



CIVIC RESPONSE ON ENVIRONMENT AND DEVELOPMENT (CRED)



# The ban on Land Titling in the Albertine Region Implications for Tenure Security

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# CIVIC RESPONSE ON ENVIRONMENT AND DEVELOPMENT (CRED)

## THE BAN ON LAND TITLING IN THE ALBERTINE REGION: IMPLICATIONS FOR TENURE SECURITY

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Cover Photo: A cross section of displaced vulnerable people from the village of Kijaayo, Kiziranfumbi Sub-County, Hoima district

Source: CRED Photo Library

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# List of Abbreviations

- ALC** – Area Land Committee
- CAO** – Chief Administrative Officer
- CRED** – Civic Response on Environment and Development
- DGF** – Democratic Governance Facility
- DLB** – District Land Board
- DLG** – District Local Government
- IDP** – Internally Displaced Persons
- MLHUD** – Ministry of Lands, Housing and Urban Development
- NLP** – National Land Policy

# Acknowledgements

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# Executive Summary

Based on extensive stakeholder interviews and literature review, this paper highlights the effect of the ban on land titling in the Albertine Region and its impact on land tenure security in the region.

In 2010, the Principle Private Secretary to the President, Flora Kiconco directed the CAO Buliisa to halt land title issuance in the district with the view of protecting the local people from land grabbers. This directive is widely construed as a ban on land titling – an administrative measure to protect the local people in the oil region, who were losing land to grabbers and land speculators. Despite this ban, there has been an increase in land grabbing in the region.

It is therefore extremely peculiar that instead of adopting measures to proactively support the communities to protect their land rights, the government rather chose to issue a ban on titling with no clear timeline or benchmarks that must be achieved before the ban is lifted.

**As described in detail in this policy brief, the detailed assessment lead to a number of key findings and conclusions.**

First, the ban on land titling in the Albertine region is not premised on any law. On the contrary, it stands out to direct the operations of the District Land Boards in the districts concerned contrary to the provisions of the Constitution.

Second, it proscribes untitled landowners in the Albertine from codifying their ownership, thereby robbing them of the agency granted to legal property owners – a scenario unknown in property law. By freezing land titling, government has unlawfully deprived citizens' of their right to property ownership. Without a title, landholders do not have the legal evidence needed to protect them from competing claims and infringement on their land. Nor do owners without legal title have the means for proving, as prescribed by law, that they are indeed the owners of the land and thereby the sole possessors of the right to transfer the property

Third, the ban on titling is being selectively implemented, to the detriment of the local people. While the ban continues, several individuals have been able to process and acquire titles. Large parcels of land have been registered during the time of the ban; it is alleged that most of this land

has been registered in the names of prominent people including senior government officials, their proxies and senior military officers. So in reality, the ban has actually facilitated the exact type of land grabbing it was supposed to counteract.

It suffices, therefore, that the ban runs contrary to known land protection mechanisms and principles. It may have been a misguided attempt to maintain the status quo and prevent further disputes; however, this would have been effective only if stringently and uniformly implemented but it has not. The ban, and the subsequent failure to ensure strict adherence has in essence meant that while communities are unable to protect their land, it is in several instances being systematically alienated as well placed individuals secure titles and only show up to take possession. It has also conversely left the mainly untitled land in the region subject to speculation, multiple and overlapping transactions-none of which are being effectively documented and will ultimately result in competing claims and disputes.



## 1.0 Introduction

Land is a key, and in many instances, the only asset that many households in rural Uganda possess. Based on the country's current economic indicators, land is likely to continue to be the major asset that rural Ugandans can access. For this reason, discussions on land related policy or legislation in Uganda historically elicits great emotion and public fervor. There are often protracted periods of dialogues and consultations before the passage of any land related policy<sup>1</sup>.

Since the enactment of the 1995 Constitution and key land legislations including the Land Act of 1998 and subsequent amendments of 2004 and 2010, the Land Regulations of 2004, civil society and government have expended great effort to promote titling and land ownership formalization as a drive to land tenure security and development.

The Bunyoro region covers the districts of Hoima, Buliisa, Masindi, Kiryandongo, Kagadi, Kakumiro and Kibaale. Up to 76.6% of land in the region is held in customary private land tenure system while 21.1% is held in customary communal ownership<sup>2</sup>. Much of Uganda's recently discovered oil and oil related developments are concentrated in the two districts of Hoima and Buliisa. Prior to the discovery of oil, the volume of land transactions in the region was minimal, with land normally being passed on hereditarily. While there were localized land conflicts particularly in Buliisa between cattle keepers and indigenous communities, outside interests in land acquisition in the region was almost unknown.

