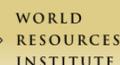


# Report on the Investment Environment and Safeguards Applicable to Large-Scale Agricultural Investments in Uganda

**Author: M. Mercedes Stickler, Associate, World Resources Institute**

September 18, 2012



**AFRICA BIODIVERSITY COLLABORATIVE GROUP**



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# Acronyms

ABCG	Africa Biodiversity Collaborative Group
EIA	Environmental impact assessment
FAO	Food and Agriculture Organization of the United Nations
NEMA	National Environmental Management Authority
PSCP	Private Sector Competitiveness Project
SDIP	Social Development Sector Strategic Investment Plan
UIA	Uganda Investment Authority
ULC	Uganda Land Commission
WRI	World Resources Institute

# Acknowledgments

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# Background

## LAND ACQUISITION CONTEXT

Following the spike in commodity prices in 2007–2008, media reports revealed that investors (e.g., government, international companies, venture capitalists) had expressed interest in 56 million ha of land for agriculture and forestry production in less than one year<sup>1</sup>. Sub-Saharan Africa accounted for 2/3 of this expressed demand. Despite the poor record of large agricultural investments in Africa and parts of Asia, the global median project size of 40,000 ha implies that these investments could have major implications for rural land rights and existing land users, especially smallholders. Alarming, countries with weak legal frameworks for recognizing rural land rights and poor business environments were most likely to be targeted by recent large land investments (Deininger et al. 2011).

Investor interest in farmland is expected to continue to increase as a result of several major global trends. The FAO (2009a) predicts that food production will have to increase by at least 70% by 2050 to meet the daily calorie needs of more than 9 billion people. This increase food demand is in turn driving demand for arable land. At the same time, demand for biofuels is growing in response to policy mandates in Europe, the United States, and elsewhere, that is creating competition for the world's finite supply of arable land. Demand for biofuels is likely to rise further as oil prices creep upwards. Meanwhile, the unpredictability of global food markets has led some major net food-importing nations (e.g., Bahrain, Saudi Arabia, South Korea) to pursue direct farming investments abroad to guarantee their food supplies. All of these trends are driving international (but also domestic) investor interest in large-scale land acquisitions for agriculture (food and biofuel crops). Nowhere is this trend more prominent than in sub-Saharan Africa, where governments are competing to attract investment in large areas of currently uncultivated arable land. While these investments are often justified for their potential to create jobs and increase food security, they also have the potential to cause profound effects on natural environments, critical ecosystem services and biodiversity in areas that have remained unaltered by large-scale agricultural production to date.

Considerable international attention has focused on investments in Ethiopia, Madagascar and Sudan, but other African countries are also allocating large plots of land to investors (Table 1). In Kenya, land in the Tana Delta is being allocated for sugar cane plantations, displacing hundreds of families and destroying one the Africa's most important bird habitats (McVeigh 2011). And in Cameroon, DR Congo and Congo (Brazzaville), natural forest is being allocated to foreign companies to develop large palm oil plantations (Land Matrix Portal 2012).

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<sup>1</sup> Compared with an annual average growth in the global cultivated area of just 1.9 million ha from 1990-2007 (FAO 2009b).

## PURPOSE AND METHODOLOGY

Considerably less international attention has been focused on Uganda, where the government has a history of allocating land for large-scale agricultural production. For example, media reports indicate that a deal is underway to lease 840,000 ha in Uganda (2.2% of the country's farmland) to Egypt for wheat and maize production to be shipped back (Sharma 2008). It has also been widely reported that the government has allowed large-scale farming operations in a number of protected areas, including Butamira Forest Reserve and several Forest Reserves on Bugala Island (Veit et al. 2008).

**Table 1:** Large Scale Land Acquisitions in East and Southern Africa

Target country	Number of deals	Total ha	Average ha per project
Ethiopia	71	4,748,753	67,839
Kenya	13	633,500	48,731
Madagascar	39	3,779,741	96,916
Malawi	7	310,147	44,307
Mozambique	103	2,190,473	24,892
Rwanda	1	3,100	3,100
Somalia	2	21,500	10,750
Uganda	7	121,512	20,252
Tanzania	55	1,324,475	25,471
Zambia	8	273,413	34,177
Zimbabwe	2	201,171	100,586

**Source:** Land Matrix Portal (2012)

This paper aims to help decision-makers better understand the following topics:

- i. The process through which investors—whether domestic or foreign, public or private—acquire agricultural land outside the protected estate<sup>2</sup> in Uganda.
- ii. The social and environmental safeguards applicable by law that are applied to this process.
- iii. The social and environmental implications of actual recent large-scale land acquisitions and potential projects in areas of high “risk” for land acquisition because of their conservation value and suitability for biofuels production.

Because of its key role in facilitating investor access to land, this paper will focus primarily on the role of the Uganda Investment Authority and its enabling legislation—the Investment Code Act of 1991. Other relevant government institutions and legislation will also be discussed to the extent that they interface with the duties of the Uganda Investment Authority.

This paper is based primarily on interviews with key informants in the Uganda Investment Authority (UIA), the Uganda Land Commission (ULC), and several leading Ugandan NGOs and private sector

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<sup>2</sup> Challenges related to private land acquisition in protected areas have been well documented in Uganda (see, for example, Tumushabe 2003, Tumushabe and Bainomugisha 2004, and Veit et al. 2008).

consultancies focused on land governance and environmental conservation. However, interviews with more than 15 other experts in government, the private sector, and civil society were completed to provide context for and corroborate information obtained from the key informants. Due to the sensitive nature of this topic, the names of all interviewees will remain anonymous, as will the names of all NGOs and private organizations. Information obtained from these interviews was also fact-checked and supplemented with a review of relevant literature on recent large-scale land acquisitions and legislation that applies to agricultural land acquisitions. Given the limited availability of peer-reviewed literature on this subject in Uganda and the resulting heavy reliance on key informant interviews, it is recommended that the results of this study be validated through further research.

The structure of the remainder of this paper is as follows. Section 2 presents a short overview of the land tenure context in Uganda and explains the restrictions on the rights of foreigners to hold land rights. Section 3 provides a brief overview of the mechanisms through which investors can acquire rights to agricultural land in Uganda. Section 4 highlights key features of the Investment Code Act related to land acquisition and describes how the UIA works in practice with other government agencies, especially the Uganda Land Commission, to help agricultural investors acquire farmland in Uganda. Section 5 provides information on the key social and environmental safeguards that apply to large-scale land acquisitions for agriculture and their application in practice. Based on the preceding information, Section 6 offers some suggested reforms to ensure that agricultural investments in Uganda contribute to national policy objectives, including poverty reduction and sustainable natural resource management. Section 7 concludes the paper.

# Land tenure in Uganda

The Constitution (Section 237(1)) states that “Land in Uganda belongs to the citizens of Uganda...in accordance with the land tenure systems provided for in this Constitution”, which are customary, freehold, *mailo* and leasehold. This principle—that land belongs to the people of Uganda—significantly diminishes the government’s authority to acquire land for agricultural investment. The Land Act of 1998 Cap 227 confirms that land belongs to the Ugandan people (Section 2) and elaborates upon the four categories of land ownership as follows.

**Customary tenure** is “owned in perpetuity” (Section 3(1)(h) of the Land Act) by the local people and is subject to “local customary regulation and management” (Section 3(1)(e)), including communal ownership (Section 3(1)(f)). Holders of customary land can acquire a certificate of customary ownership (Section 4) that “is conclusive evidence of the customary rights and interests specified in it” (Section 8(1)). Section 8(7) states that “a certificate of customary ownership shall be recognized by financial institutions, bodies and authorities as a valid certificate for purposes of evidence of title.” Thus, the Land Act provides for the certificate of customary ownership as conclusive proof for ownership of customary land. However, in many areas, customary land owners have not applied for the certificate because the government has not provided a framework through which the certificates can be issued—as a result, land registries do not have a system in place to issue the certificates. Moreover, in practice banks do not recognize certificates of customary ownership as collateral. To promote official recognition of customary ownership that is on par with the documentation provided for other tenure categories, such as titles and leases on freehold or *mailo* land (see below), the Ministry of Lands, Housing and Urban Development has recently introduced a “customary title.” Although this new document does not differ appreciably from the certificate of customary ownership envisaged under the Land Act, it is hoped that the customary title will increase the security of customary tenure (Ojwee 2012) and facilitate investment by making customary titles commensurate with freehold titles. Roughly 69 percent of all land in Uganda falls under customary tenure; much of this land is in the north and east of the country (MLHUD 2010, Terra Firma 2011).

**Freehold tenure** “involves the holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition” (Section 3(2)(a)). It provides the holder with full rights to use, develop, transact, or dispose of the land (Section 3(2)(b)(i-iv)). Holders of freehold land are eligible to register their rights through a freehold title (Section 3(3)). Freehold tenure represents about 18.6percent of all land in Uganda (MLHUD 2010).

**Mailo tenure** “involves the holding of registered land in perpetuity” (Section 3(4)(a)) and “permits the separation of ownership of land from the ownership of developments on land made by a lawful or bona fide occupant” (Section 3(4)(b)). The tenets of land holding under *mailo* tenure are almost the same as under freehold tenure, except that *mailo* tenure derives from lands that were historically awarded in freehold to chiefs of the Buganda kingdom who collaborated in the British conquest of the Buganda from 1890–1900 (Terra Firma 2011). The term “*mailo*” is derived from the measurement of these land grants in square miles. The Land Act (Section 3(4)(b)(c)) also recognizes the usufruct rights

of tenants, known as *kibanja* (pl. *bibanja*). Both the Act and its 2010 Amendment uphold the rights of *mailo* tenants (*bibanja* holders) and limit the powers of *mailo* owners to make land management decisions without the consultation and consent of *bibanja* holders (Terra Firma 2011). In practice, however the relationship between *mailo* tenants and owners has been interpreted in different ways that reflect a long history of unequal power relations (Terra Firma 2011). *Mailo* tenure is found in the central region and parts of western Uganda and covers some 9 percent of the land (MLHUD 2010).

**Leasehold tenure** is created by contract or by law that describes the relationship between a landlord (lessor) and a tenant (lessee) (Section 3(5)(a)). It is usually limited to a specified time period and may be subject to rent (Section 3(5)(c-d)). Leasehold tenure essentially confers freehold rights to both the landlord and the tenant “subject to the terms and conditions of the lease” (Section 3(5)(e)). Leasehold tenure accounts for just 3.6 percent of land in Uganda; some of this land falls within the *mailo* areas (MLHUD 2010, Terra Firma 2011)

**Foreigners** cannot own land in Uganda—they can only acquire leasehold rights to land (Land Act of 1998, Section 40(1)). A noncitizen of Uganda cannot acquire a lease exceeding 99 years (Section 40(3)), and all leases of at least five years acquired by noncitizens must be registered in accordance with the Registration of Titles Act (Section 40(2)). By law, noncitizens are not eligible to acquire or hold *mailo* or freehold land (Section 40(4)).

# Land acquisition for agricultural investment

Before describing the various mechanisms through which investors acquire agricultural land in Uganda, it is important to briefly consider why the government may want to help investors secure agricultural land in the first place and what implications different agricultural development models may have for various policy goals, including poverty alleviation and agricultural productivity.

## GLOBAL EVIDENCE ON LAND ACQUISITION FOR AGRICULTURAL INVESTMENT

Although recent investor interest in large-scale land acquisition for agricultural production has generated considerable international attention, neither large-scale farming nor private investor interest in commercial agricultural production are new phenomena. As such, recent and historical evidence on large-scale agricultural land acquisitions worldwide can provide some insights into why investors would want to secure rights to agricultural land for production enterprises. This sub-section will provide some context for the detailed discussion on the Ugandan experience, but readers are encouraged to review the literature on farm sizes and agricultural development models.

In the absence of policy distortions, agricultural production is characterized by dis-economies of scale that make smaller farms more competitive than larger ones (Binswanger, Deininger, and Feder 1995). In fact, with the exception of some plantation crops that require timely and expensive processing, such as sugarcane and oil palm, smallholder production models have proven efficient vehicles for increasing agricultural productivity while combating poverty (Deininger et al. 2011). However, a number of policy and market factors may make large farms more attractive to private investors.

Firstly, larger farmers are often able to obtain domestic finance on better terms than smaller farmers because of the high transaction costs associated with lending in dispersed rural markets. Larger farms may also be able to more easily access global financial markets, which can offer loans at much lower costs than domestic markets (Deininger, et al. 2011). Secondly, large farms can reportedly reduce input costs by 10–20 percent, which can give them an important edge in highly competitive global agricultural markets (Manciana, Trucco, and Pineiro 2009). Thirdly, large investors can provide services to their farms where public sector support is lacking, for example by building their own transportation and logistics infrastructure (Deininger et al. 2011). Finally, larger farms may be better able than smallholders to meet “importing countries’ increasingly stringent requirements on product quality and food safety,” particularly given larger farms’ greater ability to access capital-intensive technology (Deininger et al. 2011, p. 31).

However, direct land acquisition may not be always required to facilitate private investment in agricultural production. An emerging model tested in Argentina and elsewhere in Latin America involves farm management companies that rent land and equipment rather than own it outright (Manciana, Trucco, and Pineiro 2009; Regunaga 2010). Competitive land lease markets in Argentina are based on clear property rights, and the annual lease contracts offered by the management companies

suggest that landowners can also benefit from this model (Manciana, Trucco, and Pineiro 2009). The experience to date with this innovative model implies that while investors do not necessarily need to acquire freehold rights to implement large-scale farms, secure land rights are critical for both investors and existing landholders to benefit from increased agro-investment.

Furthermore, international evidence on the impacts of different agricultural development models suggests that production models based on smallholders—whether as independent producers or outgrowers—result in higher job and income gains without efficiency losses compared to large commercial farms. In fact, experience with large-scale agricultural concessions in Africa, Southeast Asia, and other regions suggests that this model may not always lead to local job creation on a scale commensurate with the costs to existing landholders displaced to create the concession (Table 2). Given that each hectare of rural land in Uganda is estimated to support roughly four rural people (Fischer and Shah 2010), at least 4,000 jobs—or commensurate compensation—would be needed just to offset the average number of people displaced to create a 1,000ha commercial farm. However, as Table 2 shows, the large-scale investments that replace smallholder farms typically fall far short of this level of job creation.

**Table 2:** Key Factor Ratios in Case Studies of Large-Scale Investments

Commodity	Jobs per 1,000 ha	InvestmentUS\$/ha	InvestmentUS\$/job
Grains	10	450	45,000
Jatropha	420	1,000	2,400
Oil palm	350	4,000	11,400
Forestry	20	7,000	360,000
Rubber	420	1,500	3,600
Sorghum	53	900	17,000
Soybean	18	3,600	200,000
Sugarcane-ethanol <sup>a</sup>	153	5,150	33,600
Sugarcane-ethanol <sup>b</sup>	150	15,500	105,000
Sugarcane-ethanol <sup>c</sup>	700	14,000	20,000
Wheat-soybean	16	6,000	375,000

**Source:** Deininger et al. (2011, p. 39)

**Note:** a. Rainfed, one-third mechanized harvest (Brazil). b. Irrigated, mechanized harvest (Mozambique). c. Irrigated, manual harvest (Tanzania).

Moreover, evidence suggests that the wages farm workers earn laboring on commercial farms are often considerably lower than the income they would have earned cultivating a comparable area independently or as outgrowers (Deininger et al. 2011). A recent global review of farm incomes for smallholders relative to wages earned on large-scale farms found that (in all but one case) smallholders earned more income from independent cultivation than they would as laborers on commercial farms (Table 3). The farm income-to-wage ratio for an irrigated sugarcane farmer in Zambia was 6.09, and for an independent oil palm grower in Cameroon it was 3.05 (Deininger et al. 2011). Therefore, to the extent that poverty alleviation remains an important policy goal for agricultural development, the

government of Uganda may want to promote smallholder-friendly agricultural development models rather than help investors acquire large areas of farmland.

