



Uganda Mailo Land Reforms: Disentangling Landlord From Tenant

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In Uganda, evictions of the poor from land by the dominant economic class have been common in the last two decades. They have mainly been classified under the broader rubric of land grabbing. Land evictions are a microcosm of Uganda's political economy and offshoots of lapses in land governance and the unending land reform processes.

Eviction scenes are usually characterised by the following: a group of people (most often hired goons) destroying crops; a grader destroying structures or debris from already destroyed structures; victims trying to salvage their belongings from the debris (usually basic household items such as overused mattresses, plastic plates, cups, and clothing); stick-wielding victims voicing their frustration in front of media microphones/cameras, affirming their claim to the land and calling on a powerful agency or a politician to intervene (at times these calls to intervene are directed at the government using the popular Luganda phrase, "*tusaba gavumenti etuyambe*" (we are begging for the government's intervention/help); women crying profusely, pacing around the scene, asking rhetorical questions (usually concerning their dire helplessness as widows/sole providers for their families and wondering how they will pay off that loan or feed the children now that the food is destroyed); and people in uniform wielding guns and court papers purportedly authorising the eviction.

This description of evictions is a metaphorical representation of the actors, powers, agendas, and interests at play in land contestations. It is usually the face of other invisible forces deeply rooted in the letter of the law, power play, and asserted by a court of law through interpretation or misinterpretation. The scene can be appropriately captioned “noise verses uniforms, guns and court papers”. The poor can only amplify their voices of dissent by wielding sticks, while the instruments of state authority (uniforms, guns and court papers) remain in the hands of their tormentors.

The scene also presents a number of dichotomies: a class struggle between the underclass/poor and the dominant economic class, between the powerful and the subordinated/oppressed, citizens and subjects. The constitutional notion of citizenship bestows upon all Ugandans the right to state protection. Land conflicts have however presented a dynamic where the rich and powerful are more of citizens than others, for they can use the law and state institutions to assert their “entitlement” against the underclass/poor. Those who lose their land in this context become “subjects” whose claims are dismissed as merely an annoyance rather than “rights” worth defending. The “subjects” can only cry out for help as a privilege rather than a right. This is evidence that the most recent land law reforms of 1995, 1998 and 2010 have not yet benefited the majority of victims of land evictions. Their social-economic existence is destabilised. To them, the law is a powerful tool in the hands of the economically and politically dominant group.

The Constitution of Uganda recognises four tenure systems: *mailo*, freehold, customary and leasehold. Evictions have taken place on land held under all four tenure systems across the country. Not every eviction is unlawful, but unlawful evictions abound in Uganda’s history, and have intensified in recent times. They cause land conflicts, destabilise society, retard land-based production and curtail free marketability of land. Debates on land reform are frequent and the country is currently debating another range of [reforms on the mailo system of land tenure](#).

There is need to understand the dialectic views about the need for reforms in this area, and I offer some discussion here. I take a teleological approach, avoiding the polemic debates on how we got here and focussing instead on what we could learn from and do about the sticking issues in the land reform processes in Uganda. I also explore the pro-commercialisation and other efforts aimed at land restitution in other countries, as well as the politics of the “entangled” interests on *mailo* land in Uganda, and how this shapes the efforts and politics of disentanglement. Land law has been used as a tool in the politics of entanglement and disentanglement. I argue that the law is not the magic bullet; it rarely addresses the underlying intersectional quandaries of a social, economic and political nature that normally converge in the spaces of the poor/underprivileged. Law should be coupled with other legitimate efforts aimed at disentangling the convergence of the issues referred to above and understanding the roles played by the various actors in land conflicts and their resolution.

Land reforms elsewhere

Land reforms elsewhere are characterised by scenes where (just like in Uganda) voices of protest confront forces wielding state authority sanctioned through law reforms, the poor pitted against the economically empowered in the struggle over land. A number of African countries have undertaken land reforms in the recent past, achieving—according to official supporting discourses—a constellation of gains ranging from correcting historical flaws, improving tenure security, promoting the capital value of land, and protecting indigenous communities, among others. South Africa and Zimbabwe stand out in the Southern Africa region. South African reforms have included a broader agenda to annihilate the dangers associated with the land dispossessions perpetrated against the black population during the apartheid era. Debates about racial inequalities, and restitution and/or compensation have been current in addition to communal land tenure policy initiatives aimed at vesting land in tribal authorities and streamlining its use and access within that traditional body

politic. Expropriation without compensation is another hot debate in the South African context.