The discovery of oil and anticipated developments, however, sparked an unprecedented new interest in land-based investments in the region, resulting in a land rush. A study by the Uganda Land Alliance, 2011 found a high level of new land transactions since the discovery of oil in the region. Importantly, most of the new land acquisitions involved people from outside the areas acquiring land from longtime holders or local leaders. The study also found incidents of conversions of customary land to registered land - freehold tenure<sup>3</sup>. The sudden interest in and moves towards acquisition of vast tracts of land sparked conflicts amongst communities over land that had suddenly become valuable, as well as between communities and self-proclaimed 'investors'. Amidst these

<sup>1</sup> It took about a decade to develop and adopt the National Land Policy

<sup>2</sup> Patrick Byakagaba, "Land Rights Abuses in the Oil Rich Albertine Graben in Uganda, Civic Response on Environment and Development," February 2014

<sup>3</sup> Uganda Land Alliance, Land Grabbing and its effects on the Communities in the Oil Rich Albertine Region: The Case of Hoima, Buliisa and Amuru

conflicts, in 2012, the government made the unprecedented move to unilaterally ban the issuance of land titles in the region.

This policy brief is intended to illustrate the effect of the ban and bring to the attention of policy makers, the Executive and Parliament the impact of the ban on land tenure security in the region. The policy brief is also intended to stimulate an urgent assessment with a view to eventual revocation of the ban.

## 1.1 Background

In 2009, it was reported that the president issued a moratorium on the issuance of land titles in the Albertine region. By a letter dated 10<sup>th</sup> December 2010, an official from State House issued several directives to the Chief Administrative Officer of Buliisa District; among these was that no applications of any form involving land should be approved until the district technical team is fully constituted as per the Land Act.<sup>4</sup> In a March 2011 letter to the Prime Minister, the President directed the Minister of Lands to,

“...cause a review of all land titles given out in Buliisa District to date. He should cancel all titles that he finds to have been given out fraudulently”.<sup>5</sup>

In 2012, following reports that some District Land Board officials were ignoring the ban, the Minister of Lands, Daudi Migereko warned against defying the directive by stating that,

“The President made this pronouncement for the good of this country. He has a duty to protect the disadvantaged from losing their property... the discovery of oil in the Albertine Graben created excitement which led to some rich people to starting massive acquisition of land in the rift valley...some were trying to process titles overnight. We decided that this should stop forthwith until the ban is lifted.”<sup>6</sup>

<sup>4</sup> Letter date 10th December 2010, REF PO/19 from Ms. Flora Kiconoc to the CAO Buliisa.

<sup>5</sup> Letter of 5th March 2011, REF PO/13 from the President to the Prime Minister

<sup>6</sup> <http://www.monitor.co.ug/News/National/-/688334/1376678/-/awomsgz/-/index.html> accessed on May 26th 2016

While appearing before the parliamentary *ad hoc* committee on the regularization of the oil sector, Minister Migereko justified the ban by stating that it was passed on the premise of,

“...ensuring that the people live in a planned environment with no complaints and would ensure implementation of a physical planning process tailored to regulating land acquisition and use in the area.”<sup>7</sup>

The Minister further explained that the ban is,

“...an administrative measure to protect land owners in the sub region who were losing land to grabbers and speculators.”<sup>8</sup>

In May 2015, following a meeting by the District Land Board which allocated land to various individuals, the Ministry of lands wrote a letter reminding the Buliisa District Chief Administrative Officer (CAO) that the moratorium on land transactions as communicated in the President's letter Ref PO/13 dated 5<sup>th</sup> March 2011 had not been lifted and that the Ministry would inform the district once the matter is brought to a conclusion.<sup>9</sup>

While the directive was initially aimed at all the districts in the Albertine Region, focus in implementation seems to be concentrated on Buliisa district. It is worth noting that at the time the ban came into effect, government acknowledged that land grabs and speculations were causing disputes and the violations of property rights.<sup>10</sup>



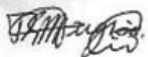
Figure 1: A cross section of the Internally Displaced Peoples' camp in Kijaayo village, Kiziranjumbi Sub County, Hoima district. The Victims were displaced by Hoima Sugar Ltd between 2013 and 2016.

<sup>7</sup> [http://www.newvision.co.ug/new\\_vision/news/1301053/gov-bans-acquisition-land-titles-oil-rich](http://www.newvision.co.ug/new_vision/news/1301053/gov-bans-acquisition-land-titles-oil-rich)

<sup>8</sup> *ibid*

<sup>9</sup> Letter of 4th May 2015, REF LAD/90/126/3 from the Ministry of Lands to the CAO Buliisa

<sup>10</sup> Letter dated March 11, 2011 from the President to the Prime Minister on Land disputes in Buliisa District

MUGISA JOS. MUKERU (Speaker)  CLSP R/G

TEL: 231900  
FAX: 235462  
EMAIL: [she@statehouse.go.ug](mailto:she@statehouse.go.ug)

IN ANY CORRESPONDENCE ON  
THIS SUBJECT PLEASE QUOTE No. ....

PO/13



THE REPUBLIC OF UGANDA

State House,  
P. O. Box 25497,  
Kampala,  
Uganda.

5<sup>th</sup> March 2011

Rt. Hon. Apollo Nsibambi  
Prime Minister  
Office of the Prime Minister  
**KAMPALA**

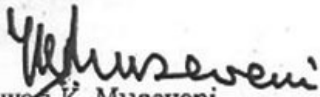
### **LAND DISPUTES IN BURIISA DISTRICT**

I sent my legal team comprised of Ms. Florence Kiconco and Mr. Okiror to Buriisa district in order to determine whether the people who have been acquiring big chunks of land there were doing so legally. The team found out that the land in Buriisa (Bugungu) is communally owned. In communal ownership, an individual family only owns the portion where somebody has got his home, gardens and *enshambu* (spare land for garden expansion). If he/she is to sell, he/she can only sell this part. The rest of the communal land cannot be sold by an individual. It is only used by the community according to their customs such as for hunting, grazing or cultivating purposes.