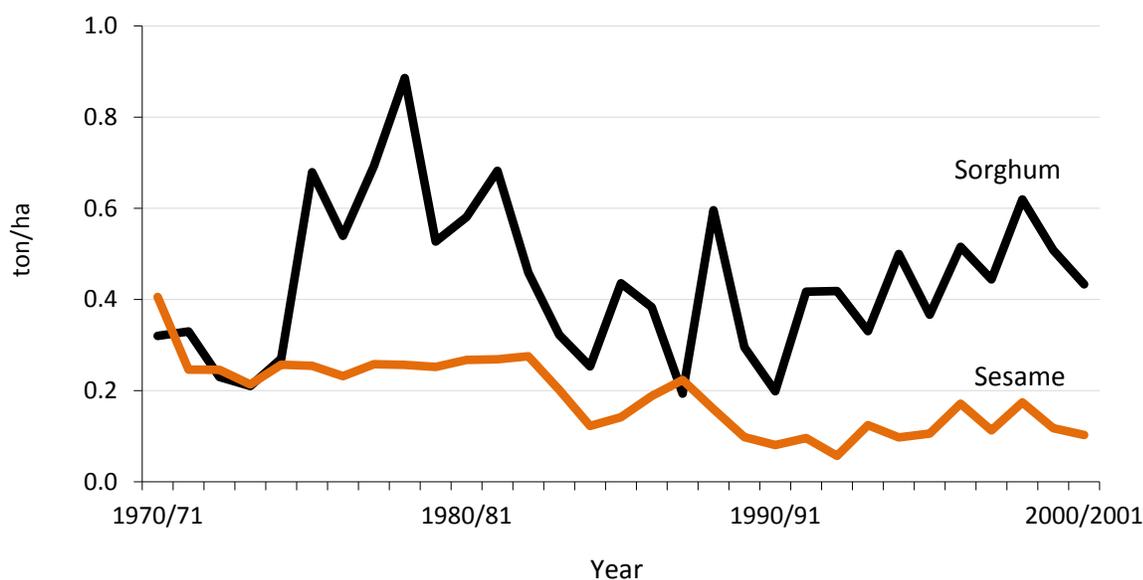
**Table 3:** Summary of Analysis of Farm Incomes for Smallholders Relative to Wage Employment on Large-Scale Farms

Commodity	Ratio of smallholder to large-scale for:			Family labor days/yr <sup>a</sup>	Farm income US\$/yr <sup>b</sup>	Wages US\$/yr <sup>c</sup>	Farm income-to-wage-ratio
	Yields	Labor/ha	Cost/ton				
<b>Sugarcane</b>							
Zambia 1 ha irrigated	0.78	4.8	0.86	598	2,118	348	6.09
<b>Oil palm</b>							
Indonesia 2 ha outgrower	0.89	0.92	1.04	322	2,067	990	2.09
Indonesia 2 ha low output	0.47	0.48	1.00	192	873	990	0.88
Cameroon 2 ha independent	0.62	0.90	0.36	200	1,770	580	3.05
<b>Rubber</b>							
Malaysia 1 ha independent	0.60	1.22	1.63	72	810	624	1.30
<b>Grains</b>							
Nigeria 5 ha independent maize	0.50	0.53	1.18	100	1,563	500	3.13
Zambia 5 ha independent maize	0.67	5.06	0.91	260	1,316	290	4.54
Cameroon 5 ha independent maize	0.74	0.84	0.93	490	1,526	154	9.91
Sudan 20 ha sorghum	1.00	2.00	0.74	200	1,994	319	6.10

**Source:** Deininger, et al. (2011), based on the following: Sugarcane and maize for Nigeria and Zambia using emerging farmer category where possible (World Bank, 2009); oil palm and maize for Cameroon using high input smallholder (World Bank, 2008); oil palm for Indonesia (Zen, Barlow and Gondowarsito, 2006); rubber for Malaysia (Barlow, 1997); sorghum for Sudan (Government of Sudan, 2009)

**Notes:** a. Not corrected. b. Corrected. c. Wages for cultivating an equivalent area on a commercial farm.

Large farms are often promoted for their perceived ability to increase agricultural productivity beyond the level smallholders could achieve. However, evidence from Africa and elsewhere has shown that small-scale farms are more efficient (and produce more jobs) than larger farms (e.g. Binswanger, Deininger, and Feder 1995; Christodoulou and Vink 1990; van Zyl et al. 1995). Moreover, the experience of Sudan, which promoted large-scale, semi-mechanized commercial farms in the 1970s, offers a particularly cautionary tale. The government awarded some 5.5 million hectares to investors to boost sorghum and sesame seed production; although, as much as 11 million ha were encroached upon (UNEP 2007; Government of Sudan 2009). Small-scale farmers and pastoralists who had previously used the land lost their land rights, which contributed to severe conflicts over land access locally and to broader conflict in the region (Johnson 2003; Pantuliano 2007). Moreover, crop yields actually decreased over time (Figure 1), partly as a result of low investments in technology and soil fertility maintenance due to the tenure insecurity and conflict caused by displacing the existing land holders (Deininger et al. 2011). After the land was cleared of its natural vegetation and degraded by poor production practices, many large farms were abandoned.



**Figure 1:** Yields on semi-mechanized farms in Sudan.  
**Source:** Deininger et al. 2011 based on Government of Sudan, 2009; official statistics

Experience with large-scale farming schemes elsewhere in Africa suggests Sudan’s experience is not isolated. Efforts to introduce large-scale rainfed wheat farms in Tanzania displaced pastoralists from some 40,000 ha of prime grazing land, yet wheat production has been declining as these enterprises were ultimately deemed unprofitable (Lane and Pretty 1991; Rogers 2004). In Nigeria, large-scale mechanized irrigated wheat projects begun in the 1970s and 1980s have also been largely abandoned (Andrae and Beckman 1985). These examples suggest that other countries in the region will need to carefully weigh all of the costs involved in creating large-scale commercial farms—not just the production costs as compared to other global producers, but also in terms of displaced livelihoods and lost natural vegetation—before embarking on new efforts to promote large-scale production models that displace and exclude existing smallholders and other land users, such as pastoralists.

Despite this international experience, the government of Uganda has apparently concluded that making land available for commercial agriculture investments is a pre-requisite for attracting private investment. However, a number of external reviews of Uganda’s private sector competitiveness have highlighted the difficulties that businesses in all sectors face in acquiring any land in Uganda (World Bank 2004; US DOS 2011). Inefficient (and sometimes corrupt) administration of the title registration system reportedly makes it expensive to verify land ownership, which complicates land transfers (World Bank 2004; US DOS 2011). The inability to efficiently identify landowners and execute foreclosures makes commercial banks reluctant to accept land as collateral for loans (World Bank 2004). The low overall rate of land registration (only some 20% of land is registered) and difficulties of navigating customary tenure systems on unregistered land make it difficult for investors to acquire

land with a clear title (World Bank 2004; US DOS 2011). As a result, many businesses have identified access to land as a primary constraint to their establishment and growth.

To address these shortcomings, the government has implemented a number of reforms—that will be discussed below—to facilitate the land acquisition process for investors. However, these reforms have been implemented in the absence of any coherent, over-arching policy framework to govern land acquisition or agricultural development. The government’s decision to help investors acquire large areas of agricultural land was apparently taken without even considering the broader policy goals it hopes to achieve by promoting private investment in agricultural production or the role of existing smallholders in developing the competitiveness of Uganda’s agriculture sector. As will be shown below, this lack of an organized policy framework has created opportunities for various agencies to interpret the existing laws in different ways that can undermine the security of tenure not only for investors, but especially for existing owners and tenants.

Given rising investor interest in Uganda’s farmland, there is an urgent need for the government—in consultation with a wide variety of stakeholders, especially local landholders—to determine which policy goals it wants to promote through its agricultural development policy framework, and then—only after these goals have been agreed—to develop the appropriate policy, legal and institutional frameworks to meet these goals. An agricultural development policy whose primary aim is to alleviate poverty *may* require different policy tools than a policy that aims to increase export or tax revenues. Determining the fundamental goals of an integrated agricultural policy will be critical to support the design and implementation of a coherent policy framework for private investment in agricultural production and agricultural development more broadly. While identifying these goals is the responsibility of the government on behalf of—and in consultation with—the people of Uganda, this policy discussion could benefit from existing evidence on the impacts of different agricultural development models in Uganda and other countries in the region and around the world.

## **LAND ACQUISITION MECHANISMS FOR AGRICULTURAL INVESTORS IN UGANDA**

Currently, there are two primary mechanisms through which investors can acquire land for agricultural investment in Uganda: through direct negotiation with private land owners (possibly with government facilitation) or through the acquisition of government land held by various agencies, including the District Land Boards, the Uganda Land Commission, or the Uganda Investment Authority. Each of these mechanisms will be discussed briefly below before a deeper analysis of the role of the Uganda Investment Authority is presented.

### ***Private land acquisition***

Investors can purchase (domestic investors only) or lease (domestic or foreign investors) land through direct negotiation with private land owners. The Investment Code Act of 1991 defines “foreign investor” to mean “a person who is not a citizen of Uganda; a company...in which more than 50 percent of the shares are held by a person who is not a citizen of Uganda; [or] a partnership in which the majority of partners are not citizens of Uganda” (Part III, Section 9). In practice, foreign investors

most often acquire leasehold land because of the complex tenure systems governing *mailo* and customary land (US DOS 2011).

All leases on *mailo* land are subject to the interests of bonafide or lawful occupants who have the right to reside there (US DOS 2011). Investors are further required to compensate lawful occupants for improvements on the land. Compensation procedures for land acquired by the government are regulated by the Land Acquisition Act of 1965; however, it is not clear that any legislation regulates compensation where private investors acquire land directly. Although the UIA helps investors determine which occupants are ‘bonafide’ or ‘lawful’, dealing with *mailo* land occupants has proved particularly difficult for investors.

Customary land is also typically unattractive to investors because it lacks title and is not surveyed, making it ineligible for use as collateral with banks (US DOS 2011). Since customary land is governed by the “unwritten, customary laws” specific to the area, it is difficult for investors to identify legitimate holders of customary land (US DOS 2011). However, the new customary titles are intended to facilitate investment by making it possible to register these titles as collateral with banks.

### ***Government land acquisition***

Investors can also lease land held by various government agencies, including the District Land Boards, which are authorized to hold land on behalf of local governments, and the Uganda Land Commission (ULC), which, according to Section 49(a) of the Land Act, is authorized to “hold and manage any land in Uganda which is vested in or acquired by the government in accordance with the Constitution.” As will be discussed below, a limited number of investors have also acquired lands directly held by the Uganda Investment Authority. However, there is currently no enabling legislation that specifies the procedures for any of these agencies to allocate land to investors. There is also no legal definition of “public”, “government”, and “local government” land, which makes it difficult to determine which agency has authority or a given parcel of land (Bogere 2011).

There are also important on-going debates about the authority of the government to compulsorily acquire land for the purpose of allocating it to investors. The Constitution (Section 26(2)(a)), the Land Act of 1998 and the Land Acquisition Act Cap. 226 of 1965 prohibit the government from using compulsory acquisition to promote investment. The government has tried to overturn these provisions, including most recently through the Draft National Land Policy, but its attempts to include the authority to use compulsory acquisition for investment promotion in the Draft National Land Policy were rebuffed by stiff opposition from civil society and communities consulted on the draft document. As a result, the final Draft National Land Policy (March 2011) prohibits compulsory acquisition for private investment (MLHUD 2011). However, the government can still purchase or lease privately held land for the purpose of allocating it to an investor.

Because the UIA is legally authorized to facilitate investor access to land, the next section provides more detail on the role of the UIA in helping investors acquire farmland—in law and in practice.

# The role of the UIA in helping investors acquire agricultural land

The Uganda Investment Authority is legally empowered to promote investment in Uganda, including by facilitating investor access to land. The first sub-section below briefly describes provisions of the Investment Code Act (“the Act”), Cap 92 of 1991<sup>3</sup> and other legislation relevant to the process of acquiring and allocating agricultural land for large-scale investment. The next sub-section critically examines how these provisions have been applied in practice based on key informant interviews with the UIA, the Uganda Land Commission, and civil society experts.

## AUTHORITIES PROVIDED IN THE INVESTMENT CODE ACT

At just twenty-two pages, the Act is fairly concise. The Act creates the Uganda Investment Authority (UIA), whose functions are, *inter alia*:

- “to promote, facilitate, and supervise investments in Uganda;
- to receive all applications for investment licences for investors intending to establish or set up businesses enterprises in Uganda under this Code and to issue licences and certificates of incentives in accordance with this Code.
- to secure all licenses, authorizations, approvals, and permits required to enable any approval granted by the authority t[o] have full effect;
- to do all other acts as are required to be done under this Code or are necessary or conducive to the performance of the functions of the authority” (Part II, Section 6).

In establishing the Uganda Investment Authority, the Act specifies that “The authority shall be a body corporate...capable of acquiring and holding property” (Part II, Section 2(3)). It appears that the UIA has chosen to broadly interpret this authority, which was meant to empower the UIA to acquire land for its own use as a body corporate, to include acquiring and holding property for allocation to investors. However, the UIA was not granted the express power to acquire land and then either sell it to investors or otherwise allocate it to them.

Given that the UIA is not explicitly legally authorized to acquire land on behalf of investors, it is perhaps unsurprising that there are no rules or regulations governing the UIA’s identification or acquisition of agricultural land for private investment. Neither does the Act itself specify any rules or

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<sup>3</sup> Although revisions to the Act have been proposed and forwarded to the Ministry of Finance, these revisions are awaiting consideration by Parliament.

regulations governing the allocation of agricultural lands<sup>4</sup> held by the UIA for private investment. Significantly, however, the Act does state unequivocally that “[n]o foreign investor shall carry on the business of crop production or acquire or be granted or lease land for the purpose of crop production or animal production” (Part III, Section 10(2)). However, a company that is 49% foreign-owned could still register as domestic company and circumvent this rule.

Although the Act does not explicitly provide the UIA with the authority to acquire, hold, or allocate land to investors, it does provide the UIA with the authority to *facilitate* investor access to land:

The executive director shall liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary in order to [sic.] assist an investment license holder in complying with any formalities or requirements for obtaining any permissions, authorizations, licenses, land and other things required for the purpose of the business enterprise. (Part III, Section 15(2))

However, there are no codified rules or regulations governing the UIA’s authority to facilitate investor access to land. The Act does not specify whether the UIA is responsible for helping investors acquire land from private owners or from other government agencies that hold land, such as the ULC or the District Land Boards. Neither does the Act specify how the UIA should interface with the other government institutions that have played roles in recent land acquisitions, including the Ministry of Agriculture and the National Forestry Authority.

The Investment Code Act stipulates that the UIA should appraise the capacity of the proposed investment to contribute to “locally or regionally balanced socioeconomic development” when considering an investment application (Section 12(e)). It also explains that a license may contain provisions requiring the investor “to take necessary steps to ensure that the operations of his or her business enterprise do not cause injury to the ecology or environment” (Section 18(2)(d)). However, the Act does not specify any sanctions for non-compliance with this optional provision. Beyond these two guidelines, the Act does not stipulate any social or environmental safeguards that apply to agricultural investments in Uganda. The Act also does not cross-reference relevant environmental laws and regulations governing the project development in Uganda.

Neither does the Investment Code Act specify or cross-reference any compensation procedures for existing occupants on land acquired for private investment. The Land Act (Section 59(1)(e)&(f)) stipulates that compensation for land acquired by the government is paid based on the current market price of the land in the area of the land to be acquired, which is valued annually by the District Land Board. Following the completion of established procedures<sup>5</sup>— which include surveying the land, making a declaration by law that the land is suitable, and providing at least 15 days’ notice for all people with interest in the land to present their claims—the Uganda Land Commission pays

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<sup>4</sup> The UIA does, however, have criteria for allocating land within its Industrial and Business Parks. In addition to meeting the minimum requirements for an investment license, investments wishing to obtain “free land” from the UIA must meet two out of three additional criteria: (i) total investment per acre must exceed US\$ 1 million; (ii) a minimum of 80 percent of the total product value must be exported as value added products; (iii) local employment must support a minimum of 30 semi-skilled or 15 skilled workers per acre (UIA 2010c, reported in Zeemeijer 2011).

<sup>5</sup> For further information on acquisition procedure, see “Fact 6/8/2011: The procedure through which Government can acquire private land” on the Uganda Land Alliance website (<http://ulaug.org/fact-sheets/>). Last access 11 April 2012.

compensation for the value of the land (Section 6(4)(b) of the Land Acquisition Act of 1965). The extent to which the UIA implements this legislation when acquiring land for investors will be discussed in the next section.

## **IMPLEMENTATION OF THE INVESTMENT ACT**

This sub-section relies primarily on key informant interviews to illustrate the *de facto* role of the Uganda Investment Authority in allocating land for agricultural investment and to draw conclusions about the implementation of the Investment Code Act of 1991. The section analyzes the UIA's role in facilitating investor access to land—which is explicitly authorized by the Act—separately from the UIA's role in directly acquiring, holding and allocating land for large-scale agricultural investment—which is not explicitly authorized by the Act—before highlighting challenges related to both roles.

### **Land acquisition facilitation**

The Investment Code Act does explicitly authorize the UIA executive director to “liaise with Government Ministries and departments, local authorities, and other bodies as may be necessary” to help investors acquire land (Section 15(2)). However, no rules or regulations have been promulgated to govern the exercise of this authority. Interviews with both the UIA and the Uganda Land Commission provided some insights into the role of the UIA in helping investors acquire both government and private land for agricultural production.

#### ***Government land acquisition***

When an investor requests UIA assistance in identifying land for an agricultural investment, the UIA may liaise with other government agencies to identify land that may be suitable for the investment. Several government agencies have recently been involved in allocating agricultural land for private investment in Uganda. These include the Uganda Land Commission, the District Land Boards, the Ministry of Agriculture, the Uganda Wildlife Authority, and the National Forestry Authority (Tumushabe 2003, Tumushabe and Bainomugisha 2004, Veit et al. 2008).

As previously mentioned, the Uganda Land Commission<sup>6</sup> (ULC) is authorized to “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution” (Section 49(a) of the Land Act). Prior to the 1995 Constitution, which created the ULC (Section 238(1)), various government institutions held and managed government land. For example, the government, through the Ministry of Agriculture, previously maintained model farms of 1,000 to 2,000 acres at each of 52 District Farm Institutes. This land, along with all other land vested in or acquired by

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<sup>6</sup> District Land Boards are authorized to “hold and allocate land in the district which is not owned by any person or authority” (Section 59(1)(a) of the Land Act). However, there is no legal distinction between lands under the authority of the Uganda Land Commission and those subject to the authority of District Land Boards (Bogere 2011). Moreover, one legal expert interviewed indicated that, in his view, it was not the role of the Land Boards to allocate land—that is the responsibility of the Uganda Land Commission. Therefore, this discussion focuses on the ULC.

the government<sup>7</sup>, is now held and managed by the ULC. As such, the UIA typically helps investors acquire government land through the Uganda Land Commission.