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In Zimbabwe, a number of land reforms took place in turbulent fashion in the early 2000s (of course there were efforts at land reform in the 1980s). Like in South Africa, reforms involved reversion of land from white to black farmers (put simply). The views about these reforms have been divergent with some believing that they have helped the small-scale farmer to gain ground in the agricultural market economy, while others see the initiatives as disastrous and unsustainable in economic and human rights terms (if all, both black and white, are considered citizens).

Next door in Kenya, the most recent reforms were heralded by the inauguration of the 2010 Constitution followed by the new land law of 2012 and the Community Land Act of 2016, among others. As elsewhere, the reforms were justified on a number of bases including inequitable distribution of land, historical injustices, landlessness among the poor, increasing trends of land grabbing, and the need to streamline communal land use. In her recent book, *The Struggle for Land and Justice in Kenya*, Ambreena Manji argues that one of the problems with reform in Kenya is the parochial view of “land reform” as reform of land law that leads to focus being placed on reforms within the land management and administration institutions that are pivotal to the exercise of bureaucratic power.

This approach diverts attention from the broader questions of access, land justice for the poor and unequal distribution. Manji further believes, “We must attend to insurgent knowledge and ideas of change.” In essence, any reform programme should aim at deeper and broader change beyond legal reforms in order to address the plight of the subaltern poor caught up in contestations over land. Such an approach questions the dominant but rather rhetorical narratives of the state as the protector of rights and people, to address situations where symbols of state power (uniforms, guns and court papers) are ironically applied to entrench a skewed power position to intimidate and dispossess victims in land conflicts/evictions.

The Uganda case

Public debate in Uganda has recently been dominated by discussions on the reform of the *mailo* land tenure system, with views varying from those that believe it needs to be reformed (and may be abolished) to those that believe that the *mailo* system does not need to be reviewed. Uganda has gone through a series of land reforms over the course of the country’s history, with each reform influenced by the political, social and economic factors prevailing at the time. In 1975, President Idi Amin abolished all perpetual land ownership tenure systems and vested all land in the state, which granted periodic leases to land users. The post-1995 land law reforms re-vested land back in the citizens to hold by virtue of the revived tenure systems (*mailo*, freehold, customary, in addition to leasehold). Unlike in the past, the post-1995 period saw heightened contestations over land and witnessed classic evictions.

The 1900 Agreement is often seen as the precursor of mega-reforms in the *mailo* system of land holding. The Land Law of 1908 introduced reforms to address the lack of clarity identified in the findings of the Carter Committee of 1907. Among the issues raised was whether the 1900 agreement introduced a new system which changed the reciprocal obligations that existed between landlords and tenants (embedded in custom and tradition) prior to its signing. The 1908 law defined and drew the boundaries of the *mailo* system introduced under the 1900 agreement. *Mailo* land could be transferred to anyone in the Protectorate (outside the clan system of Buganda) and it was no longer

land exclusively governed based on Ganda customary law. In 1928, the *Busulu* and *Envujjo* law attempted to reorganize the landlord-tenant relationship by, among others, stipulating the rent payable and other terms of use. This was following tenants' complaints of exploitation by landlords who were charging exorbitant rents. In 1975, *mailo* interests were by law commuted to leaseholds when land was nationalised, a position that was reformed through the Constitution of Uganda in 1995 and operationalised through the Land Act of 1998.

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Reforms are not new. The question is why haven't they delivered on their agenda to address the so-called "land question"? Can reforms focusing on the *mailo* land tenure (mainly in central Uganda) address all the problematic land issues at a national level or those associated with other tenure systems such as the vast customary tenure predominant in the north? Are we asking the right questions to guide reform processes? Are we addressing the right problems? Does the operating environment allow for clear and focused reforms? Can focus on "law reform" (to refer to Manji's conceptualisation) without addressing the underlying social-political issues resolve the multifaceted nature of challenges encountered in the *mailo* system?