Apparently, the district land boards of Masindi and Buriisa districts have been giving land titles on the recommendations of Local land committees. However, these Local land committees have been giving approvals without informing residents and other stakeholders contrary to the law. Therefore, many of these land titles may be fraudulent.

By copy of this letter, I am, therefore, directing the Minister of Lands to cause the review of all land titles given out in Buriisa District to-date. He should cancel all titles that he finds to have been given out fraudulently. If the Minister gets busy because of the on-going campaigns, then the Permanent Secretary of the Ministry of Lands should act on this matter on his behalf.

In the meantime, the cattle keepers who came in that area illegally should be evicted. Apart from their disputed land rights, they can be evicted on the ground of having moved livestock into the area illegally. Many of them had no proper cattle movement permits. Since the cattle are not controlled by *sengenge* (fence), these cattle trample on people's crops (*okwonesa*). Cattle can only co-exist with crops if they are in a fenced area. These people cannot fence these lands because their 'titles' are suspect. They should, therefore, leave the area. There is no question of the Government 'settling' them because we are not the ones who sent them there. They should just go to wherever they came from or wherever they can settle legally. General Tinyefuza is already directed to effect this eviction.



Yoweri K. Museveni  
P R E S I D E N T.

Copy to: Hon. Minister of Lands, Housing & Urban Development

Attorney General

All area Members of Parliament/Buriisa District

Gen. Tinyefuza


LC V Chairperson Buriisa District

Ms. Florence Kiconco - Legal Assistant/State House

Figure 2: Letter by President Museveni ordering for the cancellation of fraudulently acquired titles in Buriisa District



TEL: 231900  
FAX: 235462  
E-MAIL: [shc@statehouse.go.ug](mailto:shc@statehouse.go.ug)  
IN: → CORRESPONDENCE ON THIS SUBJECT PLEASE QUOTE **PO/19**



THE REPUBLIC OF UGANDA

State House,  
P. O. Box 25497,  
Kampala,  
Uganda.

10<sup>th</sup> December, 2010

The Chief Administrative Officer  
Buriisa District

**RE: LAND ALLOCATIONS IN BURIISA**

Due to Public outcry by Wanaichi (local people), that prompted His Excellency the President to send a team of Lawyers to ascertain facts on the ground, the following directives must be adhered too in a bid to avert the existing mischief:

1. No more applications of any form touching land should be approved until the district technical team is fully constituted as per S.59(b) of the Land Act 227, inclusive of functioning area land committees.
2. All land applications already considered should be reviewed, examined, and those granted in error for instance on encumbered land be cancelled.
3. The district land board should be independent without directions or influence from any leader, person or body to pave way for legal compliance.
4. The district physical planner should immediately stop acting as Secretary District Land Board to avoid fusion of duties.
5. Buriisa District Land Board should work out the uniform compensation rates and liaise with the oil companies to implement the same.
6. Any civil servant/leader who takes advantage of his/her office to deprive the Wanaichi of their land should be reported to the authorities to allow the law takes its course.
7. Sensitization programmes should be conducted especially on land ownership and genuine communal land Associations.

These short term measures must be followed as we earn final and comprehensive remedies.

For clarity, the role of leaders is to protect the local people i.e. legal bibanja owners, bonafide occupants, and those settled by the Governments( who cannot defend themselves due to their economic in capacity and also not well informed of the existing laws.



Flora Kiconco

**For: PRINCIPAL PRIVATE SECRETARY  
TO HIS EXCELLENCY THE PRESIDENT**

**Copy to:** Area Members of Parliament  
Resident District Commissioner  
Chairman L.C V, Buriisa  
District Police Commander  
Chairman Buriisa District Land Board  
Area Land Committees  
Local Leaders

Figure 3: Letter by the Principle Private Secretary to the President, Flora Kiconco directing the CAO, Buliisa on land administration and management in the district

Telephone: General: 0414342931/3  
Hon. Minister: Direct: 04143233871  
Hon. Minister of State (Land): 04143231030  
Hon. Minister of State (Housing): 0414324245  
Hon. Minister of State (Urban Development): 0414326384  
Permanent Secretary: 04143233879  
Under Secretary: 04143233339  
Fax: 04143233881



THE REPUBLIC OF UGANDA

Uganda  
Vision 2040

MINISTRY OF LANDS, HOUSING  
AND URBAN DEVELOPMENT  
P.O. BOX 7096  
KAMPALA, UGANDA

In any correspondence on  
this subject please quote No. **LAD/90/126/3**

May 4, 2015

The Chief Administrative Officer  
Buliisa District Local Government  
**BULIISA**

**RE: STAY OF PROCESSING LAND APPLICATIONS FROM BULIISA  
DISTRICT**

The above subject matter refers.