In response to an investor's request for land, the UIA may write a letter of recommendation to the government agency that formerly managed lands suitable for the investment (e.g. the Ministry of Agriculture) requesting that the agency authorize the ULC to transfer the title to the investor as a leasehold. The UIA recommendation is based on the information presented in the investment license (e.g. financial qualifications, technical qualifications, and experience in the sector). The ULC then consults its registry of government properties to identify properties that might meet the investor's needs.

There are no specific criteria or procedures for identifying government land that would be suitable for a given investment. At a minimum, the ULC considers the project profile, including the size of land required and the proposed use of the land, to determine which properties might be suitable. Once a suitable property has been identified, then the agency writes a letter to the ULC requesting them to permit the investor to lease the land (UIA 2010).

If the ULC approves the agency request, the ULC would then begin the process of transferring the title to the investor as a leasehold, typically for up to 49 years. As part of this process, a site visit is required to determine the current land use and identify any "squatters" (i.e. tenants) occupying the land. As described above, these tenants must either be resettled or compensated before the land can be transferred to the investor. While the investor is responsible for paying the compensation, various government agencies, including the ULC and the Chief Government Valuer, facilitate this process. However, it is not clear which authority has ultimate authority over the resettlement or compensation. Investors also typically pay ground rent<sup>8</sup> for the land.

### *Private land acquisition*

Given that only some 15% of land in Uganda is considered "government land," including forest reserves and national parks, it is unsurprising that investors would be interested in acquiring *private* land. The UIA maintains a database of private landowners who are interested in selling or leasing their land to investors. Using this database, the UIA links investors to landowners to help investors identify private land suitable for their proposed investment (Mitti 2011). The UIA does not hold rights to these properties. Rather, it acts as a broker by connecting investors and land owners, who privately negotiate the terms of lease or sale of the land.

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<sup>7</sup> The ULC (2012) considers that all national parks, forest reserves, and other protected areas are also 'government land' that can be allocated to investors. A thorough analysis of the legal challenges inherent in allocating protected areas for crop or livestock production is beyond the scope of this paper. However, the Constitution clearly states that the government is only empowered to hold such lands "in trust for the people...for ecological and touristic purposes for the common good of all citizens" (Section 237(2)(b)). It is also worth noting that recent legal challenges to the degazettement of protected reserves (e.g., Pian Upe Wildlife Reserve and Butamira Forest Reserve) to provide land for agricultural investments have confirmed that the government's authority as trustee of such lands does not include the power to degazette them for private investment (Tumushabe 2003; Tumushabe and Bainomugisha 2004).

<sup>8</sup> The Land Act (Section 31(3) requires "the tenant by occupancy shall pay to the registered owner an annual nominal ground rent as shall be determined by the board", i.e. the District Land Board. Section 31(5) limits this ground rent to a maximum of one thousand shillings per year regardless of the area or location of the land.

When an investor requests the UIA's assistance in acquiring private land, the UIA prepares a "short list" of properties tailored to meet the investor's needs based on the information provided in their investment license application and/or the Land Request Form. Typically, the UIA consults with the Ministry of Agriculture to determine which areas of the country are best suited for growing different crops. The UIA also relies on local knowledge of which crops grow best in different areas to identify properties that would likely suit the investor's needs. Beyond this desk review, investors are expected to complete their own site visit and any other investigations (e.g. soil sampling) necessary to determine the suitability of the land for their proposed investment.

Once a suitable property has been identified, the investor must negotiate directly with land owners (and tenants, where relevant) on the price and terms of the lease or title transfer. The Land Act of 1998 Cap 227 (Section 29) recognizes the rights of "bona fide" and "lawful" tenants to occupy and utilize lands held by a registered owner (i.e. title holder). The 2010 Land (Amendment) Act further reinforced tenant rights on *mailo* land (Terra Firma 2011).

A thorough discussion of the statutory protections granted to tenants (occupants) is beyond the scope of this study. However, it is worth noting that, according to the Land Act, all tenants are entitled to tenure security (Article 31(1)) and to the right of first refusal where the owner wishes to sell land occupied by tenants (Article 35(1) and Article 35(2)). In practice, "bona fide" and "lawful" occupants are entitled to compensation or resettlement when an investor wishes to acquire the lands they occupy. Interviews with both UIA and Uganda Land Commission confirmed that land identified for investment must be cleared of "squatters" before the investor can acquire the land (Box 1).

### **Box 1: Loaded Vocabulary—“Squatters” and “Encroachers” vs. “Occupants” and “Tenants”**

The use of the term "squatters" or "encroachers" to refer to occupants or tenants suggests that tenant rights may not be adequately enforced in the context of land acquisition for investment. It "illustrates the hard-line position that (some) landowners take towards people who have established historic land rights over their land" (Terra Firma 2011). In fact, occupants displaced without compensation by recent high profile investments have disputed their classification as "squatters" rather than "bona fide" or "lawful" occupants (see, for example, Grainger and Geary 2011).

As Grainger and Geary (2011) note in their case study on the evictions that made way for the New Forests Company timber plantations (see below), the word "encroachers" or "illegal encroachers"

...is a dangerously loaded term because it pre-judges people's rights and dehumanizes them, making it easier to justify violent tactics. And it is arguably a misleading term too, because the people maintain that they did in fact have lawful entitlement to the land and were testing that argument in ongoing legal cases. (Page 4)

It is troubling, then, that both the UIA and the ULC used the term "squatters" in recent interviews (Mitti 2011).

The UIA helps the investor identify legitimate owners and “bona fide” or “lawful” occupants by conducting a title search at the Ministry of Lands. However, only about 20 percent of all land in Uganda is registered. Uganda is also estimated to have over 8,000 fake titles, making it difficult to determine legitimate land owners even if the land is registered and a title can be located (US DOS 2011, World Bank 2011).

As such, it is unsurprising that “businesses generally deem acquisition of land with a ‘clean title’ as one of their biggest challenges” (US DOS 2011). Moreover, the bureaucracy in land departments, land boards and Registrars of titles office is such that it is nearly impossible for a genuine investor to acquire the land required for investment, even if it is just an acre. For all these reasons, many investors thus prefer to acquire lands from the government rather than from private owners. This may be why the UIA started acquiring land itself for allocation to investors.

While it is the responsibility of the investor to pay compensation to these occupants, the UIA reportedly engages the expertise of the Chief Government Valuer to inspect the property and determine its value for the purpose of setting compensation fees. The Government Valuer has no official role in private land acquisition, which is a transaction between a willing buyer and a willing seller. However, the Valuer may give an indicative price to the current owners for the purpose of facilitating a transaction with an investor. Investors typically retain lawyers to handle compensation negotiations with occupants. The Uganda Land Commission may also negotiate on behalf of the investor with the tenants to ensure the investor pays a fair compensation value.

Once the investor has compensated any occupants and agreed on the price and terms of the sale or lease with the owner(s), the investor is eligible to apply for a transfer of the lease or title. The Ministry of Lands published a detailed newspaper advertisement that describes the procedures and fees for land registration services in Uganda<sup>9</sup>. The World Bank’s “Doing Business” website<sup>10</sup> also provides details on this process (World Bank 2012a). Since the UIA is not directly involved in this process, no further discussion is merited here.

## **Direct land allocation by UIA**

Despite lacking clear legal authority to acquire land for investors, the UIA has acquired several rural properties<sup>11</sup> for allocating to agricultural investors. Although the UIA does not use the term “land bank” to refer to these properties, the Draft National Land Policy does envision creating such an institution (Box 2). The UIA does maintain a registry of lands acquired by UIA and allocated to investors. This registry specifies the terms of the land deal, including the property name, name of investor, effective date, land area, location, period of lease, premium paid, annual ground rent, and date the ground rental payment is due annually. Although this registry was made available for this research, these data remain private at the request of the investors.

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<sup>9</sup><http://ulaug.org/new/wp-content/uploads/Procedures-Fees-for-Land-Registration.pdf>

<sup>10</sup> <http://www.doingbusiness.org/data/exploreeconomies/uganda/registering-property>

<sup>11</sup> Since this research is focused primarily on land for agricultural production, all figures relevant to industrial and business parks, which are primarily urban developments designed to promote the ICT, agro-processing, and mining industries, will be omitted from the analysis (UIA 2011).

## Box 2: Proposed Creation of a “Land Bank”

The final version of the Draft National Land Policy (Section 89(1)(e)) calls for the government to “assemble land and allocate it through a land bank” to facilitate private investment (MLHUD 2011). The draft policy does not specify the management or activities of the proposed land bank. Nonetheless, interviews with government officials and civil society leaders knowledgeable about the draft policy suggest that the land bank would be managed by either the UIA or the Uganda Land Commission, which is responsible for managing government land. The land bank would hold titled land purchased proactively (i.e. without a specific investment application) by the government for allocating to future investors. The government would also ensure the land is free from occupants.

According to the UIA, the Authority can purchase land directly from individuals, communities, or cooperatives wishing to sell land that is “unencumbered (free of squatters)”, properly titled, and free of conflict (Mitti 2011). Once the UIA has purchased the land, the titles are “automatically” converted to freehold. Since 1997, the UIA has purchased six rural properties from private individuals using government funds. In total, the UIA has purchased some 25,570 acres (6 parcels) of agricultural land from private land owners, of which 6,460 acres (4 parcels) were freehold; 12,800 acres (1 parcel) were leasehold; and 6,200 acres (1 parcel) were *mailo* land<sup>12</sup> before they were purchased by UIA (UIA 2012c). The parcels range in size from just 20 acres to 12,800 acres, with an average of 4,262 acres.

The prices paid by the UIA for these lands vary widely and do not reflect average market prices<sup>13</sup>. On average, the UIA paid private land owners \$296/acre for these properties, with a high of \$728 for land in Kasangati and a low of \$19 for Masindi farmland. According to an interview with the UIA, the price of an acre of farmland varies between roughly \$330 in Mubende and \$500 in Mukono. However, the UIA paid just \$57/acre for acquiring 6,205 acres of farmland in Mubende.

Moreover, lands acquired by the UIA are not always unencumbered of legal or illegal occupants<sup>14</sup> (UIA 2012c). In such cases, the UIA works with the local council (local administrative authority) to identify tenants eligible to receive compensation (Mitti 2011). The Chief Government Valuer determines the value of compensation based on the values set annually by the District Land Board for crops and other property. The compensation value paid to tenants includes the value of crops and improvements on the land (e.g. house or other structures), plus a disturbance allowance of 30% of the value of the compensation.

The total value assigned to any crops grown on the property depends on the terms of any lease agreement governing the occupant’s rights. Where a lease agreement will be taken over by the new investor, the current lessee is entitled to the value of their crops for the remaining term of the lease.

<sup>12</sup> While the UIA shared a hard copy of the properties it holds for allocation to investors, no information on these rural properties appears to be available on the UIA website (UIA 2012a).

<sup>13</sup> All prices were converted to USD in the year of acquisition using historic exchange rates from <http://www.gocurrency.com/v2/historic-exchange-rates.php>.

<sup>14</sup> See Section 29 the Land Act for an explanation of “bona fide” and “lawful” occupants.

Where occupants do not possess a lease agreement or other form of legal documentation of their rights (e.g. title), they are entitled to crop compensation for the value of one year's harvest.

Investors must hold a valid investment license<sup>15</sup> to be eligible to acquire agricultural land from the UIA (UIA 2012b). Licensed investors are free to complete an online "Land Request Form" that specifies their investment license number, intended land use (agricultural, industrial, or other), the size of land required, the type of "terrain (e.g. highland, flat, swampy etc)", preferred tenure status (freehold, leasehold, or mailo), offer price, preferred location, service requirements (power, water, telephone, other), and acquisition type (purchase, lease, joint venture) (UIA 2012b). Applications for agricultural land are considered on a case-by-case basis; there are no standard criteria for determining which investors can acquire UIA land. Suitable land is identified based on the specifications in the investment application, including the area and type of land required.

In addition, since 1999 the UIA has been required to seek Cabinet approval for leases to foreign agricultural investors above 50 acres for crop or animal production (US DOS 2011). This requirement stems from the government's interest in promoting skills transfer to smallholder outgrowers through 50 acre model farms. Although the UIA has requested that this requirement be repealed, it does not appear to have stopped foreign investors from acquiring land for agricultural production – which is explicitly prohibited by Part III, Section 10(2) of the Act.

The six agricultural properties owned by the UIA have all been leased to investors, some of them foreign, typically on 99 year leases<sup>16</sup> (UIA 2012d). As specified in the UIA land registry, investors most often pay a premium for acquiring the land in addition to an annual ground rent for the duration of the lease (UIA 2012d). The UIA sets standard prices according to guidance from the Chief Government Valuer. The "government price" so determined sometimes varies slightly from the market price. On average, investors have paid \$291/acre premiums to acquire UIA agricultural properties, with a range of \$16 to \$693 per acre. Annual ground rents (exclusive of value added tax) vary from \$0 to \$676 per acre, with an average of \$197.

Notably, these premiums are generally below the cost UIA paid to acquire the properties. Across all five properties for which both cost and premium data are available, the UIA lost approximately \$502,950 in the process of acquiring and allocating private agricultural lands to investors. However, if annual ground rents are paid according to the terms specified<sup>17</sup> for the three properties for which all

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<sup>15</sup>The Act does stipulate the minimum information that an investor seeking an investment license must provide in their application. This includes, *inter alia*, the proposed business name and address, the legal form of the business, the nature of the proposed business activity, the proposed location, the estimated number of persons to be employed, the qualifications and experience of project management and staff, and "any other information relating to the viability of the project" (Section 11(1)). Before awarding an investment license, the Act requires the UIA to "carry out an appraisal of the capacity of the proposed business enterprise to contribute to" a number of objectives, including employment, advanced technology introduction, and "locally or regionally balanced socioeconomic development" (Section 12).

<sup>16</sup> The length of leases for two properties was unavailable.

<sup>17</sup> UIA records indicate only one investor has paid their ground rent in full for the life of the lease, while another has paid through 2007; no data were available on the status of ground rents paid by the other investors (UIA 2012d).

data are available, the total net present value<sup>18</sup> to the UIA is \$4.1 million, or roughly 0.24% of net official development assistance and official aid received in 2010 (UIA 2012d, World Bank 2012b).

## CHALLENGES RELATED TO POLICY AND PRACTICE

**Firstly, and perhaps most troublingly, the UIA has acquired land and allocated it to investors despite the lack of any clear legal authority to do so.** Only under the broadest interpretation of the UIA’s authority to acquire and hold land as a body corporate might this activity be justified. Moreover, there are currently no policies, laws, or regulations in place to govern the UIA’s authority to acquire, hold, and allocate land to investors. This makes it difficult to determine whether these transactions followed legal procedures for government land acquisition. For instance, it is not clear whether these allocations of government land followed the public notice and compensation procedures specified in the Land Acquisition Act of 1965 (see further discussion below) or the legal requirements governing the disposal of public assets as codified in the Public Procurement and Disposal of Assets Act of 2003. The lack of a legal framework and accountability mechanism leaves this process vulnerable not only to poor management, but also to corruption and injustice.

**Secondly, the UIA registry clearly indicates that it has allocated large areas of land to foreign investors for crop production – which directly contravenes Part III, Section 10(2) of the Investment Code Act.** The UIA reports quarterly on the number of projects approved by sector (e.g. agriculture, forestry, etc.) and by investor country of origin. However, beyond the UIA registry, no official data on government or private land acquired by approved domestic or foreign investors are available. Thus, it is not possible to determine how much land foreign investors have acquired for agricultural production in Uganda. However, recent research suggests that there are several foreign companies operating agricultural production investments in Uganda (Land Matrix Portal 2012). Furthermore, by allowing companies that are up to 50% foreign-owned to register as domestic entities, the Investment Code Act leaves investors with ample room to circumvent restrictions on foreign land acquisition.

**Thirdly, the Investment Code Act and the Land Act, among other relevant laws, assign unclear and sometimes overlapping authorities to different government institutions that in practice play a role in the process of transferring land to investors.** There are no established procedures governing the authorities of either the UIA or the ULC<sup>19</sup> to manage government land (Bogere 2011). Nor are there any regulations to guide the interaction of different government agencies, for example in identifying government land suitable for a particular investment. Moreover, the District Land Boards also have the authority to “hold and allocate land in the district which is not owned by any person or authority”, but

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<sup>18</sup> The following assumptions were used to calculate the net present value: the term is 99 years; the discount rate applied was 14%, which is the estimated rate used in 2010 by the central bank of Uganda (CIA 2012); annual ground rent payments were summed over the total acreage for each investment; the cost of land purchased by the UIA and the premium paid by investors to UIA occurred at the beginning of the first term.

<sup>19</sup> Although a thorough investigation of the authorities of the ULC is beyond the scope of this report, it should be noted that a recent audit reported a number of shortcomings in the ULC’s performance (Bogere 2011). In particular, the audit highlighted the lack of legal clarity over the authority or ownership of different types of government land and the “lack of an effective working and collaborative relationship between the Commission and other partner institutions like local governments” (Bogere 2011). In addition, the ULC has not followed the public advertisement procedures mandated by the Public Procurement and Disposal of Assets Act.

it is not clear how the Land Boards exercise this mandate with respect to the UIA or the ULC (Section 59(1)(a) of the Land Act).

At a minimum, the lack of legal and procedural clarity on the duties of the UIA and other government authorities in allocating government land to investors creates opportunities for inefficiencies—and perhaps even corruption (Bogere 2011). In fact, a recent audit of the Uganda Land Commission found several cases where the same parcel of government land was allocated to two or three different investors with different lease titles<sup>20</sup> (Bogere 2011). Some investors apparently go directly to the President of the Republic to secure land.

