainably managed for increased contribution of the land sector to economic productivity and commercial competitiveness.</i> '  Also include the following strategies:  To promote vertical expansion for appropriate construction with respect to shopping malls, among others. Such constructions should have provisions for parking with the building
<b>What Draft 3 of National Land Policy (NLP) draft 3 says</b>	<b>Reference in Draft 3 NLP</b>	<b>Proposed suggestions for consideration in the National Land Policy draft 3</b>
Natural resources such as water, minerals, forests, wetlands, wildlife, nature reserves and sensitive ecosystems are important for Ugandans. The Constitution of and the Land Act confer management trusteeship in respect of these resources in the State and local authorities. These instruments do not however address the issue of how access to these resources may be obtained. There is need, therefore, for the establishment of clear tenure principles	Section 5.2.3  Paragraph 84	Include <i>soils</i> as a natural resource in paragraph 84  Secondly, the policy document has not placed any emphasis on soil management, yet soil degradation is a major form of land degradation particularly soil fertility depletion. This is a wide spread problem/constraint to agricultural production in Uganda. Soil fertility depletion has implications of low agricultural productivity resulting into hunger, poverty and poor livelihoods among communities (Land, land use and soils issues paper, 2006). However, the issue of sustainable soil management will be addressed by the National Soils policy for Uganda which is being developed under leadership of National



regulating access to and the sharing of the products of natural resources with ordinary Ugandans.		Environment Management Authority (NEMA) for the last 10 years and not yet completed. Therefore there is need for the National Land policy to cross reference with the Draft National Soils policy on issues of soil degradation and soil fertility depletion.
'Ensure that common property resources exclusively used by or available to particular communities are directly held and managed by them.'	Paragraph 88, Strategy (iii)	<p>Rephrase strategy (iii) to read, '<i>To strengthen and promote community management of common property resources.</i>'</p> <p>Also include the following strategies:</p> <ul style="list-style-type: none"> <li>✓ <i>Provide appropriate support to communities to manage common property resources in an equitable and sustainable manner</i></li> <li>✓ <i>Establishment of secure legal rights for local communities over common property resources</i></li> </ul>
<p>Pastoral communities occupy dry lands which are harsh in terms both of climate and ecology. The land use system is, therefore, characterized by territorial expansion, transhumance and competition over grasslands, limited woodlands and watering commons. The drylands environment also provides habitat for many wildlife species.</p> <p>More recently, global climate change has exposed drylands to extreme vulnerability. The resulting stress often leads to conflicts and competition over these resources. This is particularly the case in the North and North-Eastern parts of Uganda.</p>	<p>Section 5.2.9</p> <p>Paragraph 97</p> <p>Paragraph 98</p> <p>Paragraph 99</p>	<p>These paragraphs are on pastoral lands and communities but lack clear diagnosis of constraints in relation to escalating degradation of pastoral lands due soil erosion, over stocking, limited access for water for livestock, bush burning. This result in implication in terms of encroachment on gazetted areas like national parks, wetlands, evading land for neighboring communities, among others resulting in further degradation, landlessness, land conflicts, civil strife and death.</p> <p>It is also important to note that the effects of climate change not only affect the pastoral communities but also communities in fragile ecosystems e.g. those in montane areas are affected by high heavy down powers resulting into land slides destroying property and lives.</p> <p>Also include the following strategies:</p>