All these questions have one answer. Land is a part of the political repertoire and therefore efforts to bring about land reforms involve managing politics, society, and the economy, yet the balance is not easy to strike. Although cumbersome for some, the unresolved land issues are exploitable "stock" for others. Beneficiaries of the "stock" would therefore not opt for approaches that resolve the problem once and for all, since that would not be just a trifling inconvenience but a big loss.

The "miles" of "entangled" land

Any attempt at reforming the *mailo* system requires a broader approach using multiple lenses to disentangle the various legal and social-political issues that characterise its structure and practice. Broadly, the *mailo* system is entangled in class, religion, culture, politics, etc. Specifically, it is first entangled in history, conjuring historical rationales and claims that are also embedded in culture/traditions whose contemporary relevance may come into question. Who was who and who is who in terms of control of the centres of power. Does the new generation embrace the shifts (if at all) in the power centres? Second, the *mailo* system is entangled in the argument about the fairness of land distribution under the 1900 agreement and its contemporary relevance in debates about the classes of "victims" and "beneficiaries" in the *mailo* land tenure system.

Third, *mailo* system is entangled in the geopolitical imperative to promote registration and free marketability of land as a part of the broader goal of promoting a neoliberal model of development. In [*Uganda - The Dynamics of Neoliberal Transformation*](#), the country is described as an exemplar of African countries that have fully embraced neoliberal restructuring that has resulted in significant economic growth, but also in inequality, concentration of wealth, corruption, and privileging production paradigms (as opposed to others of social value). Neoliberalism has also influenced land reforms by commodifying land and placing it in the markets, by increasing the relationship between land and commerce, and by changing the exchange value of land.

Fourth, *mailo* land is also entangled in the national political agenda on land reform, officially presented as a pro-poor logic; reform the land laws to strengthen protection of land occupants against land title holders. Fifth is the cultural issue where talk of *mailo* land evokes debate about the monarchy of Buganda and its power over land (mainly the official *mailo* land), considered trust land

held by the King in trust for the people of Buganda. Crucially, land in Buganda is currently occupied by people/social groups from all over the country, including the powerful, and “foreign investors”.

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Understanding these entanglements is invaluable in debates on *mailo* land reforms. One should take a microscopic view of them all in order to decipher them; use them as a guide to identify the actors to engage with; transcend blemished determinist economic views in the rationalisation of the purpose of reforms; promote debate and constructive engagement; avoid ideational and discursive hegemonic approaches shaped by subjectivities in perspective.

With the above, the law may indeed not be the silver bullet. It contains positive initiatives that would go a long way to solving the problem, but at the same time, it has contributed to the stalemate thereby further entangling the *mailo* tenure system. The reforms have largely not delivered emancipation for the oppressed, or corrected the power imbalances and the resulting injustices.

Beyond the law

The Constitution and the Land Act aim to “streamline” the “relationship” between the landlord and the tenant. This presupposes continuation of the dual/conflicting rights on the same piece of land for title holders and tenants/occupants, with some changes in the reciprocal rights and obligations for both, and amicable social co-existence. The land by implication remains entangled in the dual claims of the landlord and the tenant, albeit in a regulated manner. There are a number of initiatives in the Land Act aimed at regulating the landlord/tenant relationship, a few of which are highlighted here.

First, the tenant is guaranteed security of occupancy and protected against eviction on condition that s/he pays rent to the landlord. The rent is “nominal”/“non-commercial”, fixed through government bureaucracies with the resulting “coercive security of occupancy” for the tenants. The landlords are obliged to receive the rent (even against their will) and refrain from evicting the tenants.

This has elements of imposing “edifice” since market forces are locked out in the determination of rent and the social good of the tenant is considered to be of paramount importance. It is believed that such approaches of regulating rent entrench the social aspects of the landlord/tenant relationship in recognition of the historical dimension of the *mailo* system of land holding. The tenants can occupy the land as long as they pay the nominal rent to the landlords, which sustains the existence of dual rights on the same piece of land.

Second, the tenant can apply for certificate as evidence of his/her occupancy with the consent of the landlord. This is then registered as an encumbrance on the landlord’s title. It is ironical to expect that the landlord will accept to further entangle the land, and limit its application in the market.