**Fourthly, the absence of clear and transparent procedures for the UIA and other relevant government agencies to facilitate investor access to land makes it difficult to monitor this process and ensure it adheres to the letter and spirit of the law.** For example, there are no criteria for assessing the technical feasibility of proposed investments or determining which investors should have preferential access to lands held by the UIA or other government agencies. The UIA apparently consults with the Ministry of Agriculture on the feasibility of agriculture projects, but details on this process were unavailable.

The lack of clear procedures for identifying and compensating legitimate claimants to either private or government lands allocated for investment is particularly problematic. The Investment Code Act does not specify how to determine who is eligible to receive compensation, the criteria for determining the value of compensation, or the actor responsible for implementing (or monitoring) this process. In practice, numerous actors are reportedly involved in the compensation process, including the investor, the UIA, the ULC, the Chief Land Valuer, and District Land Boards<sup>21</sup>, and various other local authorities, including the local council.

The situation is further complicated where investors acquire government land, as the government authority with rights to use this land may also be involved in the compensation process—despite lacking the legal authority or competency to do so. In some cases, the compensation process has apparently been handled by the Office of the Prime Minister. Regardless of which actors are involved, the lack of transparency and accountability governing the identification and compensation of rights holders risks undermining the legitimate rights of owners and especially occupants.

**Finally, the lack of publically available data on the land acquisition process and its outcomes undermines effective monitoring and increases the likelihood of abuse.** The UIA does not have sufficient resources to monitor even the most basic information about approved investments. With the exception of the six rural properties the UIA has directly allocated to investors, neither the UIA or the ULC collects data on the amount of land investors have acquired for agricultural production or the processes through which investors have acquired farmland. Although the UIA shared its registry of six properties for this research, there is no map or publically available registry of government lands allocated to investors. Nor does the UIA monitor the outcomes of these investments in terms of, for

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<sup>20</sup> The report found that the ULC does not work effectively with “other partner institutions” and specifically references local governments and District Land Boards (Bogere 2011).

<sup>21</sup> The Land Act (Section 59(1)(e)(f) authorizes the District Land Boards to “compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed” on an annual basis.

example, job creation, income generation, or rural development. In fact, since its creation in 1991, the UIA has not been able to determine whether approved projects were actually operational<sup>22</sup> (Mitti 2011). This makes it impossible to determine whether approved projects have, at a minimum, met the objectives specified in the Act, including job creation and “locally or regionally balanced socioeconomic development” (Section 12(c)(e)).

The lack of data on the land acquisition process and its outcomes also precludes effective monitoring that could inform current policy debates on the role of foreign investment in developing Uganda’s agricultural sector. It also obscures aggregate statistics on how much farmland foreign investors have acquired in contravention of the Investment Code Act. Furthermore, the lack of publically available data on the land acquisition process increases the likelihood that such transactions will be subject to manipulation by powerful interests. Making the land acquisition process more transparent—especially for government lands, which should be used for the benefit of all Ugandans—will be particularly critical to ensure that agricultural investment leads to sustainable and equitable development in Uganda.

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<sup>22</sup> New funding from the European Union and UNIDO is meant to help the UIA establish the status of the roughly 5,000 investments licensed since UIA opened its doors in 1991 (Mitti 2011).

# Social and environmental safeguards for agricultural investments

## SAFEGUARDS FRAMEWORK

This section draws upon a framework for analyzing safeguards developed by the World Resources Institute (Daviet and Larsen forthcoming). This framework analyzes three different components of a national safeguard system: “goals,” “functions,” and “elements.” The authors define safeguard **goals** to be “the substantive components of safeguards that spell out what they are meant to achieve” (p. 2). Goals are typically represented in high-level principles or criteria, such as policy objectives. Safeguard **functions** are defined as the mechanisms used to achieve the identified goals; there are five primary functions for each goal (Box 3). Finally, safeguard **elements** are the rules and actors that operationalize the safeguards. A safeguard system’s rules set the parameters of the system by defining activities that should or should not occur, while actors help ensure that these parameters are appropriately designed and thoroughly followed (Daviet and Larsen forthcoming).

### Box 3: The five functions through which safeguard goals are achieved

According to Daviet and Larsen (forthcoming), there are five key functions of a safeguard system. A comprehensive safeguard system:

- ANTICIPATES potential risks and impacts associated with the land acquisition strategy, or with individual land acquisition projects;
- PLANS to avoid or mitigate harm to ecosystems or people by addressing social and environmental considerations in the design of land acquisition strategies and projects;
- MANAGES land acquisition activities by implementing safeguard plans and procedures to mitigate harm and ensure the social and environmental outcomes;
- MONITORS land acquisition processes and outcomes to help ensure compliance; and
- RESPONDS to problems and grievances that arise related to the effects of land acquisition projects on people or the environment.

As will be shown below, at present Uganda’s national safeguards framework has significant gaps.

This paper focuses on the legislative rules laid out in existing laws and regulations in Uganda—including laws requiring environmental and social impact assessments—and on the responsibilities of various government agencies and the project developer to implement these rules. Future research may want to explore the role of civil society or other actors in implementing the identified rules. Other

future research may want to identify safeguards found within the international treaties and conventions of which Uganda is a member.

The functions as defined by Daviet and Larsen (forthcoming) largely reflect a “do no harm” approach<sup>23</sup> to safeguards, rather than an approach that improves upon the status quo. This approach best reflects the traditional definition of safeguards employed by international finance institutions and other donors. It also helps draw a clear distinction between “acceptable” and “unacceptable” activities. While the focus of this analysis is therefore on avoiding harm, the framework presented below could also be used to design broader and more ambitious safeguards that aim to maximize benefits for local people and the environment. If the government does decide to pursue a more benefit-centered approach to safeguards, it will still need to define a minimal acceptable standard below which safeguard protections are deemed inadequate (Daviet and Larsen forthcoming).

### **Environmental safeguards**

Table 4 details the environmental safeguards applicable to large-scale agricultural investments in Uganda under national law and provides some information on their implementation. Objective XIII of the National Objectives and Directives of State Policy compels the government to protect important natural resources. This Objective will be used as the overarching goal in the analysis, although the National Policy for the Conservation and Management of Wetland Resources (1995) lays out a number of more specific policy goals related to wetlands<sup>24</sup>. Since these goals have been further elaborated into rules and actors through the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, they will not be discussed in detail here.

The following section highlights some particularly relevant safeguards that should be enforced as a first priority. The overarching environmental legislation in Uganda is the National Environmental Act, cap 153 of 1995. Among other important provisions, the National Environmental Act requires project developers to complete an environmental impact assessment (EIA) where the project “may have an impact on the environment” (Section 19(3)(a)). The developer may be required to submit a more detailed environmental impact study if, on the basis of an environmental impact review or an environmental impact evaluation, “the project will lead to significant impact on the environment” (Section 19(7)). On the basis of this study, the developer should make an environmental impact statement that will govern the project’s management of the environment (Section 20(1)(5)).

The National Environmental Act also created the National Environmental Management Authority (NEMA) (Section 4). NEMA is responsible for working in consultation with the lead agency<sup>25</sup> (e.g. Ministry of Agriculture) to, *inter alia*, review the findings of all environmental impact assessments and determine whether an environmental impact study is required (Section 19(6)&(7)); conduct “an environmental audit of all activities that are likely to have significant effect on the environment”

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<sup>23</sup> “Under a ‘do no harm’ approach, activities are ‘unacceptable’ if they make things worse than before implementation of the activity (Daviet and Larsen forthcoming).

<sup>24</sup> For interested readers, the full text of the policy can be found here: [http://www.ramsar.org/cda/en/ramsar-news-archives-1999-national-wetland-21174/main/ramsar/1-26-45-90%5E21174\\_4000\\_0](http://www.ramsar.org/cda/en/ramsar-news-archives-1999-national-wetland-21174/main/ramsar/1-26-45-90%5E21174_4000_0).

<sup>25</sup> “ ‘Lead agency’ means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment” (Section 1).

(Section 22(a)); and monitor “the operation of any industry, project or activity with a view to determining its immediate and long-term effects on the environment” (Section 23(1)(b)).

The National Water Act, Cap. 152 of 1995 also details a number of important provisions governing water use, including for irrigated agriculture. An investment (project) developer may be required “to install pollution control or waste treatment equipment...and to operate that equipment in a manner determined by the director” of water resources (Section 29(c)). Developers may not construct or operate any works without a permit for water use. Permitted developers may not cause or allow any water to be polluted; must prevent damage to the source of water/discharge; and must take precautions to ensure that no activities on the land where water is used render the water less fit for the purpose (Section 20(a-c)).

The National Water Act also authorizes the Minister of Water to publish a local notice that prescribes areas for water extraction and the time and manner in which water may be used; regulates water use during times of (anticipated) shortage; temporarily or permanently prohibits water use from a particular source for health reasons; or requires any person watering livestock to take measures to avoid, reduce, or repair livestock damage to a water source. The Minister may also “prescribe waste which may not be discharged; trades which may not discharge waste, or classes of premises or particular premises from which waste may not be discharged...except in accordance with a waste discharge permit” (Section 28(1)(a-c)).

Investments seeking to operate in wetlands or along river banks or lake shores are also subject to the National Environment (Wetlands, River Banks, And Lake Shores Management) Regulations, No. 3/2000. These regulations specify that all wetlands are held in trust by the Government or a local government “for the common good of the citizens of Uganda” (Section 3(2)) and that wetlands cannot be leased or otherwise alienated (Section 3(3)). The regulations aim to, *inter alia*, “provide for the conservation and wise use of wetlands and their resources in Uganda; ensure the sustainable use of wetlands for ecological and tourist purposes for the common good of all citizens; ensure that wetlands are protected<sup>26</sup> as habitats for species of fauna and flora; minimize and control pollution (Section 4 (a)(d)(e)(h)).

Section 5(a) further explains that “wetland resources shall be utilized in a sustainable manner compatible with the continued presence of wetlands and their hydrological functions and service”. Anyone wishing to carry out any regulated activity in a wetland—which includes cultivation where the total area is at least 25 percent of the wetland area—must hold a wetland resource use permit (Section 11(2)(b) and Section 12(1)&(2)). The regulations also commit the government to demarcate (Section 10(3)) and make an inventory of all wetlands (Section 10(1)) that includes, *inter alia*, the location; type of fauna and flora; soil and hydrological characteristics; volume, flow, and quality of water; existing uses; and “the density of population in the wetland catchment” with special attention given to “those most dependent on the wetland” (Section 10(2)(a-j)).

Investments planned in hilly or mountainous areas, such as tea or coffee plantations, are additionally subject to the National Environment (Hilly and Mountainous Area Management) Regulations, no.

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<sup>26</sup> Wetlands can be declared fully or partially protected or subject to local conservation (Section 8(2)(a-c)).

2/2000. These regulations set out a number of requirements for land users in hilly or mountainous areas, including soil protection measures and restrictions on the size of cultivated areas permissible on increasingly steep slopes (Regulations 16(1)(a-f), 16(2)(a-f), 16(3)(a-f)). Land owners, occupiers and tenants are also required “to reduce water run off through grassing of medium and steep slopes; to mulch and bund gardens on medium and steep slopes; to practice agroforestry; [and] to prevent the burning of grass in areas of intensive agriculture or on steep slopes” (Regulations 10(1)(a-d)).

**Table 4: Environmental Safeguards Framework**

GOAL	FUNCTIONS	Elements	
		Rules	Actors
<p>Government will protect important natural resources (Objective Kill of the National Policy of State Policy)</p>	<p>Anticipate</p>	<p><b>Environmental Impact Assessment Regulation</b>, SI<sup>27</sup> no. 13/1998 under section 107 of the National Environmental Act, Cap. 153 of 1995</p> <p><b>Reference:</b> Regulations 10–30 and the First Schedule</p>	<p><b>National Environmental Management Authority (NEMA):</b> Responsible for working with lead agency to review environmental impact assessments<sup>28</sup> (EIAs) and determine whether a full environmental impact study<sup>29</sup> is required.</p> <p><b>Lead Agency</b><sup>30</sup>: Reviews the developer’s project documents, including project brief, environmental impact assessments, and environmental impact studies.</p> <p><b>Developer</b><sup>31</sup>: Submits project brief and hires qualified experts to conduct environmental impact assessments or studies as determined by Lead Agency. The First Schedule details issues to be considered in making an EIA.</p>
		<p><b>National Water Act</b>, Cap. 152 of 1995</p> <p><b>Reference:</b> Section 16</p>	<p><b>Water Policy Committee:</b> May, on the request of the <b>Minister for Water</b>, coordinate the preparation, revision, and updating of a comprehensive action plan for the investigation, use, control, protection, management, and administration of water for the country (Section 16(1)(a)). “May prepare guidelines or conditions concerning waste discharge permits and recommend them to the Minister” (Section 29(5)).</p> <p><b>Minister for Water:</b> Considers recommendations made by the <b>Water Policy Committee</b> and may prescribe the recommended guidelines or conditions.</p>
		<p><b>National Environment (Wetlands, River Banks and Lake Shores Management) Regulations</b>, SI no. 3/2000 under section 107 of the</p>	<p><b>Developer:</b> Any developer wishing to cultivate in a wetland must apply for permission to do so using Form A in the First Schedule. Any developer who plans to alter any structure in, under, or over a river bank or lake shore, or who plans to introduce or plant any plant on a river bank or lake shore, must submit a completed Form A in the First Schedule to the</p>

<sup>27</sup> Statutory Instrument

<sup>28</sup> “Environmental impact statement” means the statement described under sections 20 and 21 of the Act and regulations 13, 14, 15 and 16 of these Regulations;

<sup>29</sup> “Environmental impact study” means the study conducted to determine the possible environmental impacts of a proposed project and measures to mitigate their effects as provided under sections 19, 20, and 21 of the Act and as described in regulations 10, 11, and 12 of these Regulations” (Environmental Impact Assessment Regulations, Interpretation).

<sup>30</sup> “Means any agency on whom the Authority delegates its functions” (Environmental Impact Assessment Regulations, Interpretation).

<sup>31</sup> The term “developer” is used broadly throughout this table to refer to the owner, manager, or operator of a large-scale commercial farm.

National Environment Act, Cap 153

**Reference:** Regulations 6–7, 10–12, 15, 21–22, and 37–38 and First and Second Schedules

Executive Director. Any developer who commits an offense—including by, *inter alia*, reclaiming or draining a wetland; destroying, damaging, or disturbing a wetland in a way that is likely to have an adverse impact on any plant or animal or its habitat; introducing any exotic or introduced plant or animal in a wetland; removing soil from or burning a wetland; failing, neglecting, or refusing to protect a lake shore, or contravening any of the provisions in these regulations—is liable on conviction to imprisonment of not less than 3 months or to a fine not exceeding 3 million shillings or both. May be required to conduct community work that promotes wetland conservation.

**District Environment Committees:** Coordinates, monitors, and advises District Councils on all aspects of wetland resource management.

**Executive Director:** May issue a permit for wetland resources using Form B in First Schedule.

**Local Government:** On recommendation from the local environment committee, makes by-laws to identify river banks and lake shores within their jurisdiction at risk from environmental degradation and to promote soil conservation along river banks and lake shores.

**NEMA:** In consultation with the **Lead Agency** and **Local Authorities**, completes an inventory (including maps showing the areas specified) to identify lake shores and river banks at risk from environmental degradation.

**Technical Committee on Biodiversity Conservation:** Reviews and recommends regulations or guidelines to be issued by NEMA to developers. Recommends activities related to wetland resource use for regulation.

**Wetlands Management Department:** Responsible for making an inventory of all wetlands showing, *inter alia*, the location, type of flora/fauna, soil and hydrological characteristics, conservation status, area, and other relevant factors. Also supposed to show the boundaries of inventoried wetlands on suitable boundary maps. May, after consultation with the Executive Director, grant a temporary permit for use of a wetland where, *inter alia*, “there is need to irrigate an area pending a construction...the wetland is needed for construction of a road, a building or other infrastructure” (Section 15(a-e)).