Following the Presidential Directive of 2011 to stay the processing of all land transactions for the Albertine Graben (specifically Buliisa District), the Ministry of Lands, Housing and Urban Development together with the Ministry of Energy and Mineral Development conducted a fact finding field visit to Hoima and Buliisa Districts to investigate reports of land disputes arising from irregular / fraudulent allocation of big chunks of land to unscrupulous people who were speculating the existence of oil reserves in those areas.

During the field visits, the team held meetings with your District Technical Staff, District Land Board and the Oil companies to forge a way forward on the on-going allocations as well as the already titled land in the oil areas.

The findings and recommendations of the field visit are contained in a report, copy of which was submitted to your office.

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Vision: "Sustainable Land Use, Land Tenure Security, Affordable, Decent Housing and Organized Urban Development".

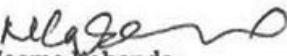


Among the Key recommendations, was to stay the ban on the processing of all land transactions in Buliisa District until investigations into this matter are completed. In addition, the report also recommended that the titles which were issued fraudulently and/ or irregularly by the District Land Board be cancelled. This report is now before the respective Parliamentary Committee chaired by the Rt. Hon. Prime Minister for consideration.

The purpose of this letter therefore, is to inform you that the moratorium on land transactions from Buliisa District, has not yet been lifted until the Committee completes its work and pronounces its self on the matter.

The Ministry will inform you of the next set of actions arising out of the committee's decision as soon as the matter is brought to its logical conclusion. A copy of the letter on the moratorium from **H.E the President Ref PO/13 dated 5<sup>th</sup> March, 2011** is attached for ease of reference and a copy of the Minutes from Buliisa Land Board of their meeting held on 26/06/2014 allocating land to various applicants is also attached for your information.

I thank you for your cooperation.

  
Naome Kabanda

For: **PERMANENT SECRETARY**

- c.c. The Minister of Lands, Housing and Urban Development
- c.c. The Permanent Secretary, Ministry of Energy and Mineral Development
- c.c. The Director, Land Management
- c.c. The Commissioner, Land Registration
- c.c. The Commissioner, Land Administration
- c.c. The Commissioner, Surveys and Mapping
- c.c. The Chairperson LCV, Buliisa
- c.c. The Resident District Commissioner, Buliisa District Local Government
- c.c. The Mayor, Buliisa Municipality
- c.c. The Chairperson, Buliisa District Land Board
- c.c. The Secretary, Buliisa District Land Board

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Vision: "Sustainable Land Use, Land Tenure Security, Affordable, Decent Housing and Organized Urban Development".

Figure 4: Letter by the Permanent Secretary, Ministry of Lands to the CAO, Buliisa putting a moratorium on land transactions in Buliisa District

It is important to note that the lack of titles by customary owners makes them vulnerable to land grabbing. The National Land Policy (NLP), 2013 notes that the lack of titles held by communal land-owners in the region was the major cause of tenure insecurity. Therefore, the need for cadastral surveys, demarcation of clear boundaries and documented rights in the region is therefore more urgent than ever.

It is therefore extremely peculiar that instead of adopting measures to proactively support the communities to protect their land rights, the government rather choose to issue a ban on titling with no clear timeline or benchmarks that must be achieved before the ban is lifted. Three years after the adoption of the National Land Policy, there has been no move to lift the ban.

## 2.0 Legal justification of the Ban

The 1995 Constitution provides for a general protection of property rights – it provides that every person is entitled to own property.<sup>11</sup> It further provides that a person shall not be compulsorily deprived of their property except where the deprivation is catered for within the confines of the Constitution – including the requirement for payment of prompt, fair and adequate compensation.<sup>12</sup> The Constitution vests paramount title to land in the citizens of Uganda and provides for four types of tenure; Freehold, Leasehold, Mailo and Customary tenure. It also stipulates that persons owning land under customary tenure may acquire certificates of ownership. Further, through registration, land under customary tenure may be converted into freehold.<sup>13</sup>

The Land Act Cap 227 provides for the tenure, ownership and management of land as well as amends and consolidates the law relating to these and other related or incidental matters.<sup>14</sup>

Land governance in Uganda is a function of the District Land Boards (DLBs) established under Article 240 of the Constitution. The Constitution prescribes the functions of the DLBs as being among others: facilitating the registration and transfer of interests in land and dealing with all matters connected with land in the district in accordance with the law. In the performance of its functions, the District Land Board is not subject to the

<sup>11</sup> Article 26 of the 1995 Constitution

<sup>12</sup> *ibid*

<sup>13</sup> Article 237

<sup>14</sup> ULA study

direction or control of any person or authority and is only required to take into account national and district policy on land.<sup>15</sup>

Following the directives of the President as per the communications dated 10<sup>th</sup> December 2010 by the Principle Private Secretary to the President, Flora Kiconco and the one dated 5<sup>th</sup> March 2011 by the president himself, the Ministry of Lands wrote to the Solicitor General seeking advice as to whether occupiers of land in oil exploration areas within the Albertine Graben could lawfully acquire land titles, in light of the administrative ban. In a response dated January 24<sup>th</sup> 2012, the Solicitor General discussed the nature of the District Land Boards as independent in facilitating the registration and transfer of interests in land, as provided for under Article 237(1) of the Constitution.