Third, the landlord and tenant can jointly hold the land or equally agree to share it such that each can exclusively hold and occupy a portion. The skewed power patterns between landlord and tenant most times hinder the possibility of an amicable and fair agreement/outcome.

Fourth, under the Land Act, the tenant may request the landlord for a *mailo* title, freehold (resulting in subdivision of land and grant of exclusive ownership to the tenant on agreed terms), or a lease. Considering the fact that the majority of tenants are financially constrained, yet land is of high value and in high demand on the open market, it is unlikely that such negotiations would yield in the

interest of the tenant. Offering the land on the competitive market is normally a more viable option. In some instances, the lack of assistance from a third party to participate in the negotiations exposes the tenant to exploitation by the landlord. In essence, unless the Land Fund provided for in the law is capitalised and applied to facilitate land acquisitions by tenants on *mailo* land, land will remain unaffordable to many.

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Fifth, the law allows either landlord or tenant to sell their interest to the other or in case of a sale on the market, to consider the other as the one with priority to purchase. A [2016 study](#) that I conducted for the Public Interest Law Clinic of Makerere University finds that realities on the ground render many of the initiatives above mere perceptions of protection that fall short of the lived experience of people in a landlord/tenant relationship on private *mailo* land.

A 2010 amendment to the Land Law allows the landlord to sell the encumbered land to a new person who steps into the landlord/tenant relationship with the tenant(s), yet the tenant who sells in violation of the law (offering first to the landlord) commits a criminal offence punishable by law. This change (in favour of the landlord) perpetuates the entangled situation of the *mailo* system, which at times leads to evictions by new landlords.

The big question remains: how can the layers of entanglement be disentangled? To eradicate the dual and overlapping rights (of landlords and tenants) on the same land, the best two options are, first, mutual agreements to share land such that both landlord and tenant get (exclusive) registered title and, second, grant of leaseholds by landlords to tenants. The law makes provision for government support to acquire registered interest in land through the land fund. The law is to some extent confirming Manji's argument, since it has not yet delivered on its promise. A lot more needs to be done in order to achieve the promises set out.

The dangers associated with the unintended consequences of going too far back in history outweigh the benefits.

Addressing the issues using the already existing initiatives is advantageous in many ways, and the assumption is that they are a product of consensus. This is more a from-now-onwards approach to the problem, conveniently avoiding peeling the discursive frames rooted in history to establish right and wrong. Remedying historical wrongs can be important, but some scholars (such as Jenna Thompson in *Taking responsibility for the past: Reparations and Historical Injustice* commenting about the choice between restitution and compensation) have argued that at times the dangers associated with the unintended consequences of going too far back in history outweigh the benefits.

For Uganda, the dual and overlapping rights to *mailo* land—with landlords holding registered title and tenants claiming occupancy rights—is a product of historical events heralded by the 1900 agreement. This situation perpetuates land conflicts and evictions. To resolve it, it will be necessary to ensure the active involvement/agreement of all those who are affected (landlords and tenants, and other actors). Also needed is government support to ensure that such agreements do not overly burden the weaker party (the tenant with occupancy). This will be facilitated by the gathering of information on the amount of land that is currently under the *mailo system*, how many landlords and tenants there are, how many are absentee, the location of the land, how much *mailo* land is without tenants, etc. This will fill the information gap and facilitate the reform process. Reform processes

should provide a platform to discuss the problematic land issues in the whole country beyond the central region, by all citizens beyond the Kabakaship and the presidency.

In the meantime, rampant evictions are an indicator of the law's and the system's failure to address the sticky issues regarding *mailo* land. Yet land remains an arena for the entrenchment of class differentiation, portrayal of power and fear of the pro-commercialisation reforms that may lead to loss of land. The fact that *mailo* land is entangled has not stopped the rich and investors from evicting the poor. The entangled nature of the tenure is a "mess" that is exploited by the evicting class with impunity. Disentangling the tenure through provision of clear interests/proprietary rights (leases or *mailo* titles) could equip the disenfranchised tenants with the tools to assert their rights. If not, the metaphorical scene described here will remain the hallmark of land relations in Uganda.

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