		✓ Development of particular projects for adaptation and reclamation of pastoral lands for sustainable productivity and improved livelihood of communities
<b>What Draft 3 of National Land Policy (NLP) draft 3 says</b>	<b>Reference in Draft 3 NLP</b>	<b>Proposed suggestions for consideration in the National Land Policy draft 3</b>
<p>The role of the state in the land sector will be clarified</p> <p>The role of the state in the development of the land sector is generally expressed in three distinct ways. These are through the exercise of the power of eminent domain in appropriate circumstances, the exercise of the police power of the state, and the provision of capacity and resources to enforce the regulatory framework of land use and management. Over the years the state and local authorities have demonstrated systematic arbitrariness, inefficiency and lack of transparency in the exercise of those powers. The fact the regulatory framework of land use and management is complex, internally fragmentary, conflictual, bureaucratic and highly centralized has tended to impede the effective management of land resources. Thus the land sector is as much a prisoner of its juridical status as it is of its isolation from other productive sectors.</p>	<p>Section 4.2.2</p> <p>Paragraphs 66, 67 &amp; 68</p>	<p>This section mentions the role of the state in the development of the land sector i.e. through the exercise of the power of eminent domain in appropriate circumstances, the exercise of police power of the state, and the provision of the capacity and resources to enforce the regulatory framework of land use and management. It recognizes that the state and local authorities have over years demonstrated systematic arbitrariness, inefficiency and lack of transparency in the exercising these powers but does not articulate the implications which this can cause to the people and communities in Uganda. Some of the implications are high risk of some communities becoming landless and continuous land conflicts with their neighbors and the state. It also means that such communities will lose access and ownership of their land which is the major resource for their livelihood. At extremes as a matter of survival, they encroach other gazetted land confining wetlands, National parks and forests. Examples of such communities include the Batwa, Pastoralists e.g. Basongola among others.</p> <p>Additionally, it does not clearly define and differentiate <i>'Public land'</i> and <i>'Government land,'</i> otherwise these can be confused to mean the same. Also article 239 of the Uganda constitution, 1995 stipulates that the Uganda Land commission shall hold and manage any land in Uganda vested in or acquired by the Government. This is based on the assumptions that such land includes land used by Government agencies for public purposes, land reserved for future public use, road reserves and land carrying social infrastructure.</p> <p>Secondly, the section does not clearly stipulate the situation or circumstances when the Government should exercise the power of</p>





		<p>eminent domain or police power. This ambiguity leaves a high risk of abuse of such powers.</p> <p>Thirdly, the section does not clearly give/mention the responsibilities of the state in exercising the '<i>power of eminent domain and police power.</i>'</p> <p>Fourthly, the section is very silent on acquisition of land by the Government for investment especially foreign direct investment yet there are various cases (e.g. <i>a number of forest reserves were degazatted Namanve for industrial park; Butamira for expansion of sugar production by Kakira</i>) and growing tendency for the state to acquired land for foreign investors in the name of development through exercising the powers of eminent domain.</p> <p>Therefore, there is need for clear definition of Public land and Government land; responsibilities of state in exercising police power and power of eminent domain but also clear provisions and guidelines for management of public and Government land and/or in cases of changing land use to safe guard against misuse of this power. Some of these are already clearly stipulated in various sector policies and guidelines e.g. Forestry policy, Environment Impact Assessments (EIA). Therefore there is need for cross-referencing with these.</p> <p>The following proposals should be adopted to address the gaps in Section 4.2.2:</p> <p>(a) Proposed definition for <i>Public land</i> is 'land held in trust by Government on behalf of Ugandans and for the benefit of all Ugandans.' For instance, this includes land for road reserves, forestry reserves, wetlands, National parks and land carrying social infrastructure e.g. hospitals,</p> <p>(b) Government Land is 'land owned by the Government and this</p>
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		<p>includes land on which Government institutions are hosted e.g. Ranches, Ministries'</p> <p>The Government should exercise the police power and power of eminent domain under the following circumstances:</p> <ul style="list-style-type: none"> <li>✓ Establishment of public good or services e.g. infrastructure like hospitals, road construction</li> </ul> <p>However, clear guidelines and provisions should be developed to ensure commensurate compensations of individuals or communities affected in executing these powers.</p> <p>(c) The Government as public trustees for public land is expected</p> <ul style="list-style-type: none"> <li>✓ to protect, manage and develop the natural resource for the common good of all Ugandans</li> <li>✓ to control their access and utilization</li> <li>✓ to put interests of beneficiaries of the trust property at the forefront of any decision relating thereto</li> <li>✓ to sustainably manage and develop natural resource reserves</li> </ul>
<b>What Draft 3 of National Land Policy (NLP) draft 3 says</b>	<b>Reference in Draft 3 NLP</b>	<b>Proposed suggestions for consideration in the National Land Policy draft 3</b>
Transmission of land held under mailo tenure is governed by Baganda customary law. <i>This means that land rights pass exclusively to male heirs.</i>	Section 5.1 Paragraphs 76	The last sentence presented in italics is not true, it should be reviewed because in Buganda culture there is no law/custom which prevents women from acquiring and owning land hence women have access, ownership and user rights through the cultural institutions.
Tenure Law must ensure security of access to land	Section 5.2.1	Rephrase to read, 'Tenure Law must ensure security of ownership and access to land.' For reasons that security of ownership is very important for investment in sustainable management of the land. Secondly, land with secured ownership can be used as collateral to access credit finance. Also experience has shown that land without secured ownership is many at times exploited with minimum investment for sustainable management and is subsequently highly