In his response, he stated,

“Basing on the advice as stated above, the occupiers of land in the Albertine Graben and Buliisa should be issued with titles. The law provides a process that government can use to acquire land if petroleum is discovered. This is under the Land Acquisition Act where the land owner is compensated for the land.”<sup>16</sup>

When presenting to Parliament, the Minister of Lands explained that the ban was necessary for physical planning. However, this has no legal basis. The National Land Policy stipulates that, “...through legislation and other measures Government will declare the entire country a physical planning area for effective land use and management.”<sup>17</sup> Automatically therefore, the entire country is a physical planning area- but this has not stopped the acquisition of titles elsewhere. The land use planning process has no impact on the titling process unless acquisition for planning purposes is required. If this is the case then the land may be compulsorily acquired as set out under the relevant laws. It would therefore suffice that the ban is not premised on any law. On the contrary, it stands out to direct the operations of the District Land Boards in the districts concerned contrary to the provisions of the Constitution.

Secondly, the ban undermines the very essence of property rights. One key aspect of land and any property ownership is agency. Property ownership grants the holder the discretion to handle the property however they wish, provided no law prohibits them from doing so. The

<sup>15</sup> Article 240-241 of the 1995 Constitution

<sup>16</sup> New Vision, 20<sup>th</sup> April 2012

<sup>17</sup> National Land Policy, 2013

ban on land titling prohibits untitled landowners in the Albertine from codifying their ownership, thereby robbing them of the agency granted to legal property owners – a scenario unknown in property law. By freezing titling, government has therefore unlawfully deprived citizens of their right to property ownership. While Article 242 of the Constitution authorizes the government to regulate land use, this can only be done under the provisions of the law, not through extra legal means like those employed in the Albertine land title freeze. At present, the only legally sanctioned method for government to interfere with individual land rights is during compulsory land acquisition, executed in the public interest.<sup>18</sup> In cases other than this, the law does not permit government to interfere with the full enjoyment of property rights by absolute owners.

Thirdly, it is pertinent to note the inconsistencies in the communications relating to the directive.<sup>19</sup> The initial communication by the Principle private Secretary to the president, Ms. Flora Kiconco dated 10<sup>th</sup> December 2010 stated among others that the District Land Board should be independent but then went on to prescribe exactly what should be done. Further, the communication by the President to the Prime Minister dated 5<sup>th</sup> March 2011 only directed the cancellation of fraudulent titles and the expulsion of cattle keepers from Buliisa- it made no mention of a moratorium in issuance of title. Yet in the communication of the Ministry of Lands to the CAO, Buliisa dated 4<sup>th</sup> May 2015, which directed a stay on processing titles, the Ministry of lands referenced the letter by the president to the prime minister dated 5<sup>th</sup> March 2011 as the basis of their directive.<sup>19</sup> This has only caused significant confusion.

Due to the suspect legality of the Albertine titling ban, some leaders in the Bunyoro region vowed not to respect it since it is not premised in any law. According to the Chairperson of the Buliisa District Land Board, “We as District Land Boards facilitate the processing of titles. Where do we get the mandate to stop people from processing titles for their land?”<sup>20</sup> However, even if districts were to contravene the ban, titles cannot be granted without central government. In the cases where the District Land Board has handled the preliminary title processing and land owners go to the National Lands Office in Entebbe with applications, they are told there is a ban on Bunyoro and their title cannot be processed.<sup>21</sup>

<sup>18</sup> As provided for under Article 237 and 26 of the 1995 Constitution.

<sup>19</sup> Letter of 10th December 2010, PO/19 from State House to the CAO Buliisa, Letter of 5th March 2011, PO/13 from the President to the Prime Minister, and letter of 4th May 2015, LAD/90/126/3 from the Ministry of Lands to the CAO Buliisa.

<sup>20</sup> <http://www.monitor.co.ug/News/National/-/688334/1376678/-/awomsgz/-/index.html>

<sup>21</sup> <http://www.monitor.co.ug/News/National/-/688334/1376678/-/awomsgz/-/index.html>

### 3.0 Impact on Tenure Security

Without a title, landholders do not have the legal evidence needed to protect them from competing claims and infringement on their land. Nor do owners without legal title have the means for proving, as prescribed by law, that they are indeed the owners of the land and thereby the sole possessors of the right to transfer the property. In essence, legal titles provide the titleholders with access to the legal system which, to a greater or lesser degree, functions to protect these rights of ownership.<sup>22</sup> It is therefore primary for security of tenure that the ban be overturned as it undermines security of tenure and the related bundle of rights premised on secure tenure.

### 3.1 Livelihoods and Socio Economic Development

Land is an asset and major source of capital in Uganda. It is important not only as the key source of livelihoods but also as a key driver of economic development. Private, long-term investment, and thereby overall economic development, requires secure ownership of land. The ban on issuance of titles not only puts the livelihoods of millions of customary land owners at risk but also undermines any land related developments. The ban on titling of land has therefore affected and in some cases put a halt to land driven economic developments in all sectors. While some impacts are already being experienced, it is expected that others will follow in the medium to long term.