	<p><b>Environmental Impact Assessment Regulation</b>, SI no. 13/1998 under section 107 of the National Environmental Act, Cap. 153 of 1995</p> <p><b>Reference:</b> Regulation 25</p>	<p><b>Executive Director of NEMA:</b> Reviews EIAs and can reject a project, require it to be redesigned to avoid negative environmental impacts, or require the developer to provide further information to determine potential impacts.</p> <p><b>Developer:</b> May be required to use new technologies or an alternative site to avoid negative environmental impacts; may need to provide more information to help NEMA assess impacts.</p>
	<p><b>Water (Waste Discharge) Regulations</b>, SI no. 32/1998 under Section 107 of the Water Act, Cap 152 of 1995 <b>Reference:</b> Regulations 4–20 and Second Schedule</p>	<p><b>Director of Water Resources:</b> May issue guidelines on waste treatment methods for different industries or establishments. Issues waste discharge permits according to the provisions in regulations 5–10. Maintains a Register of all applications made under regulation 5 and provides access as specified.</p>
<p><b>Plan</b></p>	<p><b>National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations</b>, SI no. 5/1999 under section 26 and 107 of the National Environmental Act, Cap 153</p> <p><b>Reference:</b> Regulations 3–6 and Schedule</p>	<p><b>Executive Director of NEMA delegated to the Water Permits Unit of WRMD</b><sup>32</sup>: May issue guidelines and recommend the effluent method for industries or establishments to ensure assimilation by the water or land into which the effluent is discharged. NEMA has delegated its obligations and enforcement of these standards to the Director of Water Development under the National Environment (Delegation of Waste Discharge Functions) Instrument, 1999. The Water Permits Unit of WRMD implements the standards.</p>
	<p><b>National Forestry &amp; Tree Planting Act</b>, SI no. 8/2003</p> <p><b>Reference:</b> Regulations 30–31</p>	<p><b>Minister of Forestry:</b> May by statutory order declare that tree species of international or national importance (e.g., threatened, rare, or endangered species) be reserved species subject to controls as specified in the order. In respect to private land, the Minister (or the <b>District Council</b>) may by statutory order declare a particular tree or group of trees on that land to be a protected tree or trees subject to controls as specified in the order.</p>
	<p><b>Land Act</b>, Cap 227 of 1998</p> <p><b>Reference:</b> Section 43</p>	<p><b>Developer:</b> “A person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law.”</p>

<sup>32</sup> Uganda Water Resources Management Department

<p><b>Developer:</b> May be required “to install pollution control or waste treatment equipment of a type specified by the <b>Director</b> and to operate that equipment in a manner determined by the director” (Section 29(c)).</p> <p><b>Director:</b> May specify the quantity that may be taken under a permit where the permit does not specify the quantity. Receives and considers applications for easements to allow permit holders to drain water or waste discharge or bring water over land owned or occupied by another person; creates easements as may be appropriate after considering any objections.</p> <p><b>Minister of Water:</b> May where necessary publish a local notice that prescribes areas for water extraction and the time and manner in which water may be used; regulate water use during times of (anticipated) shortage; temporarily or permanently prohibit the water use from a particular source for health reasons; and require any person watering livestock to take measures to avoid, reduce, or repair livestock damage to a water source.</p> <p>May “prescribe waste which may not be discharged; trades which may not discharge waste, or classes of premises or particular premises from which waste may not be discharged...except in accordance with a waste discharge permit” (Section 28(1)(a-c)).</p> <p><b>Water Policy Committee:</b> Coordinates the preparation, implementation and amendment of the water action plan and to recommend the plan to the Minister.</p>	<p><b>Developer:</b> On gentle slopes (up to 3%), they shall “not cultivate any garden exceeding 100 m in width; leave an uncultivated strip of land of not less than two meters width between all cultivated plots which shall be planted with grass approved by the <b>local environment committee</b>; follow contour lines marked by the <b>local agricultural extension officer</b> and the <b>local environment committee</b> in planting crops...lay parallel to, halfway between the existing bunds, trash lines consisting of dead vegetation where the land is planted with permanent crops” (16(1)(a-f)). On medium slopes (3–15%), the developer shall “not cultivate any garden exceeding 75 meters in width; leave an uncultivated strip of land of not less than three meters width between all cultivated plots which shall be planted with grass approved by the <b>local environment committee</b>; ; follow contour lines marked by the <b>local agricultural extension officer</b> and the <b>local environment committee</b> in planting</p>
<p><b>National Water Act, Cap. 152 of 1995</b></p> <p><b>Reference:</b> Section 8 (1(a-e)), 10(b), 28, 36<sup>33</sup></p>	<p><b>National Environment (Hilly and Mountainous Area Management) Regulations, SI no. 2/2000</b> under section 107 of National Environmental Act, Cap 153</p> <p><b>Reference:</b> Regulations 16–17 and Third Schedule</p>

<sup>33</sup> See also the Water Resources Regulations 1998 for further details on the procedures of application and regulation of water abstraction permits

Government will protect important natural resources (Objective XIII of the National Objectives and Directives of State Policy)	Manage	<p><b>Environmental Impact Assessment Regulation</b>, SI no. 13/1998 under section 107 of the National Environmental Act, Cap. 153 of 1995 (Regulation 33)</p> <p><b>Water (Waste Discharge) Regulations</b>, SI no. 32/1998 under Section 107 of the Water Act, Cap 152 of 1995 <b>Reference:</b> Regulations</p>	<p>crops...lay parallel to, halfway between the existing bunds, trash lines consisting of dead vegetation where the land is planted with permanent crops” (16(2)(a-f)). On steep slopes (&gt; 15%), the developer shall “not cultivate any garden exceeding 25 m in width; leave an uncultivated strip of land of not less than three meters width between all cultivated plots which shall be planted with grass approved by the <b>local environment committee</b>; follow contour lines marked by the <b>local agricultural extension officer</b> and the <b>local environment committee</b> in planting crops...lay parallel to, halfway between the existing bunds, trash lines consisting of dead vegetation where the land is planted with permanent crops” (16(3)(a-f)).</p> <p><b>Executive Director of NEMA:</b> Authorizes permitted activities within protected zones, which consists of 100 m from the highest watermark of the river for the rivers specified in the Sixth Schedule; 30 m from the highest watermark for rivers not specified in the Sixth Schedule; 200 m from the low water mark for all shores of lakes specified in the Seventh Schedule; 100 m from the low water mark for all shores of lakes not specified in the Seventh Schedule.</p> <p><b>Local Environment Committee:</b> Determines watering points and routes for animals to access water in each river and lake.</p> <p><b>Local Government:</b> On the advice of the <b>District Environment Committee</b>, makes by-laws governing sanitation in lake shores and river bank areas in accordance with the Public Health Act.</p> <p><b>Executive Director of NEMA:</b> May require that the developer takes specific mitigation measures to ensure compliance with the predictions made in the project brief, or environmental impact statement (as appropriate).</p> <p><b>Developer:</b> May be required to implement mitigation measures; if measures are not implemented, they could be subject to criminal/civil proceedings.</p> <p><b>Developer:</b> Required to install anti-pollution equipment for treating effluent and waste discharge emanating from the industry. In case of accidental discharge, responsible for reporting the matter to the Director of Water Resources and for taking immediate action to mitigate the damage. Holders of a waste discharge permit must also pay an annual waste</p>
		<p><b>National Environment (Wetlands; River Banks and Lake Shores Management) Regulations</b>, SI no. 3/2000 under section 107 of the National Environment Act, Cap 153</p> <p><b>Reference:</b> Regulations 29–31 and Sixth and Seventh Schedules</p>	

15–18	<p><b>National Forestry &amp; Tree Planting Act</b>, SI no. 8/2003</p> <p><b>Reference:</b> Regulation 27</p>	discharge fee.
<p><b>National Environment (Wetlands; River Banks and Lake Shores Management) Regulations</b>, SI no. 3/2000 under section 107 of the National Environment Act, Cap 153</p> <p><b>Reference:</b> Regulations 7, 16–17, 28</p>	<p><b>Developer:</b> Any developer whose permit expires or is revoked must, within one year after the permit’s expiration or revocation, restore the wetland to as near its previous state before permitted use as is possible. Every developer who is adjacent to or contiguous with a wetland is required to prevent the degradation or destruction of the wetland and must maintain the ecological and other functions of the wetland; failure to do so constitutes an offence. Any developer in whose land a river bank or lake shore is situated must prevent and repair degraded river banks and lake shores.</p> <p><b>Local Environment Committee:</b> Main implementing organ for conserving and managing wetland resources in its area of jurisdiction.</p> <p><b>Lower Local Government Council:</b> Ensures that activities implemented within the catchment area of a wetland do not affect the wetland’s water level; regulates activities that may include supplying water for domestic use, fishing, swamp adage gardens, and papyrus harvesting to ensure sustainable use. Advises NEMA, after prior approval from the <b>District Council</b> on areas to be declared a “protected wetland” in accordance with these regulations. Works with the <b>local District Environment Officer</b> on EIAs involving use of a wetland or an area within 10 meters of the edge of a wetland. Can declare a wetland closed to some or all activities for regeneration. Can formulate local by-laws on the proper management of wetlands.</p>	<p><b>District Forest Officer:</b> May issue direction to the owner of trees or forest produce on private land requiring the developer to manage the trees or forest produce in a professional and sustainable manner.</p>
<p><b>National Environment (Hilly and Mountainous Area Management) Regulations</b>, SI no. 2/2000 under section 107 of National Environmental Act, Cap 153</p> <p><b>Reference:</b> Regulations 4–17; First</p>	<p><b>Developer:</b> While utilizing land in a mountainous or hilly area, they are required to, <i>inter alia</i>, respect the carrying capacity of the land, implement soil conservation measures, implement measures to protect water catchment areas, and minimize significant ecological and landscape risks. They are also required to take measures to “reduce water run off through the grassing of medium and steep slopes, to mulch and bund gardens on medium and steep slopes, to practice agroforestry, and to prevent the burning of grass in areas of intensive agriculture or on steep slopes (10(a-d)). In areas where the slope exceeds 15%, they are required to apply to the local environment committee of lower local governments</p>	<p><b>Developer:</b> Any developer whose permit expires or is revoked must, within one year after the permit’s expiration or revocation, restore the wetland to as near its previous state before permitted use as is possible. Every developer who is adjacent to or contiguous with a wetland is required to prevent the degradation or destruction of the wetland and must maintain the ecological and other functions of the wetland; failure to do so constitutes an offence. Any developer in whose land a river bank or lake shore is situated must prevent and repair degraded river banks and lake shores.</p>

<p>and Third Schedule</p>	<p>using Form A in the Second Schedule.</p> <p><b>District Council:</b> Required to make by-laws identifying mountainous and hilly areas within its jurisdiction that are at risk from environmental degradation. The Council should notify NEMA of identified areas using the First Schedule. Also responsible for conducting land use mapping in all mountainous and hilly areas within their jurisdiction that shows the characteristics, status, use, etc. Makes by-laws to prohibit or restrict grazing in hilly or mountainous areas. May by statutory instrument declare a mountainous or hilly area closed to all or any activity to avoid degradation or open to permitted specified activities.</p> <p><b>District Environment Committee:</b> May regulate land use through zoning, restrict and control any activities inconsistent with good land husbandry, and create guidelines to manage areas prone to landslides, floods, drought, avalanches, falling rocks, fires and wind damage. May establish a <b>sub-committee on soil conservation</b> to advise the district environment committee on the best practices for conserving soils. May issue an order prescribing the maximum number of livestock that may be grazed on any area of land.</p> <p><b>Local Council:</b> Informs agricultural extension officer of any activity likely to degrade the environment of mountainous or hilly areas within its jurisdiction.</p> <p><b>Local Environment Committee:</b> Reviews applications from developer and, where necessary, grants a permit in Form B in the Second Schedule. May issue an order requiring a developer to plant trees and other vegetation to protect a hilly or mountainous area at risk from environmental degradation.</p> <p><b>NEMA:</b> Maintains a register of at risk mountainous and hilly areas.</p>	<p><b>Developer:</b> May not construct or operate any works without a permit. Permitted developers may not cause or allow any water to be polluted; must prevent damage to the source of water/discharge; and must take precautions to ensure that no activities on the land where water is used render the water less fit for the purpose (Section 20(a-c)).</p> <p><b>Director:</b> Receives water and waste discharge permit applications, gives public notice of applications, and grants permits on conditions if necessary (e.g., required fees or specified land or water uses (Section 18(4) and 5)(a-c)). May serve notice in writing to a developer requiring them to do or not do anything or take such measures or construct or remove</p>
		<p><b>National Water Act, Cap. 152 of 1995</b></p> <p><b>Reference:</b> Sections 18, 20, 29, 44, 61, 68–69</p>

			<p>works that may be necessary or desirable for the investigation, use, control, protection, management or administration of water (Section 44(1)). Where a developer fails to comply with such a notice, the director may enter the land and take measures to ensure complete compliance with the notice and recover reasonable costs from the developer (Section 44(2)).</p> <p><b>Sewerage Authority:</b> May declare any type of waste to be trade waste that cannot be discharged. May also declare any type of trade, classes of premises or specific premises where trade waste cannot be discharged into any sewer or related works except in accordance with a trade waste agreement. Enters into trade waste agreements with a developer for the discharge of waste into a sewer or the storage or treatment of waste by the Sewerage Authority.</p> <p><b>Water Authority:</b> May prohibit, regulate or restrict consumption of water supplied by publishing notice in local media.</p>
<p>Govt will protect important natural resources (Objective XIII of the National Objectives &amp; Directives of State Policy)</p>	<p><b>Monitor</b></p>	<p><b>Environmental Impact Assessment Regulation</b>, SI no. 13/1998 under section 107 of the National Environmental Act, Cap. 153 of 1995 (Regulation 32)</p> <p><b>National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations</b>, SI no. 5/1999 under section 26 and 107 of the National Environmental Act, Cap 153</p> <p><b>Reference:</b> Regulation 5</p> <p><b>National Water Act</b>, Cap. 152 of</p>	<p><b>NEMA:</b> Responsible for working with lead agency to conduct environmental audits<sup>34</sup> and monitor approved activities. A designated inspector may enter on any land, premises, or other facility related to a project for which a project brief, or environmental impact study (as appropriate) to determine the extent to which the predictions made in these documents are being complied with.</p> <p><b>Lead Agency:</b> Required record the amount of waste generated by the activity and of the parameters of the discharges and to submit this record to the Executive Director and to any other relevant lead agency every three months from the commencement of the activity for which the permit was issued.</p> <p><b>Executive Director of NEMA:</b> May (on the basis of effluent discharge records) issue guidelines necessary to ensure reduction of effluent discharge.</p> <p><b>Authorized person:</b> May enter land to inspect works or water use; take samples or make tests to determine (i) whether water is being wasted, misused or polluted; (ii) if the terms</p>

<sup>34</sup> “Environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are performing in conserving the environment and its resources” (National Environment Act, Interpretation).

	<p>1995</p> <p><b>Reference:</b> Sections 10(a), 12–13, 29, 34, 37<sup>35</sup></p>	<p>of any water permit, waste discharge permit, or any other permit are being complied with; or (iii) an offence is being committed against the Water Act (Section 37(a-b)).</p> <p><b>Director of Water:</b> May provide for an inventory of water resources, including (Section 12(1)(a)) “the collection, collation, and analysis of data concerning the occurrence, flow, characteristics, quality, and use of any water or waste;” (Section 12(1)(b)) “the systematic gauging and recording of rainfall and of the volume, flow and quality of other water or waste” ..and (Section 12(1)(d)) “the sampling and analysis of any water or waste.” May require a developer holding a permit to, at his or her own expense, conduct monitoring and to “provide the director with information and data relating to the characteristics, volume and effects of waste being produced, stored, treated, discharged, deposited or otherwise disposed of” (Section 29(7)(f)). Maintains “a register of all permits granted and any works or uses of water registered” (Section 34(1)).</p> <p><b>Minister of Water:</b> May require a developer to “keep and maintain records; install, operate and maintain equipment; take samples, dispose of them in a manner and submit them to such analysis by such person or class of persons; provide information to a person, concerning the investigation, use, control, protection, management or administration of any water or concerning any waste” (Section 13(1)(a-d)).</p> <p><b>Water Policy Committee:</b> Assists the Minister of Water in the coordination of hydrological and hydrogeological investigations.</p> <p><b>Environmental Inspector designated by NEMA:</b> May enter any premises and take samples, analyze and examine materials used in permitted activities.</p> <p><b>Executive Director of NEMA:</b> In consultation with WMD, reviews the conservation status of wetlands every two years to identify any degradation and institute measures to ensure their protection.</p> <p><b>Local Environment Committee:</b> Must inform the <b>District Environment Officer</b> in writing of</p>
<p><b>Water (Waste Discharge) Regulations,</b> SI no. 32/1998 under Section 107 of the Water Act, Cap 152 of 1995</p> <p><b>Reference:</b> Regulation 17</p>		
<p><b>National Environment (Wetlands; River Banks and Lake Shores Management) Regulations,</b> SI no. 3/2000 under section 107 of the</p>		

<sup>35</sup> See also the Water Resources Regulations 1998 for further details on the procedures of application and regulation of water abstraction permits.

