A Narrative on Land Law Reform in Uganda

Patrick McAuslan

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Contents

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Gareth A Jones
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To Carwyn

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[1] Resumes of papers and discussions appeared in *Land Use Policy* (1999, 16 (1) 57-59), *Urbanissimo* (1999, February, 23-26), and *Land Lines* (1998, 10 (6) 1-4, available in Spanish at http://www.lincolninst.edu/pubs/pub-detail.asp?id=385).

CONTRIBUTORS

David Dowall
Professor of City and Regional Planning
University of California at Berkeley
dowall@uclink.berkeley.edu

Alain Durand-Lasserve
Senior Researcher
Centre National de la Recherche Scientifique (CNRS)
Bordeaux, France
a.durand-lasserve@wanadoo.fr

Edésio Fernandes
Research Fellow
Institute of Commonwealth Studies
University of London
edesiofernandes@compuserve.com

Clarissa Fourie Augustinus
Chief of Land Tenure Unit
UNCHS (Habitat)
Nairobi, Kenya
clarissa.augustinus@paulaugustinus.com

Gareth A Jones
Lecturer in Human Geography
London School of Economics
G.A.Jones@lse.ac.uk

J.M. Lusugga Kironde
Associate Professor
Department of Land Management and Valuation
University College of Lands and Architectural Studies (UCLAS)
Dar es Salaam, Tanzania
kironde@uclas.ac.tz

Ling Hi Li
Associate Professor
Department of Real Estate and Construction
University of Hong Kong
lhli@hkucc.hku.hk

Patrick McAuslan
Professor of Law
Birkbeck College
University of London
p.mcauslan@law.bbk.ac.uk

Geoffrey Payne
Geoffrey Payne and Associates
London, United Kingdom
gkpayne@gpa.org.uk

Thomas A. Reiner
Professor Emeritus of Regional Science
University of Pennsylvania
Philadelphia, Pennsylvania
tareiner@sas.upenn.edu

Lauren A. Royston
Principal
Development Works
Johannesburg, South Africa
laurenr@global.co.za

Francisco Sabatini
Assistant Professor
Catholic University of Chile
fsabatin@puc.cl

J. David Stanfield
Project Director for the Land Market Institutional Development Project in Albania, and the Land Use Policy Administration Project in Trinidad and Tobago.
Land Tenure Center
University of Wisconsin-Madison
jdstanfi@facstaff.wisc.edu

Peter M. Ward
Professor of Sociology
Lyndon B. Johnson School of Public Affairs
University of Texas at Austin
peter.ward@mail.utexas.edu

A Narrative on Land Law Reform in Uganda

Patrick McAuslan

In 1998, the Uganda government enacted the Land Act of Uganda, an important piece of legislation that launched a land reform aid project that same year.[1] The project in question was entitled Securing Sustainable Livelihoods through Land Tenure Reform (generally referred to as the Land Act Implementation Project). It was a 15-month exercise, funded by the Department for International Development (DfID) of the British government and designed to assist the government of Uganda to begin the process of implementing its Land Act. The author had assisted in drafting the act in 1998 and was invited to become the senior technical adviser to the project in 1999. He worked with the project for one year, from April 1999 to late March 2000. This chapter is based on the author's experiences in his advisory role.

The project was developed with the best of intentions, but, despite some limited achievements, was judged largely unsuccessful. This chapter puts forward the argument that three interrelated factors caused this failure. First, from the outset the host ministry harbored—but ignored—fundamental and irreconcilable internal differences about both the act and the project. Second, offices within the aid agency struggled with political differences over the merits of the project, while the agency's key regional office failed to offer any real commitment to the project. Third, the project was miscast; its stated purpose—to lay the foundation for the effective and equitable implementation of the Land Act—could not be realized because the project did not address the underlying requirements to meet this purpose. The Land Act's failure, therefore, is a case study of how bureaucrats can subvert and corrupt the implementation of new land law, despite the best intentions of ministers, Parliament and aid agencies. Such a case study should be of general interest to all those concerned with more than just the text of a new law. Land reform is very much back on the agenda of both governments and aid agencies. Nevertheless, as this chapter demonstrates, land reform involves much more than land-law reform, reform of land relations or the facilitation of a land market. It goes to the heart of governance, and a failure to focus on that will likely undermine any good intentions.