#### i) Agriculture

An important influence on farmers' inclinations to make investments is their security of tenure. The hypothesis is that if farmers feel relatively secure in their possession of the land, they will be more inclined to make long-term capital investments and will devote more of their family labor to the farm enterprise. Raup (1967, p. 49) presents the basic idea: "Before you can risk your labor and your seed for a harvest that may be months away, you must have assurance that you will be able to reap where you have sown." In more formal terms, Villamizar (1984, p. 13) hypothesizes that farmers with relatively high levels of security of tenure "will invest with longer time horizons

<sup>22</sup> [http://www.newvision.co.ug/new\\_vision/news/1304175/bunyoro-mps-ban-issuing-land-titles-lifted#sthash.5JlG3M99.dpuf](http://www.newvision.co.ug/new_vision/news/1304175/bunyoro-mps-ban-issuing-land-titles-lifted#sthash.5JlG3M99.dpuf) accessed on May 26th 2016

given the longer period foreseen to recoup investment, since they are freed of fear of being expelled from the land they are working.”

### ii) Land market

The discovery of oil and gas has made land in the Albertine suddenly attractive to investors and speculators alike and perhaps for the first time, land in the region is a hot commercial commodity. However, secure ownership is necessary for a fluid land market. Effectively, the ban on tenure has put in abeyance the rights of land owners to sell or transfer their land. An individual who buys land not only wants to be certain that the seller has the right to sell, that he is the true owner of the land but that once he has acquired the property he can effectively claim ownership and assert his rights as a new owner. At the moment, any land transaction in the region is potentially subject to contestation of legality or legitimacy of the sale at a later date because new transfers cannot be registered and there is nothing to stop a land owner from selling it several times over.

### iii) Land as collateral

The credit market requires that borrowers promise to transfer their ownership rights of land to lenders if the borrowers do not repay their loans. Without marketable title - that is, without the borrower's secure possession of the right to transfer the land - institutional lenders are not inclined to accept the land as a mortgage guarantee. Legally valid ownership titles to the land give greater security to the persons wishing to acquire ownership (or some other interest such as a secured mortgage) that the sellers have the legal right to engage in transactions. Security of ownership in this case refers not only to the security of the present owner but also to the security of the potential owner that the transaction will result in the genuine transfer of ownership. This aspect of security of ownership permits the property to be treated as a marketable commodity and, as such, enters into the formation of a market economy, wherein the factors of production presumably flow freely from one owner to another.

## 3.2 Undermining Negotiation for Compensation

Proof of land ownership is a critical factor in negotiations for compensation and surface rights agreements. After years of debate and unrelenting advocacy from civil society, the National Land Policy was adopted in 2013. The policy acknowledges the threats to tenure security posed by



the discovery of oil and gas, especially for undocumented customary landowners. It states:

“...The recent discovery of petroleum deposits in the Albertine Graben has generated excitement in Uganda regarding the promise the resource may yield to the national economy; the energy subsector and to the national social well-being. It has equally raised concerns with issues of tenure, compensation displacement and resettlement. ....As anticipated the rush to secure land in oil rich areas is threatening communal lands, which are neither demarcated, surveyed nor titled. Cases of grabbing of land from indigenous communities are common, as customary owners are insecure because they do not possess formalized rights over and to benefit from sharing of royalties as provided for under the Constitution.”<sup>23</sup>

During the process of land acquisition for the refinery in Kabaale village and road works along the Hoima-Kaiso-Tonya Road in Hoima district, there were claims that the value of compensation differed greatly between those with titles and those without. Community members alleged that individuals with land titles were compensated near market value for their land compared to those without.<sup>24</sup> According to a study conducted by Uganda Land Alliance, the significance of documentation relates not only to the amount of compensation but to whether one receives any compensation at all. The absence of any kind of documentation makes it difficult for the land holders to prove or indicate their ownership.<sup>25</sup>

To this end, there has been speculation that the ban is intended to maintain the status quo and ensure that the government is not saddled with huge amounts in compensation for any land that might be required during the acquisition of land for oil related developments. This allegation suggests that the government instituted the ban to further disenfranchise, rather than protect landowners in the Graben. At the outset, the government stated that this was a temporary short term measure,

“...the ban will be lifted when government has finalized a comprehensive planning for oil developments in the area...government will expedite the planning process

<sup>23</sup> The Uganda National Land Policy, 2013

<sup>24</sup> The Uganda Contracts Monitoring Coalition, Report of the Meeting of Community Monitors in Buseruka Sub-County, Hoima District, July 2013

<sup>25</sup> Uganda Land Alliance, 'Land Grabbing and its effects on the communities in the Oil Rich Albertine Region: The Case of Hoim Bullisa and Amuru'

which will include gazetting areas for the refinery construction, pipelines, the location of the oil city and other oil related developments"<sup>26</sup>

This is partly one of the reasons why the local leaders contest the move by the government: according to area members of Parliament, the move is a deliberate ploy to compensate people in oil areas at rates far below the market value.<sup>27</sup> If landholders cannot get titles to their land and, thus, have less codified evidence of their ownership to prove their claims, government overall can spend less money on compensation. If there are less legal landowners, there are less people that the government is obligated to pay, or at lesser amounts. Hence, the land titling ban has the capacity to leave thousands of people landless with no money to buy land elsewhere.<sup>28</sup>

### 3.3 Perpetuating Land Grabbing

When announced, leaders from the Bunyoro region contested the ban arguing that it could escalate vulnerability and land grabbing. "You may find some big shots already processing titles on our land. Some of us have genuine ownership of land in those areas. What shall we do?"<sup>29</sup> Over the years since the ban was put into place, their fears turned out to be well founded.