		<p>National Environment Act, Cap 153  <b>Reference:</b> Regulations 6, 10, 22, 25</p>	<p>any activity taking place within its jurisdiction that is likely to degrade the environment, river banks, or lake shores for appropriate action.</p> <p><b>NEMA:</b> In consultation with the <b>Lead Agency</b>, monitors lake shores and river banks identified in an inventory as at risk from environmental degradation.</p> <p><b>Technical Committee on Biodiversity Conservation:</b> Reviews and advises on environmental impact assessments, audits, and monitoring.</p> <p><b>Wetlands Management Department (WMD):</b> Periodically inspects inventoried wetlands to determine whether revision or correction is necessary.</p>
	<p><b>Respond</b></p>	<p><b>Environmental Impact Assessment Regulation</b>, SI no. 13/1998 under section 107 of the National Environmental Act, Cap. 153 of 1995 (Regulation 32)</p>	<p><b>Member of the Public:</b> May petition the Executive Director of NEMA to request that an audit be carried out on any project.</p> <p><b>NEMA:</b> Responsible for conducting an audit as described under Section 32.</p>
		<p><b>National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations</b>, SI no. 5/1999 under section 26 and 107 of the National Environmental Act, Cap 153  <b>Reference:</b> Regulation 6</p>	<p><b>Executive Director of NEMA delegated to the Water Permits Unit of WRMD:</b> May (in addition to any penalty imposed on an offender) require that actions be implemented to mitigate damages. NEMA has delegated enforcement of these standards to the Director of Water Development under the National Environment (Delegation of Waste Discharge Functions) Instrument, 1999.</p>
		<p><b>National Environment (Hilly and Mountainous Area Management) Regulations</b>, SI no. 2/2000 under section 107 of National Environmental Act, Cap 153  <b>Reference:</b> Regulation 22</p>	<p><b>District Environment Committee:</b> Hears appeals from persons aggrieved under these regulations by a decision of the local environment committee.</p> <p><b>Executive Director of NEMA:</b> Hears appeals from persons aggrieved by a decision of the district environment committee.</p> <p><b>Board of NEMA:</b> Hears appeals from persons aggrieved by a decision of Executive Director.</p> <p><b>Chief Magistrate’s Court:</b> Hears appeals from persons aggrieved by a decision of the Board.</p>

		<p><b>National Environment (Wetlands; River Banks and Lake Shores Management) Regulations</b>, SI no. 3/2000 under section 107 of the National Environment Act, Cap 153</p> <p><b>Reference:</b> Regulation 6, 14, 25, 35</p>	<p><b>Board:</b> May hear an appeal filed by a developer aggrieved by a decision of the Executive Director under these regulations. The Board’s decision is final.</p> <p><b>Executive Director:</b> May, after consultation with the <b>Lead Agency</b>, revoke a permit for wetland use (or for use of a river bank or lake shore) if the conditions of the permit have not been complied with or the continued use of the wetland is likely to cause harm to the community and the environment. May require that a wetland, river bank, or lake shore that has been degraded be allowed to regenerate, or issue a restoration order.</p> <p><b>Inspector:</b> Where an inspector has reasonable cause to believe the developer is violating these regulations, he/she may issue them an improvement notice or take any other measures provided for under section 80 of the National Environment Act.</p> <p><b>Technical Committee on Biodiversity Conservation:</b> Advises on solutions to conflicts that might arise through competing requirements for the wise use of wetland resources and on ways to reconcile wetland use rights by local communities with their impacts on natural resources.</p>
		<p><b>National Water Act</b>, Cap. 152 of 1995.</p> <p><b>Reference:</b> Sections 25, 31, 36, 38–40<sup>36</sup></p>	<p><b>Developer:</b> Responsible for paying the cost of remedying any damage caused due to waste discharge and restoring the environment to the condition that existed without the damage to the extent possible (Section 31(4)). Where a developer commits an offence under this Act, the court may require the developer to compensate any person who suffered damage as a result of the action for which the developer was convicted (Section 39(3)). Where a developer is convicted of an offence for which no other penalty is provided, the developer is liable to imprisonment for at most five years or to a fine of at most six million shillings and is liable to a fine of one million shillings for every day during which the offense continues (Section 40(1)).</p> <p><b>Director:</b> May cancel a water permit where the holder has “failed to comply with any express or implied condition to which the water permit is subject; taken or used more water than he/she is entitled; taken or used water for a purpose other than that for which he/she is entitled; failed to comply with any provision of this Act; not made full beneficial use... within the two preceding years” (Section 25(a–e). Receives and considers objections to easement applications. May also cancel an easement if a developer holding an easement</p>

<sup>36</sup> See also the Water Resources Regulations 1998 for further details on the procedures of application and regulation of water abstraction permits

			<p>fails to comply with its provisions.</p> <p><b>High Court:</b> Hears cases brought by any person aggrieved by an easement decision of the <b>Director</b> if this decision was made without his/her consent.</p> <p><b>Minister of Water:</b> May refer a developer to court for failing to pay for restoration of damaged water resources. May also “enter any land and take such measures as may be necessary to ensure compliance” (Section 31(5)(b)). Hears appeals from any person aggrieved by a decision of the director, authorized person, or public authority made under the Water Act.</p>
	<p><b>Implementation</b></p>	<p>Weak enforcement, auditing, and monitoring of environmental impact assessment process means that investors do not necessarily implement the proposed activities or follow the prescribed mitigation plan. Although technically agricultural investors are required to complete an EIA before obtaining a lease, in practice the ULC issues titles before the EIA process has been completed. Where EIAs have been completed, the environmental impact statements—which by law are public documents—may not always be publically available. A search of the environmental impact statements for agricultural developments held at the NEMA library returned statements for just three projects: Oil Palm Uganda Ltd.<sup>37</sup>, Olweny Swamp Rice Irrigation Project, and Rosebud Limited, an integrated floriculture and tourism project. Further research is required to determine whether other recent agricultural investments have approved environmental impact statements. The Wetlands Management Department (WMD) also has not had sufficient funding to complete the inventory of wetlands. At a minimum, this makes it difficult for NEMA to determine whether a proposed project will be operating in a wetland, let alone what types of land uses might be appropriate for a particular wetland or what impacts the proposed project may have on biodiversity and people dependent on the wetland. It also means that the WMD is unable to track how many projects with approved EIAs are operating in wetlands, a necessary prerequisite for NEMA auditing of approved projects to determine impacts on biodiversity, ecosystem services, and livelihoods.</p>	

<sup>37</sup> At least three environmental impact statements were filed for this project, including one by a funder, the International Fund for Agricultural Development (IFAD).

## Social safeguards

Table 5 details the social safeguards applicable to large-scale agricultural investments in Uganda. Social safeguards at international financial institutions, including the World Bank Group and the African Development Bank, typically include provisions to avoid and mitigate the impacts of forced displacement; protect the rights of indigenous peoples; and ensure that development projects have net positive benefits for local people and communities. While the Government of Uganda does not recognize indigenous peoples in the way the term is used internationally, a number of constitutional provisions related to non-discrimination, affirmative action, and the value of culture to development can be construed to provide for the rights of indigenous peoples (ILO and ACHPR 2009). As such, this safeguards analysis will focus on safeguard goals specified in the Constitution and the National Objectives and Directives of State Policy that relate to the rights of local people more broadly, rather than to indigenous people specifically. As will be shown, in most cases there is implementing legislation for more than one function required to achieve each goal. The goals identified include:

- Non-discrimination, affirmative action, and cultural rights (Articles 21 & 32 of the Constitution & Objective XIV(b) of the National Objectives and Directives of State Policy)
- Protect the Rights of Tenants (Article 237(8) of the Constitution)
- Land in Uganda belongs to the citizens of Uganda (Article 237(1) of the Constitution)
- Due process and fair compensation in cases of expropriation (Article 26(2) of the Constitution)
- Investment should contribute to locally or regionally balanced socio-economic development (Article 12(e) of the Investment Code Act)

Several of the most important social safeguard rules will be discussed briefly below. These include the National Culture Policy of 2006; the Equal Opportunities Commission Act of 2007; the Land Act of 1998; the Land (Amendment) Act of 2010; the Land Acquisition Act of 1965; and the Investment Code Act of 1991.

The National Culture Policy of 2006 provides “strategies to enhance the integration of culture into development,” including: “advocating for culture, ensuring capacity building, ensuring research and documentation, promoting collaboration with stakeholders and mobilizing resources for culture” (Foreword). These strategies constitute an integral part of the Social Development Sector Strategic Investment Plan (SDIP), which aims “to create an enabling environment for social protection and social transformation of communities” (Foreword).

According to its introduction, the Equal Opportunities Commission Act of 2007 aims

... to give effect to the State’s constitutional mandate to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability, and take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom for the

purpose of redressing imbalances which exist against them; and to provide for other related matters.

The Constitution also includes several provisions to prevent discrimination and promote affirmative action. Local Government Councils are obliged to implement affirmative action for the benefit of marginalized groups, including women, youth, the disabled, and those marginalized for “any other reason created by history, tradition or custom” (Article 32(1) of the Constitution). Parliament is also required to enact laws necessary to implement policies and programs to redress social, economic, educational or other societal inequalities, including by regulating local councils (Article 32(1)).

The Land Act of 1998 and the Land (Amendment) Act of 2010 protect the land rights of Ugandan citizens and specify the types of land rights non-citizens can acquire. Articles 23–27 of the Land Act set out a number of protections for holders of customary land, including rights to exclude non-members of the community from using or occupying common lands ((26(1)(d,g)). The Land Act also provides a number of protections for tenants. “A change of ownership of title...shall not in any way affect the existing lawful interests or bona fide occupant<sup>38</sup> and the new owner shall be obliged to respect the existing interest” (Article 35 (8)).

Article 32A (1) of the Land (Amendment) Act states that a lawful or bona fide cannot be evicted from registered land except for non-payment of the annual rent. Article 31(9) of the Land Act clarifies that the tenure security of lawful and bona fide occupants is not dependent on their having a certificate of occupancy. Article 39 restricts transactions in land by family members without the consent of all those residing on the land, including wives, children, and orphans. As discussed above, the Land Act authorized the Uganda Land Commission (Article 49(a) and District Land Boards (Article 59(1)(a)) to hold land not privately owned. However, the Act also specifies that lands with ecological value are to be held in trust for the people and protected (Article 237(2)(b)).

The Land Acquisition Act specifies the procedures through which the government can compulsorily acquire private land. The reader is reminded, however, that so far the courts have ruled that private investment is not a legal justification for compulsory acquisition (Veit et al. 2008). Articles 4 and 5 of the Land Acquisition Act require that persons with an interest in the land to be acquired be notified of the government’s plan to acquire their land through a notice published in the Gazette and posted on or near the land in question. The government is also required to hold inquiries into existing land claims and make recommendations on the compensation that should be provided to those dispossessed of their rights (Article 6).

Section 59 of the Land Act authorizes the District Land Boards to “(1)(e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other

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<sup>38</sup> Article 29 defines the terms “lawful occupant” (29(1)) and “bona fide occupant” (29(2)). Lawful occupants gained their rights either through repealed colonial-era tenant acts or through the consent of the registered owner, while bona fide occupants used the land unchallenged for twelve years or more or were settled on the land by the Government.

thing that may be prescribed.” Rates are to be reviewed annually and used to determine compensation payments<sup>39</sup>. Any person aggrieved by compulsory land acquisition may petition the courts for redress.

As already detailed above, the Investment Code Act of 1991 requires that investment applications be appraised for their potential to use local materials, supplies and services; create employment opportunities; and contribute to locally or regionally balanced socio-economic development (Article 12(b)(c)(e)). In addition, investment licenses may include a requirement that the investor “employ and train citizens of Uganda to the fullest extent possible with a view to the replacement of foreign personnel as soon as may be practicable” (Article 18(2)(b)).

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<sup>39</sup> Section 77 of the Land Act provides that, “(1)(a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land; (b) the value of the buildings on the land, which shall be taken at open market value for urban areas and depreciated replacement cost for the rural areas; (c) the value of standing crops on the land, excluding annual crops which could be harvested during the period of notice given to the tenant.” The government must also pay a disturbance allowance of 15% of the compensation or 30% if less than a six-month notice is given. Compensation can be paid in-kind, including through the provision of alternative land, housing, or other livelihood assets (Veit et al. 2008).

**Table 5:** Social safeguards framework

		Elements	
GOAL	FUNCTIONS	Rules	Actors
Non-discrimination, affirmative action, and cultural rights (Articles 21 & 32 of the Constitution & Objective XIV(b) of the National Objectives and Directives of State Policy)	Anticipate	<p><b>Constitution of 1995 (Amended 2005)</b>  <b>Reference:</b> Articles 21(4), 32(1), and 180(2)(c)</p>	<p><b>Parliament:</b> Empowered to enact laws necessary to implement policies and programs to redress social, economic, educational or other societal inequalities. Required to provide for affirmative action for all groups specified in Article 32(1) in regulating local councils.</p>
	Plan	<p><b>National Culture Policy of 2006</b>  <b>Reference:</b> Article 8.1</p>	<p><b>Ministry of Agriculture, Animal Industry and Fisheries:</b> Delegated to “undertake research and dissemination on Indigenous Knowledge and plants in agriculture; promote safe traditional methods of production, processing and preservation of...crops; promote indigenous crops.”</p> <p><b>Ministry of Gender, Labour, and Social Development:</b> Overall responsibility for coordinating institutions that promote culture cultural affairs; lead agency for the National Culture Policy. Responsibilities include “ensuring the development of programmes in all areas of culture; ensuring the initiation, review and dissemination of laws related to culture; ensuring the development and enforcement of regulations and standards and guidelines for culture.”</p> <p><b>Ministry of Foreign Affairs:</b> Responsible for, <i>inter alia</i>, ratifying and domesticating international and regional instruments that promote and are relevant to culture.</p>
	Manage	<p><b>Constitution of 1995 (Amended 2005)</b></p>	<p><b>Local Government Councils:</b> Obligated to implement affirmative action for the benefit of marginalized groups, including women, youth, the disabled, and those marginalized for</p>

	<p><b>Reference:</b> Article 180(2)(c) &amp; 32(1)(3)(4)</p> <p><b>Equal Opportunities Commission Act (EOCA) of 2007</b></p> <p><b>Reference:</b> Articles 23-24, 32</p>	<p>“any other reason created by history, tradition or custom” (Article 32(1) of the Constitution).</p> <p><b>Equal Opportunities Commission (EOC):</b> Authorized to hear complaints related to discrimination and marginalization. Required to publish periodic reports and to “submit annual reports to Parliament on the state of equal opportunities” (Article 24 of the EOCA).</p> <p><b>Minister:</b> May make regulations by statutory instrument to implement provisions in EOCA.</p>
<b>Monitor</b>	<p><b>Equal Opportunities Commission Act (EOCA) of 2007</b></p> <p><b>Reference:</b> Articles 29, 31</p>	<p><b>Developer:</b> Anyone who commits an offense as outlined in Section 31 is liable, on conviction, to a fine not exceeding 250 currency points or imprisonment of not more than 18 months.</p> <p><b>High Court:</b> Hears appeals related to a settlement, recommendation, or order of the EOC.</p>
<b>Implementation</b>	<p>The Government does not recognize indigenous peoples in the way the term is used internationally. However, a number of constitutional provisions related to non-discrimination, affirmative action, and the value of culture to development can be construed to provide for the rights of indigenous peoples. Although these provisions typically refer to minorities and other disadvantaged groups, such as women, children, and the disabled, these protections could support the rights of indigenous peoples, which are often defined internationally as those who suffer from acute economic, social, and cultural disempowerment and discrimination (ILO and ACHPR 2009). A 2009 report by the International Labour Organisation and the African Commission on Human and Peoples’ Rights found that despite the many provisions and institutions cited in law, “discrimination against indigenous peoples continues to manifest itself on a large scale” (p. 30). They attribute this to the government’s failure to recognize and identify indigenous peoples and to adopt policies tailored to their needs. Furthermore, the EOCA does not explicitly address indigenous peoples’ needs, and indigenous peoples are not represented on the EOC. The report found no evidence of how the National Culture Policy is being implemented but did note the mention of culture’s importance to development in Uganda’s national planning document, the Poverty Eradication Action Plan (ILO and ACHPR 2009).</p>	

GOAL		Elements	
		FUNCTIONS	Actors
Protect the Rights of Tenants (Article 237(8) of the Constitution)	Anticipate	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Articles 23-38</p> <p><b>Land (Amendment) Act, Supplement no. 1 of 2010</b></p> <p><b>Reference:</b> Articles 2-3</p>	<p><b>Developer:</b> Articles 23-27 set out a number of protections for holders of customary land, including rights to exclude non-members of the community from using or occupying common lands ((26(1)(d,g)). The Land Act also provides a number of protections for tenants. “A change of ownership of title... shall not in any way affect the existing lawful interests or bona fide occupant”<sup>40</sup> and the new owner shall be obliged to respect the existing interest” (Article 35 (8)). Article 32A (1) states that a lawful or bona fide cannot be evicted from registered land except for non-payment of the annual rent. Article 31(9) makes clear that the tenure security of lawful and bona fide occupants is not dependent on those occupants having a certificate of occupancy. All of this suggests that any developer wishing to lease land in Uganda must pay careful attention to identifying lawful owners and any lawful or bona fide occupants, particularly in cases where there is no certificate of occupancy.</p>
	Plan		
	Manage		
	Monitor		
	Respond	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Articles 26, 32, 92(1)(e) and 92(5a)</p>	<p><b>Developer:</b> Any developer who evicts, attempts to evict or participates in the eviction of a lawful or bona fide occupant without an order of eviction is, if convicted, subject to imprisonment of not more than 7 years.</p> <p><b>Magistrates Courts (previously Land Tribunals):</b> Hear grievances from persons aggrieved by, <i>inter alia</i>, decisions about customary and <i>mailo</i> land use and transactions (Articles 26 &amp; 32). The Judiciary suspended Land Tribunals in 2007 and transferred all pending cases to the Magistrates Courts<sup>41</sup>.</p>

<sup>40</sup> Article 29 defines the terms “lawful occupant” (29(1)) and “bona fide occupant” (29(2)). Lawful occupants gained their rights either through repealed colonial-era tenant acts or through the consent of the registered owner, while bona fide occupants used the land unchallenged for twelve years or more or were settled on the land by the Government.