		degraded.
<b>What Draft 3 of National Land Policy (NLP) draft 3 says</b>	<b>Reference in Draft 3 NLP</b>	<b>Proposed suggestions for consideration in the National Land Policy draft 3</b>
<p>An important political concession made in 1993 was the restoration of assets and properties belonging to traditional rulers which were confiscated in 1967. These include vast areas of land in Buganda, Ankole and Bunyoro. The relevant legislation says that the interest restored is equivalent to that which was held by the Uganda's Land Commission at the time of restoration. There is confusion as to whether such interest is limited to leasehold or could include freehold or mailo tenure.</p> <p>In order to remove that confusion, legislatives and other measures will be put in place to -</p> <ol style="list-style-type: none"> <li>clarify the nature of tenure of such land in the light of constitutional provisions vesting all land in the citizens of Uganda;</li> <li>ensure that such land is used strictly as public property,</li> <li>prepare an inventory showing the location of such land and the nature of any beneficial interest held by persons in occupation thereby;</li> <li>ensure that such occupiers are protected from forceful evictions or removals by agents of traditional</li> </ol>	<p>Section 5.2.6</p> <p>Paragraphs 76</p>	<p>In particular, Buganda still stands firm that assets belonging to the Kingdom for instance the 9000 square miles among others should be returned to Buganda Kingdom since they belonged to Buganda Kingdom before they were confiscated. Therefore, the recommendations of the Ssempebwa commission report on these issues should be considered in the National Land Policy for Uganda. In additional, further consultations and negotiations between Government and Buganda Kingdom should be explored to come up with practical strategies to address the issue.</p>



<p>rulers; and</p> <p>v. ensure that such land is otherwise sustainably managed and used.</p>		
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<p>The restoration of mailo tenure, though politically expedient, has come at an enormous cost. For not only does it perpetuate an outmoded and essentially feudal regime, the near absolute protection now accorded to lawful or beneficial occupiers, has effectively locked out large areas of land from the development process. This is likely to impede the growth and orderly planning of land in Buganda, in general, and the Kampala metropolitan area in particular. Clearly the mailo land tenure systems may have outlined its purpose.</p>	<p>Section 5.2.13 Paragraph 108</p>	<p>The Mailo tenure is not outmoded and essentially feudal regime and it will not impede the growth and orderly planning of land in Buganda, in general and Kampala metropolitan area in particular as claimed. Growth and development of the Mailo land tenure is possible if appropriate strategies in terms of land use planning and zoning among others are employed.</p>
<p>Legislative or other measures will therefore be taken to either phase out this tenure regime or liberate in from the restrictions placed upon it by the Land Act. These will include-</p> <ul style="list-style-type: none"> <li>i. the administration of a census of all persons living as lawful or <i>bonafide</i> occupants on land under mailo tenure to prevent spontaneous invasio of such land;</li> <li>ii. updating the mailo land register to re-establish the accuracy of its property details;</li> </ul>	<p>Paragraph 109</p>	<p>Strategy (iii) should be rephrased to read, 'conversion of mailo tenure into long term leases especially if such land is located within urban areas.'</p> <p>Also include the following strategies:</p> <ul style="list-style-type: none"> <li>✓ The landlords and bonafide occupants should negotiate amicably on appropriate ground rent considering market land value</li> </ul>



<ul style="list-style-type: none"> <li>iii. conversion of mailo tenure into fully-fledged freehold tenure or conversion of such land into long term leases especially if such land is located within urban areas;</li> <li>iv. enfranchisement of those lawful or beneficial occupiers who can establish long and uninterrupted residence and use of the land;</li> <li>v. enactment of interim measures for the protection of occupants ahead of enfranchisement to pre-empt mass evictions by landlords;</li> <li>vi. establishment of a special tribunal for the resolution of disputes over mailo land; and</li> <li>vii. enforcement of constitutional principles outlawing gender discrimination in respect of the transmission of land rights under Baganda customary law.</li> </ul>		
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