Perhaps because of its questionable legal status, the ban on titling is being selectively implemented, to the detriment of the local people. While the ban continues, several individuals have been able to process and acquire titles:

"It is surprising that District Land Boards in Bunyoro are processing titles for immigrants yet the indigenous Banyoro are being denied chances of registering theirs on the pretext that there is a ban on titling land in the Albertine region" said one of the leaders of Hoima.<sup>30</sup>

<sup>26</sup> [http://www.newvision.co.ug/new\\_vision/news/1304175/bunyoro-mps-ban-issuing-land-titles-lifted#sthash.5JIG3M99.dpuf](http://www.newvision.co.ug/new_vision/news/1304175/bunyoro-mps-ban-issuing-land-titles-lifted#sthash.5JIG3M99.dpuf)

<sup>27</sup> Ibid

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Daily Monitor, Thursday October 15th 2015





Figure 5: A cross section of Internally Displace Persons at Kijaayo camp, Kiziranfumbi Sub County, Hoima District

Large parcels of land have been registered during the time of the ban; it is alleged that most of this land has been registered in the names of prominent people including senior government officials, their proxies and senior military officers.<sup>31</sup> Therefore, it seems that in practice the ban is only serving to block local landowners from acquiring titles while prominent individuals manipulate the system to do the same. So in reality, the ban has actually facilitated the exact type of land grabbing it was supposed to counteract.

<sup>31</sup> <http://allafrica.com/stories/201207200443.html>

**Figure 2: Sample of Titles Issued After the Ban**

	Description	Size	Proprietor	Date of Issuance
1	Plot 44 Block 7 at Rwamutonga, Katanga, Bugamb, Buhaguzi	103.553 Hectares	Bansigaraho Robert	Nov 1 <sup>st</sup> 2011
2	Plot 34, Block 5 at Kakoora, Rwamutonga, Katanga, Bugambe	382.897 Hectares	Tibagwa Joshua, Tibagwa Solomon, Kusiima Robinah, and others	July 13 <sup>th</sup> 2012
3	Block (Road) 21 and 19 at Kisindi/Kibaali	153.632 Hectares	Rutaro Francis Exervia	September 30 <sup>th</sup> 2014
4	Plot 93 Bugahya, Block 5 at Kiryamboga, Toonya. Buseruka	49.88 Hectares	Gids Consult Limited	January 9 <sup>th</sup> 2014
5	Block (Road) 21 Plot 27 at Kasindi Kibaali	14.80 Hectares	Rutaro Francis Exervia	February 12 <sup>th</sup> 2015
6	Block (Road) 21 Plot 29 at Kisindi/ Kibaali	40.4930 Hectares	Rutaro Francis Exervia	February 12 <sup>th</sup> 2015
7	Block(Road) 21 Plot 28 at Kisindi/Kibaali	57.9090 Hectares	Rutaro Francis Exervia	February 12 <sup>th</sup> 2015
8	Bugahya Block 5 Plot 29 at Kiryamboga	41.29 Hectares	Asiimwe Edward	2014
9	Bugahya Block 5 Plot 29 at Kiryamboga	20.4 Hectares	Kyamanywa	2014
10	Bugahya Block 5 Plot 33 at Kiryamboga	27.95 Hectares	Kizza Kenneth Alfred	2014
11	Bugahya Block 5 Plot 31 at Kiryamboga	20.45 Hectares	Byaruhanga Ireneo	2014
12	Bugahya Block 5 Plot 53 at Kiryamboga	33.41 Hectares	Agaba Edgar	2014

Source: Community Consultations conducted by CRED between 2014 and 2016

While some of these titles may be legitimate, in many cases the parcels of land being registered and the titles issued are contested by local occupants who claim customary interests- prior rights formally extinguished by the act of legal titling. For example, a one Robert Bansigaraho obtained a freehold for Block 7 Plot 44 at Rwamutonga in 2011, measuring 103 hectares – this land was occupied by local people as customary owners. In 2012, a one Joshua Tibagwa obtained a freehold title for an adjoining piece of land – Block 5 Plot 34 at Kakora measuring 382 hectares. The two land owners connived and sold their

interests to McAlester Energy Resources Company, a US-based company that intended to establish a waste treatment facility. On 25<sup>th</sup> August 2014, and without notice, hundreds of households were violently evicted. The evictees are incarcerated in an Internally Displaced Peoples' camp and are living in deplorable life conditions.<sup>32</sup> Their case is before the High court of Masindi.

The ban is therefore facilitating land grabs and enabling individuals with questionable and contested claims to fraudulently perfect their ownership.