<sup>41</sup> Veit et al. 2008

	<p><b>Implementation</b></p>	<p>While the Land Act and its 2010 Amendment attempt to regularize relations between <i>mailo</i> tenants and owners, in practice this relationship has been interpreted in different ways that reflect a long history of unequal power relations (Terra Firma 2011). Moreover, as only about 20% of land in Uganda is registered, most tenants do not enjoy these legal protections. Where these laws do apply, it is not clear they are being implemented effectively to protect tenants’ rights. NGO research has found that tenant rights are frequently ignored in transactions between the owner and an investor. While documentation is not required to prove tenants’ claims, the limited use of certificates of occupancy complicates the identification of lawful and bona fide occupants. Investors may therefore consult various authorities, including the UIA and the ULC, to help them identify legitimate occupants and negotiate compensation. These are not core competencies of either agency, and neither agency is legally authorized to perform these functions. This legal and institutional uncertainty creates undue risk that tenants’ rights will not be recognized in transactions with investors. The frequent use (by investors and government agencies) of the term “squatters” or “encroachers” to refer to tenants further suggests that tenant rights may not be adequately enforced. Recent case studies indicate that legal protections for tenant rights are not being adequately implemented (e.g., Grainger and Geary 2011; Zeemeijer 2011).</p>
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GOAL	FUNCTIONS	Elements	
		Rules	Actors
Land in Uganda belongs to the citizens of Uganda (Article 237(1) of the Constitution)	Anticipate	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Articles 2-3 and 40</p>	<p><b>Developer:</b> Articles 2-3 describe the four types of land tenure systems in Uganda: customary, freehold, <i>mailo</i> and leasehold. Customary tenure can be registered through a Certificate of Customary Ownership, but customary tenure is not contingent on possession of this document. Article 40 states clearly that non-citizens may acquire only leases on land—not freehold title—and they cannot acquire or hold <i>mailo</i> or freehold land. Finally, Article 39 restricts transactions in land by family members without the consent of all those residing on the land, including wives, children, and orphans. Thus, any developer wishing to lease land must pay careful attention to identifying lawful owners, particularly customary owners without a Certificate of Customary Ownership.</p>
	Plan	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Articles 49(a) and 59(1)(a)</p>	<p><b>Uganda Land Commission (ULC):</b> Authorized to “hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution” (Article 49(a) of the Land Act). Lands with ecological value are to be held in trust for the people and protected (Article 237(2)(b)).</p> <p><b>District Land Boards:</b> Authorized to “hold and allocate land in the district which is not owned by any person or authority” (Article 59(1)(a) of the Land Act). Lands with ecological</p>

			value are to be held in trust for the people and protected (Article 237(2)(b)).
<b>Manage</b>	<p><b>Uganda Investment Code Act, Cap 92 of 1991</b></p> <p><b>Reference:</b> Articles 10(2), 15(2)</p>		<p><b>Uganda Investment Authority (UIA):</b> The executive director is authorized to “liaise with Government Ministries and departments, local authorities, and other bodies [to] assist an investment licence holder in...obtaining...land and other things required for the...business enterprise” (Article 15(2)). However, foreign investors are explicitly prohibited from acquiring leases for crop or animal production: “No foreign investor shall carry on the business of crop production or acquire or be granted or lease land for the purpose of crop production or animal production” (Article 10(2)). As the agency with authority over foreign investors, the UIA is arguably responsible for ensuring they do not acquire land for crop or livestock production.</p>
<b>Monitor</b>			
<b>Respond</b>	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Article 92</p>		<p><b>Developer:</b> Any non-citizen who acquires land in freehold (which is illegal) is liable to a fine not more than 1,000 currency points or three years’ imprisonment or both if convicted (Article 92).</p>
<b>Implementation</b>			<p>UIA records indicate that it has granted leases to foreign investors for crop production. According to other recent research, foreign investors have apparently also acquired leases for crop and livestock production through other means, including land allocated by the Uganda Land Commission and District Land Boards and transactions with private owners (Zeemeijer 2010). However, only about 20% of land in Uganda is registered, and there is no legal distinction between lands under the authority of the ULC and those under the District Land Boards (Bogere 2011). Moreover, as of December 31, 2011, only 5% of government land had been surveyed (Kibirige 2012). There is thus a lack of legal clarity on the ownership and management of both private and public land, and it appears that the rights of both citizens and investors are being compromised as a result. A recent audit of the ULC found several cases where the same parcel of government land was allocated to two or three different investors with different lease titles (Bogere 2011).</p>

GOAL	FUNCTIONS	Elements	
		Rules	Actors
cases of expropriation	Anticipate	Land Act, Cap 227 of 1998	<b>Developer:</b> According to the ways that the Constitution and the Land Acquisition Act have been interpreted by the courts, the government is not currently authorized to compulsorily

		acquire land for the purposes of allocating it to private investors <sup>42</sup> . Therefore, any developer seeking land from the government should ensure that such land was not acquired through unlawful expropriation.
	<b>Reference:</b> Article 42  <b>Land Acquisition Act, Cap 226 of 1965</b>	
<b>Plan</b>	<b>Land Act, Cap 227 of 1998</b>  <b>Reference:</b> Articles 42, 59, 77	<b>Assessment Officer:</b> Marks out land identified for compulsory acquisition and makes a plan for the land. (Article 4 of the Land Acquisition Act). Notifies persons with an interest in the land to be acquired through a notice published in the Gazette and posted on or near the land in question (Article 5). Holds inquiries into claims and objectives and makes recommendations on the compensation that should be provided to those dispossessed of their rights (Article 6).
<b>Manage</b>	<b>Land Acquisition Act, Cap 226 of 1965</b>  <b>Reference:</b> Articles 2-6	<b>District Land Boards/Government Valuer:</b> Section 59 of the Land Act authorizes the District Land Boards to "(1)(e) compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed." Rates are to be reviewed annually and used to determine compensation payments <sup>43</sup> .  <b>Minister of Lands:</b> Authorized to "ascertain the suitability of any land for a public purpose" (Article 2 of the Land Acquisition Act), and to declare by statutory instrument that "any land is required by the Government for a public purpose" (Article 3).
<b>Monitor</b>		

<sup>42</sup> Veit et al. 2008.

<sup>43</sup> Section 77 of the Land Act provides that, "(1)(a) in the case of a customary owner, the value of land shall be the open market value of the unimproved land; (b) the value of the buildings on the land, which shall be taken at open market value for urban areas and depreciated replacement cost for the rural areas; (c) the value of standing crops on the land, excluding annual crops which could be harvested during the period of notice given to the tenant." The government must also pay a disturbance allowance of 15% of the compensation or 30% if less than a six-month notice is given. Compensation can be paid in-kind, including through the provision of alternative land, housing, or other livelihood assets (Veit et al. 2008).

	<b>Respond</b>	<p><b>Land Act, Cap 227 of 1998</b></p> <p><b>Reference:</b> Article 42</p> <p><b>Land Acquisition Act, Cap 226 of 1965</b></p> <p><b>Reference:</b> Article 13</p>	<p><b>Courts:</b> Any person aggrieved by compulsory land acquisition may petition the hierarchy of courts for redress: Local Council II Courts at the parish and village level; Court Committees at the sub-county level; and the High Court, Court of Appeal, and Supreme Court<sup>44</sup>.</p> <p><b>High Court:</b> Hears appeals from persons aggrieved by compensation for expropriated land.</p>
	<b>Implementation</b>	<p>Veit et al. (2008) enumerate a number of potential problems with compensation implementation, including low awareness of government valuation rates among citizens whose land was expropriated, accusations that the compensation citizens received for their expropriated land was below the government rate, and concerns that land offered as compensation was either insufficient or of inferior quality compared to the land that was expropriated. These authors also found that many of those aggrieved by compulsory acquisition face difficulty accessing formal redress, because few people possess the “knowledge, time and resources [required] to pursue their legal rights” through the formal court system. “Moreover many courts, especially lower-level courts...are not sufficiently independent from the government; many are influenced by politics and bribes” (Veit et al. 2008, p. 4). As such, it appears that the implementation of compulsory acquisition may not adequately protect the rights of those evicted. Furthermore, while the courts have so far prohibited the government from using compulsory acquisition to acquire land for private investors, the government has on several occasions attempted to amend the Constitution and influence land policy debates to allow for such acquisitions (Veit et al. 2008). This is particularly troubling given the implementation challenges related to compulsory acquisition documented to date.</p>	

<b>GOAL</b>	<b>FUNCTIONS</b>		<b>Rules</b>	<b>Elements</b>	<b>Actors</b>
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<sup>44</sup> Veit et al. 2008.

**Investment should contribute to socio-economic development (Article 12(e) of the Investment Code Act)**

<b>Anticipate</b>		<b>Uganda Investment Authority (UIA):</b> Required to appraise investment applications for their potential to use local materials, supplies and services; create employment opportunities; and contribute to locally or regionally balanced socio-economic development. In addition, investment licenses may include a requirement that the investor “employ and train citizens of Uganda to the fullest extent possible with a view to the replacement of foreign personnel as soon as may be practicable” (Article 18(2)(b)).
<b>Plan</b>	<b>Investment Code Act, Cap 92 of 1991</b> <b>Reference:</b> Article 12(b)(c)(e) & 18(2)(b)	
<b>Manage</b>		
<b>Monitor</b>		
<b>Respond</b>		
<b>Implementation</b>	<p>There are no published guidelines on job creation or any other types of benefit sharing with local people, such as locally sourced inputs or services, and no government authority is responsible for reviewing, monitoring, or enforcing any private benefit sharing arrangements agreed between an investor and any local citizens. While the UIA does publish the number of anticipated jobs each approved investment plans to create on the basis of their investment license application, the UIA does not track actual jobs created by approved investments. In fact, until recently the UIA did not even have sufficient resources to determine which approved investments were actually in operation on the ground (Mitti 2011). Moreover, investment licenses and lease applications are apparently often renewed without significant monitoring or review of investment implementation. For instance, when an investor chooses to notify the UIA that its activities differ from those proposed in its investment application, the UIA will typically amend the investment license to reflect the actual activities on the ground so long as they remain within the agriculture sector (Section 17(1)(b) of the Investment Code Act). Similarly, the ULC often renews expired leases to investors based primarily on a review of any discrepancies between the investment proposal and the actual activities undertaken, as well as consideration of the value of the investment and the number of jobs planned to be created. However, no verification of the number of jobs actually created or the volume of local goods or services purchased by the investor is undertaken. This makes it impossible to determine whether job creation or other benefits are actually being implemented in practice.</p>	

## IMPLEMENTATION

Information about the implementation of the environmental and social safeguards reviewed is included in Tables 4 and 5. These details are based primarily on a literature review but supplemented with interviews with knowledgeable experts in government and civil society. According to the available evidence, implementation of social and environmental safeguards to agricultural investments remains limited. In fact, until recently the UIA did not even have sufficient resources to determine which approved investments were actually in operation on the ground (Mitti 2011). When an investor chooses to notify the UIA that its activities differ from those proposed in its investment application, the UIA will typically amend the investment license to reflect the actual activities on the ground so long as they remain within the agriculture sector (Section 17(1)(b) of the Act). Similarly, the ULC often renews expired leases to investors based primarily on a review of any discrepancies between the investment proposal and the actual activities undertaken, as well as consideration of the value of the investment and the number of jobs to be created. This suggests that the UIA is not monitoring approved investments for their contribution to socioeconomic development or ensuring that they at least do not harm the environment.

Moreover, weak enforcement, auditing, and monitoring of environmental impact assessment process means that investors do not necessarily implement the proposed activities or follow the prescribed mitigation plan. Although technically agricultural investors are required to complete an EIA before obtaining a lease, in practice the ULC issues titles before the EIA process has been completed. Where EIAs have been completed, the environmental impact statements—which by law are public documents—may not always be publically available. A search of the environmental impact statements for agricultural developments held at the NEMA library returned statements for just three projects: Oil Palm Uganda Ltd.<sup>45</sup>, Olweny Swamp Rice Irrigation Project, and Rosebud Limited, an integrated floriculture and tourism project. Further research is required to determine whether other recent agricultural investments have approved environmental impact statements.

The Wetlands Management Department also has not had sufficient funding to complete the inventory of wetlands. At a minimum, this makes it difficult for NEMA to determine whether a proposed project will be operating in a wetland, let alone what types of land uses might be appropriate for a particular wetland or what impacts the proposed project may have on biodiversity and people dependent on the wetland. It also means that the Wetlands Management Department is unable to track how many projects with approved EIAs are operating in wetlands, a necessary prerequisite for NEMA auditing of approved projects to determine immediate and long-term impacts on biodiversity, ecosystem services and local livelihoods.

Meanwhile, even though the Land Act and its 2010 Amendment attempt to protect the rights of *mailo* tenants and owners, it appears that the implementation of protections for tenant rights remains lacking. While documentation is not required to prove tenants' claims, the limited use of certificates of

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<sup>45</sup> At least three separate environmental impact statements were filed for this project, including one released by the International Fund for Agricultural Development (IFAD), which partly financed the project.

occupancy complicates the identification of lawful and bona fide occupants. Investors may therefore consult various authorities, including the UIA and the ULC, to help them identify legitimate occupants and negotiate compensation terms. This function is not a core competency of either agency, and neither agency is legally authorized to perform these functions. This legal and institutional uncertainty creates undue risk that tenants' rights will not be recognized in transactions with investors.

Moreover, Veit et al. (2008) enumerate a number of potential problems with compensation implementation, including low awareness of government valuation rates among citizens whose land was expropriated, accusations that the compensation citizens received for their expropriated land was below the government rate, and concerns that land offered as compensation was either insufficient or of inferior quality compared to the land that was expropriated. These authors also found that many of those aggrieved by compulsory acquisition face difficulty accessing formal redress, because few people possess the "knowledge, time and resources [required] to pursue their legal rights" through the formal court system. Finally, "many courts, especially lower-level courts...are not sufficiently independent from the government; many are influenced by politics and bribes" (Veit et al. 2008, p. 4). As such, it appears that the implementation of compulsory acquisition does not adequately protect the rights of those evicted.

# Way forward

Based on the information presented above, this section will aim to identify reforms to laws and practices that improve the vetting, implementation and outcomes of large-scale agricultural production investments in Uganda. The primary goal of the suggested reforms is to ensure that agricultural investments reduce rural poverty in Uganda, advance the interests and needs of existing land holders and maintain or enhance Uganda's biodiversity, ecosystem services and natural resources. Given that this research is based heavily on literature and interviews with knowledgeable stakeholders, the suggested reforms should be subjected to further research and public debate. Still, it is hoped that these suggestions will inform the debate on agricultural investment in Uganda to ensure these projects contribute to sustainable and equitable development.

## CLARIFY THE RIGHTS OF FOREIGN INVESTORS TO ACQUIRE FARMLAND

To begin, it is important to recall that the Investment Code Act explicitly prohibits foreign land acquisition “for the purpose of crop production or animal production” and instead encourages foreign investors to “provide material or other assistance to Ugandan farmers in crop production an [*sic*] animal production” (Section 10(2)(a)). The goal of this provision is thus to use foreign investment to promote rather than displace domestic production. This is a laudable policy objective that is arguably justified given the limited community benefits that have been derived from large-scale land acquisitions globally, particularly in the first few years of operation (Deininger, et al. 2011).

Nonetheless, foreign investors have acquired large areas of farmland in Uganda despite the Act's rather generous definition of “domestic” investments, which includes companies with up to 49% foreign ownership. This suggests that the political will required to enforce this provision is lacking. Moreover, given that the UIA has difficulty monitoring the most basic information about approved investments—such as whether they are currently operating—it would be difficult, if not impossible, to enforce this provision on private lands.

Therefore, there is a need to produce an overarching policy on land for foreign investment that is based on sound analysis and public debate. This is particularly urgent given that foreign farmland acquisitions continue in the absence of an overarching land policy—the government still has not adopted the Draft National Land Policy after more than a decade of debate. Through the policy development process, the government needs to clarify whether foreign investors will be allowed to acquire land for agricultural production and, if so, under what conditions.

Ideally, all investors—whether domestic or foreign—interested in targeting direct crop or livestock production should be encouraged to create joint ventures and outgrower schemes with existing land owners and occupants. These types of investment are more likely to facilitate skills and technology transfer to the local population and will avoid displacing existing land holders, with potentially significant negative impacts on their livelihoods. Promoting investment in the projects that seek to

increase the productivity of existing land holders would be in line with current provisions of the Investment Code Act that encourage foreign investors to assist domestic producers. Also, the Act's current emphasis on crop and meat processing as priority areas for investment could be reinforced in negotiations with potential investors to provide domestic producers with a reliable market.

## **CODIFY THE PROCEDURES FOR INVESTORS TO ACCESS FARMLAND**

To the extent that (domestic or foreign) investors retain rights to directly acquire land for agricultural production through lease or purchase, the government needs to urgently develop and codify procedures for eligible investors to acquire farmland. These procedures should specify which parties are responsible for implementing and overseeing each step of the process and elaborate<sup>46</sup>:

- i. The types of land that the UIA can help investors acquire (e.g. public or private, and if public, whether only lands held by the ULC or also lands held by the District Land Boards);
- ii. A process for making information about both public and private landholdings available for investment publically available, possibly through a registry;
- iii. Transparent procedures for investors to identify lands appropriate to specific investments;
- iv. Detailed criteria for determining the eligibility of interested investors to acquire farmland, including specific minimum financial and technical qualifications;
- v. A transparent, up-front process for establishing all claims on lands proposed for investment—whether public or private—compensating occupants, and resolving any existing disputes;
- vi. The type of rights that investors can acquire on public vs. private land, including whether these rights can be transferred and what happens to the land in case of investor bankruptcy;
- vii. A model contract for transferring land rights to an investor that specifies, *inter alia*, the type of rights being transferred, the terms of the transfer (e.g., purchase price, annual rent, taxes), the identity of existing rights holders and any compensation paid or resettlement plans;
- viii. Mechanisms for addressing any disputes that arise over any land transfer or compensation;
- ix. Procedures for verifying investment implementation, revoking investment licenses from non-performing investments, and liquidating any land or other assets from investors whose licenses have been revoked.