Recognizing this, in a letter dated March 5<sup>th</sup> 2011, the President instructed the Ministry of Lands to investigate fraudulently acquired titles in Buliisa with a view towards cancellation.<sup>33</sup> While this is laudable, it is not an effective remedy. To date no such title has been cancelled. Under the Registration of Titles Act, once a title is issued; cancellation or any change is a long and arduous process often involving long court process. This is a drive not only for disputes but violent conflicts.

### 3.4 Fueling tribal sentiments and conflicts

The Albertine region is occupied by diverse ethnic groups that have lived together in harmony for generations. These include the Banyoro, Bahima, Banyarwanda, Alur and "native" Bagungu among others. Since the discovery of oil in the region, there have emerged new waves of ethnic conflicts fueled by competition for access to land and natural resources. Examples include the clash between the Bahima pastoralists and Bagungu cultivators in Buliisa district in 2007; the violent confrontation between the Alur and Bunyoro Kingdom royalists in Rwengabi village on 3<sup>rd</sup> December 2014 that left several people injured and houses torched; and the negative peace prevailing in Bugoigo village, Butiaba Sub County, Buliisa district between the Alur and the Bagungu. Quite often, indigenous communities in Hoima and Buliisa claim access to land that is possessed by persons from outside those districts, who are considered 'intruders', 'outsiders', or 'foreigners' leading to clashes. Conflicts of this nature are often sparked by land speculators who seek to divide communities with the view of grabbing their land. Many speculators have illegally obtained land titles in areas dominated by 'non indigenous groups' thus fuelling conflicts.

<sup>32</sup> Civic Response on Environment and Development et al, 'Up Against Giants: oil-influenced land injustices in the Albertine Graben in Uganda'

<sup>33</sup> Letter dated 5th March 2011, from the President to the Prime Minister, titled 'Land Disputes in Buliisa District'

### 3.5 Overlapping and Competing Claims

The discovery of oil in the region has escalated overlapping and competing claims on the same piece of land. Although the government has restored chunks of land to traditional institutions in the region, much of this land is unsurveyed, not titled and occupied by local communities. Similarly, landlords claiming title from the pre-1966 Bunyoro Kiara kingdom are unable to prove their ownership due to the colonial policy against land titling in the Bunyoro area. The ban on land titling seems to have worsened an already complicated situation. It makes it more difficult for the concerned parties to disentangle the overlapping claims. It also facilitates the emergence of new competing claims, leading to tenure insecurity.

## 4.0 Conclusion and Recommendations

### 4.1 Conclusion

The threats to the land and property rights of communities in the Bunyoro Region caused by the discovery of oil and gas are undisputed; similarly the multiple benefits of and importance of land documentation are universally acknowledged. According to the Ministry of Lands, Housing and Urban Development several benefits flow from land registration including: guarantee of ownership and security of tenure especially from land grabbing and illegal evictions, security for credit because of certainty of ownership; hence landowners can invest in their land, environmental protection and management through demarcation and titling of conservation areas, easy accessing and availability of land for the land markets; and supports the land and property taxation activities.<sup>34</sup>

The National Land Policy specifically recognizes the challenges to land tenure security and the land rights of local communities while the National Land Policy Implementation Action Plan identifies the Bunyoro region as a hotspot where communal land rights are threatened.<sup>35</sup> In light of this, it would be expected that government efforts would be directed at supporting communities to secure, protect and defend their property rights and claims. The primary means of doing this would be through titling as provided for under various laws.

<sup>34</sup> Ministry of Lands, Housing and Urban Development, Statistical Abstract, Vol 1, 2000

<sup>35</sup> National Land Policy Implementation Action Plan

The ban on titling therefore runs contrary to known land protection mechanisms and principles. It may have been a misguided attempt to maintain the status quo and prevent further disputes; however, this would have been effective only if stringently and uniformly implemented but it has not. The ban, and the subsequent failure to ensure strict adherence has in essence meant that while communities are unable to protect their land, it is in several instances being systematically alienated as well placed individuals secure titles and only show up to take possession. It has also conversely left the mainly untitled land in the region subject to speculation, multiple and overlapping transactions-none of which are being effectively documented and will ultimately result in competing claims and disputes.

As opined by the Solicitor General, there was no effective ban on land titling in the Albertine because it was an administrative pronouncement without legal basis. Constitutionally, District Land Boards are independent and do not work on the directives of any other person or authority. Yet in spite of the legal advice from the solicitor general, the Lands Ministry has continued in adherence to the ban and halted the issuance of land titles. There was no stated time limit for the operation of the ban and government seems to have forgotten its earlier pronouncement that it was a temporary measure.

## 4.2 Recommendations

- 1) The government should expressly revoke the supposed ban on titling. Although it is legally void, it is perceived as being the law and has indeed prevented many people from registering and subdividing their parcels especially the under privileged.
- 2) The government should consider options of protecting land interests of poor customary owners in the Albertine and strengthen tenure security for customary land owners across the country. The Ministry of Lands, as a matter of urgency, should promote a region-wide effort to register customary land in the oil region to safeguard rights of unregistered yet lawful customary residents.
- 3) The Ministry of Lands, Housing and Urban Development should review the titles issued during the subsistence of the ban with the view of determining the legality of the titles. Where it is found that land titles were issued over customary interests, the Ministry should take administrative steps of having those titles canceled.

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