Until such time as the necessary amendments and regulations are in place, it is recommended that all government agencies discontinue further public land allocations to either domestic or foreign investors for agricultural production. Regulating the acquisition of private land will be more difficult. However, the UIA could selectively approve investments in agricultural processing or outgrower schemes and disallow production investments. Another way to regulate land acquisition for agricultural production would be to require interested investors to submit a detailed cost-benefit analysis of their proposal for government review. Such an analysis would need to compare existing land uses—including the benefits existing users derive from the land—to the proposed land use. Where direct land acquisition—

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<sup>46</sup> Based on Deininger et al. 2011.

through lease or purchase—can be justified given expected costs to existing land holders, the process needs to be transparent and consistently regulated and monitored.

### **FOCUS GOVERNMENT EFFORTS ON PROVIDING PUBLIC GOODS TO FACILITATE INVESTMENT**

At the same time, arguments for the government—whether through the UIA or another agency—to proactively assemble land in a “land bank” for investors require further justification. Identifying, acquiring, holding, and allocating land for investment is a time- and capital-intensive process that requires adequate information on, *inter alia*, the suitability of a given piece of land to the financial and technical specifications of an investment proposal; the legitimate rights of current occupants and owners; the value of the land and any improvements on it; and the financial and technical qualifications of proposed investors. The evidence presented above suggests that while various government agencies are involved in one or more of these tasks, overall government capacity in all of these faculties remains limited.

Moreover, experience in neighboring Tanzania suggests there are a number of challenges associated with the government proactively acquiring land for subsequent allocation to investors. A recent World Bank review of the Tanzanian experience found that the government’s use of expropriation to acquire land for investment has been accused of “pushing out poor indigenous landowners to provide land cheaply to the rich,” “often with delayed or insufficient compensation” for the displaced (Deininger, et al. 2011, p. 106). In addition, “relying on expropriation as the primary means of making land available to investors...makes land supply subject to capacity constraints in the public sector and runs the risk of embroiling investors in political disputes” that could create costly delays in project implementation. It also precludes joint ventures that could transfer technology and skills to local people through genuine participation in farm operations. The authors conclude that “[a]s long as landowners can be identified and a regulatory framework to guide the [land acquisition] process and uphold basic standards is in place, the private sector will often be able to negotiate more flexibly and quickly than the government” (Deininger, et al. 2011, p. 106).

Therefore, the government should focus its limited time and resources on creating an enabling legislative and institutional framework that supports a fair and transparent land acquisition process. This framework should include an accurate and transparent land information management system, a clear process for investors to access land—whether through lease, purchase, or joint venture—and public education to ensure all landholders are aware of their rights (Deininger, et al. 2011). Instead of compiling land for investors, the government should focus on clarifying, recording, and mapping public and private land rights for the entire country to allow potential investors to quickly identify legitimate land holders and negotiate with them directly. Given information and power imbalances between local land holders and potential investors, land owners and occupants should also have access to negotiation assistance from third parties, such as lawyers or civil society organizations (HLPE 2011).

In fact, the World Bank, through the \$70 million second Private Sector Competitiveness Project (PSCP), has since 2005 been supporting the government to index and scan all land titles and cadastral sheets and survey all government land (World Bank 2004). However, progress in the latter has been slow. As of December 31, 2011, all existing land titles and cadastral sheets had been scanned and indexed, but

only 5% of government land had been surveyed (Kibirige 2012). Under the PSCP, the government has also streamlined the land and business registration processes.

While these are important reforms, the best way to attract legitimate agricultural investors may be to resolve existing land disputes and systematically record land rights to address investors' primary complaint—the difficulty of obtaining clean title to land in Uganda. Thus, even after all the land title and cadastral sheets are scanned and all government land surveyed, the government will need to undertake a major investment in resolving multiple claims and other land disputes. Through the PSCP, the government has already completed pilot registration projects in at least five districts, and the World Bank recently extended the PSCP to ensure that a comprehensive land information system can be completed (Kibirige 2011; World Bank 2012c). The process of resolving land disputes and systematically recording land rights will no doubt be time and resource intensive, but it is absolutely necessary to ensure that the rights of both investors and local landholders are respected.

### **CLARIFY THE AUTHORITIES OF RELEVANT AGENCIES TO FACILITATE LAND ACCESS FOR INVESTORS**

It will also be important to clarify the roles and responsibilities of the UIA vis-à-vis other government agencies with respect to land acquisition for agricultural investment. This clarification could be accomplished through amendments to the Investment Code Act, the Land Act, and other relevant legislation, or through the promulgation of new laws that regulate all of these agencies. Distinguishing the authorities of the ULC, the District Land Boards, and the Ministry of Lands in will be particularly critical to align agency competencies and responsibilities.

For instance, given its mandate to manage government land, the ULC may be a more appropriate host of a registry of public lands available for investment. The role of the District Land Boards in allocating district land for investment also needs to be clarified. Given that the Land Act does not allocate any land exclusively to the Land Boards, it may be more appropriate for them to focus on increasing the land rights of existing users in the district. Likewise, the Ministry of Lands is likely better placed than the UIA to advise on matters related to the identification and compensation or resettlement of legitimate owners and tenants. Due to the low rate of land registration and incidence of fraudulent titles, additional guidance will likely be required for both investors and the Ministry to ensure a fair and standardized process for identifying existing rights and calculating fair compensation. To avoid challenges related to the multiple allocation of government land and ensure that the rights of existing land owners and tenants are respected, the roles of each of these agencies should be clarified prior to new farmland acquisitions for investment.

Related to this, the government needs to immediately clarify the different types of public land rights and specify what duties and authorities different government entities hold in relation to these rights. Neither the Constitution nor existing legislation clearly defines the terms “government land,” “public land,” or “local government land”; in practice the terms are often used interchangeably (Bogere 2011). There is also no distinction of rights and responsibilities among the various agencies that hold, manage, or allocate non-private lands, including the ULC, the District Land Boards, and the various ministries and agencies that in practice manage government land, such as the National Forestry Authority and the Uganda Wildlife Authority (MLHUD 2011, Section 24).

The Draft National Land Policy proposes a number of reforms to address these shortcomings, including statutory definition of “government land” and “public land” (Section 25(a)). The Draft Policy also proposes legislation to, *inter alia*, “define the manner in which government or local government will hold and manage such land taking into account the principles of public trusteeship, transparency and accountability” (Section 26(ii)) and “define the terms and conditions under which such land may be acquired, used or otherwise disposed of by the government and local governments” (Section 26(iii)). The Draft Policy recommends that the government “adjudicate, survey, register or title these lands in the names of Uganda Land Commission or Local Governments” (Section 27(i)). These are urgent reforms that are particularly important in the context of large-scale land acquisition for agricultural investments.

### **INCREASE THE TRANSPARENCY OF ALL INVESTMENTS IN AGRICULTURAL LAND**

Increased transparency is urgently required to ensure that land acquisitions follow standard procedures and to enable future monitoring and analysis of investment planning and implementation. The government should make information about land available for investment publically available to all interested parties—not just investors. Before any government land is offered for private investment, a public land use planning process should be implemented ensure that the proposed land use change is in the public interest. In addition, the Ministry of Land should publish an inventory of existing claims to the land to ensure that legitimate rights holders are entitled to participation in any joint venture or compensation (Global Witness, et al. 2012).

Non-proprietary information about all approved investments should also be made public, particularly those involving government land acquisition. This follows the conclusions of a recent global review of the information required to improve transparency in large-scale land acquisitions (Global Witness, et al. 2012). Based on this review, the following information should be made public about all approved investments:

- i. The identities and responsibilities of all Parties involved in the investment
- ii. Names and affiliations of all parties involved in the investment
- iii. Financial intermediaries and investors, capital investments and deposits
- iv. Rights, responsibilities, and obligations of the implementing Party
- v. Land area and location and nature of rights awarded
- vi. Business plan (excluding any proprietary information)
- vii. Terms for local employment and other forms of benefit sharing
- viii. Cost-benefit analysis
- ix. Value of land, rents, and fees
- x. Tax liability
- xi. Monitoring and reporting obligations and penalties for non-compliance
- xii. Dispute resolution mechanisms and jurisdiction(s) applicable for foreign investments
- xiii. Closure plans

- xiv. Impact assessment and mitigation plans
- xv. Environmental impact study/assessment and management plan
- xvi. Other impact assessments (e.g., socio-economic) and mitigation plans
- xvii. Resettlement and compensation plans

In addition, the UIA and other appropriate authorities should regularly collect data to monitor the contribution of approved investments to, *inter alia*, job creation, agricultural production, and socio-economic development. The UIA could also work with the National Environmental Management Authority to publish environmental monitoring data and thereby ensure approved investments do not harm the environment. This type of monitoring would be in line with the UIA's responsibilities as outlined in current provisions of the Investment Code Act (e.g., Section 12(c)&(e) and Section 18(2)(d)). Ideally, the Ministry of Lands or another competent authority should also publish information on the resettlement and compensation of any existing landholders.

The overall lack of transparency that currently surrounds land acquisition for agricultural investments in Uganda complicates credible analysis of investment outcomes and increases opportunities for fraud and corruption. By making these data public, the government and investors can manage expectations about investments, and citizens can hold both investors and government authorities accountable to their responsibilities. This information can also be used to inform policy debates about the contribution of domestic and foreign investment to national policy objectives.

## **IMPLEMENT EXISTING ENVIRONMENTAL SAFEGUARDS AND IMPROVE UPON THEM**

The government needs to ensure that existing environmental safeguards relevant to land acquisition for agricultural investment are consistently enforced and monitored. This includes all of the safeguards enumerated in Table 4 related to provisions in the Environmental Impact Assessment Regulations, the National Environmental Act, the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, the National Environment (Hilly and Mountainous Area Management) Regulations, the National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations, the National Forestry & Tree Planting Act, the National Water Act, the Water (Waste Discharge) Regulations.

To begin, it will be most important to ensure that all applications for agricultural projects submitted to the UIA include a complete environmental impact assessment that is reviewed by NEMA *before* an investment license is granted or at least before operations begin. The existing EIA procedures may need to be reviewed to ensure that they deal adequately with the potential risks posed by large-scale agricultural production projects. Particular attention should be paid to water use for irrigation; the use of pesticides, fertilizers, and herbicides; and the potential displacement of existing land uses.

In addition, NEMA should work with the UIA to draft procedures for checking whether a proposed project is in compliance with the relevant environmental laws, and in particular to confirm that an EIA

has been completed. NEMA should also monitor approved investments to ensure they are implementing the recommended mitigation actions and complying with all other terms of their environmental management plan. It is also recommended that any revisions to the Investment Code Act specifically cross-reference the legislation cited in Table 4 and clarify the UIA's role in ensuring that Uganda's biodiversity and ecosystem services are sustainably managed.

To this end, it would be useful for NEMA to work with the UIA to improve the environmental safeguards applied at the investment license application stage. As part of the investment application process, the UIA could work with NEMA and the Wetlands Management Department to ensure that all lands proposed for agricultural investments are surveyed for wetlands, and ideally for biodiversity and ecosystem services, as well. This would be in line with the Department's mandate to inventory and demarcate all wetlands (Section 10(1)(2)(a-j) and 10(3)). It would be helpful if the Uganda Wildlife Authority and the Uganda Forestry Authority could work with NEMA and UIA to create maps that identify biodiversity-rich regions or priority areas for conservation or restoration. All proposed investment locations could then be compared to these maps to identify potential risks to the environment, biodiversity, or ecosystem services. Where such risks are identified, NEMA should require that the investor's EIA adequately avoids, minimizes, and mitigates these risks.

This type of analysis and planning will be particularly important (and appropriate) in cases where investors request land directly from the government. Indeed, it may be advisable to add environmental safeguards to the land application—for example, the investor should be required to identify any potential environmental risks and describe their plans for avoiding, minimizing, and mitigating potential negative impacts on biodiversity, the environment, and ecosystem services.

Implementing existing environmental safeguards consistently will no doubt require much better coordination among these agencies and additional staff and budget resources. However, it will also increase the likelihood that approved investments lead to sustainable development.

## **RESPECT EXISTING LAND RIGHTS AND USE INCLUSIVE BUSINESS MODELS**

The government also needs to ensure that existing social safeguards relevant to land acquisition for agricultural investment are consistently enforced and monitored, including all of the safeguards enumerated in Table 5 related to provisions in the Equal Opportunities Commission Act, the Investment Code Act, the Land Act and its Amendments, the Land Acquisition Act, and the National Culture Policy.

In particular, the government has a legal responsibility to protect the land rights of land owners, occupiers, and tenants. A relevant government authority, such as the Ministry of Lands, Housing, and Urban Development, should monitor the implementation of safeguards related to land rights. This includes tenants' right of first refusal and the right to be fairly compensated if they consent to the transfer. Should the government ever acquire the authority to use compulsory acquisition for promoting private investment, it will be important to make sure the procedures outlined in the Land Acquisition Act are implemented transparently and consistently enforced. In the meantime,

compensation procedures applicable to cases where private investors acquire privately held land need to be urgently developed. These procedures should specify the process for identifying and notifying all parties with an interest in the land, including tenants and occupants, and guidelines for calculating compensation for the land rights of tenants and occupants. Ideally, the Ministry would oversee this process and ensure the procedures and guidelines are adhered to before issuing new registration papers to the investor.

To the extent that large-scale agricultural investments displace existing land holders or uses, the government also needs to ensure that these investments avoid, minimize, and mitigate negative impacts on the culture and livelihoods of all peoples in Uganda, including indigenous peoples. It is not clear to what extent the National Culture Policy of 2006 is being implemented overall (ILO and ACHPR 2009). However, its enforcement is even more critical in the context of large-scale changes in land cover and land use as a result of large commercial plantations.

It is also recommended that any revisions to the Investment Code Act specifically cross-reference the legislation cited in Table 5 and in particular clarify the guidelines for benefit sharing with local communities. At present, there is no guidance to help the UIA advise investors on an appropriate level of benefit sharing, including the number of jobs to be created (which could be related to the number of hectares or the overall value of the investment), the proportion of goods and services to be procured locally, or the opportunities for incorporating existing tenants and occupiers into the business model either as outgrowers or as independent suppliers to the investment. It would also be advisable to incorporate a social impact assessment into the investment application process to ensure any project benefits are commensurate with any risks to local culture and livelihoods.

Ideally, all investors—whether domestic or foreign—interested in targeting direct crop or livestock production should be encouraged to create joint ventures and outgrower schemes with existing land owners and occupants. These types of investment are more likely to facilitate skills and technology transfer to the local population and will avoid displacing existing land holders, with potentially significant negative impacts on their livelihoods. Promoting investment in the projects that seek to increase the productivity of existing land holders would be in line with current provisions of the Investment Code Act that encourage foreign investors to assist domestic producers. Also, the Act's current emphasis on crop and meat processing as priority areas for investment could be reinforced in negotiations with potential investors to provide domestic producers with a reliable market.

# Conclusion

In conclusion, this study has revealed a significant gap between existing laws and policies governing large-scale land acquisition for agricultural investments, on the one hand, and the actual processes that have been applied to recent investments, on the other. Despite lacking clear legal authority or codified procedures, the Uganda Investment Authority has directly acquired agricultural properties for allocation to private investors. Moreover, the UIA has allocated at least some of this land to foreign investors for commercial agricultural production, which is in direct contradiction to the Investment Code Act. The UIA has also assumed various roles and responsibilities that appear beyond its core competencies, including helping investors identify legitimate owners and occupants. At the same time, it appears that existing social and environmental safeguards have not been adequately applied to large-scale agricultural investments

Private investment in Uganda’s agriculture sector can have an important role to play in transferring new technologies to local farmers, increasing rural incomes, and promoting balanced socio-economic development. However, a number of reforms to existing policy, law, and practice will be necessary to ensure that this investment leads to sustainable and equitable development in Uganda.

In particular, investors should be encouraged to create joint ventures and outgrower schemes with local land owners and occupants to facilitate skills and technology transfer and avoid displacing existing land holders. Where direct land acquisition is justified, detailed rules and regulations will need to be codified and implemented to clarify the role of the UIA and other government institutions in helping investors acquire agricultural land. The government needs to complete a comprehensive recording of rights to public and private lands and resolve existing land disputes to protect the rights of both existing landholders and investors. The UIA also needs to work closely with the Ministry of Lands, the Uganda Land Commission, and the District Land Boards to ensure that the rights of existing land owners and occupants are consistently recognized and enforced during the investment planning and implementation process. Finally, information about all investments—particularly those involving government land acquisitions—should be made publically available to support on-going monitoring and reform and to decrease opportunities for abuse.

There is also an urgent need for the National Environmental Management Authority, the Wetlands Management Department, the Ministry of Water and other relevant environmental agencies to work with the UIA to ensure that all approved investments implement the existing environmental safeguards. In the short term, safeguards related to environmental impact assessment, water use, waste discharge (e.g. of pesticides, chemicals, and herbicides) and wetlands conservation should be the highest priority. In the medium- to long-term, the government also needs to improve these safeguards, in particular by incorporating additional environmental screening into the investment license application process. Procedures for verifying whether a proposed project is in compliance with the relevant environmental laws, and in particular to confirm that an EIA has been completed, should be established and implemented *before* investment license is approved. Additional resources will also be needed to help NEMA and other environmental agencies monitor approved investments to ensure

they are implementing the recommended mitigation actions and complying with all other terms of their environmental management plan.

Only through reforms that promote sustainable and socially inclusive investments and clarify the roles of all parties can Uganda ensure these projects lead to sustainable and equitable development.

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