A BRIEF HISTORY OF LAND RELATIONS IN UGANDA

Uganda's Land Act of 1998 was required by the Constitution of Uganda to be enacted into law on or before July 2, 1998. It is, in many respects, a revolutionary law, overturning a century of land relations and laying the groundwork for the possible evolution of a market in land based on individual ownership. It is difficult to understand the present state of land tenure in any country without an awareness of its history. Even where a revolutionary change occurs, its rationale lies in the past, and the chances for success of the change will also be determined in part by the past and the extent to which path-dependent patterns of development can be overcome. Uganda is no exception to these generalizations.

The modern history of Uganda starts with the Uganda Agreement of 1900, an agreement equally about land and about governance, made between the British government and the Kingdom of Buganda, one component of the modern state of Uganda. It defined the judicial and administrative functions of the *kabaka* (king) and *lukiiko* (government) of Buganda vis-à-vis the British colonial authorities and in Articles 15–17 made provision for a general land settlement. In the words of Henry West, the foremost authority on land relations in Buganda:

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[1] Nothing in this chapter must be taken in any way as a statement of or as a reflection of the views of the Department for International Development, or of any official therein, as representing any official DfID position on the project discussed in this chapter or on any possible future project supporting land reform in Uganda or elsewhere.

> This land settlement was fundamental to the whole Agreement and should be viewed only as an integral part of it. Briefly, the total area of land in Buganda was assumed to be 19,600 square miles which was to be divided between the Kabaka and other notables on the one hand and the Uganda Administration on the other. Thus the Kabaka, certain members of the royal family, the Regents, county chiefs and certain other leaders were to receive either private or official estates totaling 958 square miles and "one thousand chiefs and private landowners" were to receive "the estates of which they are already in possession." These were computed at an average of 8 square miles per individual making a total of 8,000 square miles…. The remaining area, amounting to an estimated 9,000 square miles was to be vested in Her Majesty's Government. It was this land which came to be called Crown Land; its designation being changed to Public Land by the Public Lands Ordinance of 1962. (West 1972, 17)

The land thus granted to the kabaka and the chiefs was not vacant land; peasants occupied it. Relations between the peasant occupiers and the chiefs were, up to the time of the Uganda Agreement, governed by an intricate system of law and custom, like many pre-market societies, mingled public (government) and private (access to use and occupancy of land) law. The land granted to the chiefs became known as *mailo* land, referring to the square miles of land, and was granted as English freehold tenure.

Relations between landlord and tenant within Buganda have always been fraught with tension. Landlords have been reluctant to accept that the restrictions of customary relationships should limit their absolute ownership of land, and tenants have refused to accept that they have no rights in land that they regard as being theirs by virtue of customary law. Freehold tenure then was taken to be something very different in Uganda, compared with English custom. In Uganda, it was taken to denote absolute ownership free of obligations to others, while in England a freehold estate was a fundamental part of the system of divided rights of ownership, which permits more than one party to have rights in the same plot of land and so involves both rights and obligations.

The 1900 agreement also gave rise to another problem: the "lost counties." In the run-up to the Uganda Agreement 1900 and the British acquisition of Uganda, there was fighting between the British and various states and political groupings in the geographical area of modern Uganda. One such state was Buganda; another was Bunyoro. At the crucial time, Buganda threw in its lot with the British; Bunyoro did not. The 1900 agreement rewarded Buganda by taking a portion of Bunyoro and transferring it to Buganda, subjecting it (and those living in that area) to the new regime of mailo land. This created a situation with Ganda chiefs owning land in Bunyoro occupied by Bunyoro people with a burning sense of grievance over their lost counties.

The agreement had another unforeseen, but in retrospect, inevitable effect. It had divided land in Buganda into two categories, freehold (mailo) land and crown land. Customary land tenure was not recognized as giving any secure rights to those occupying mailo land. In addition, the Crown Land Ordinance of 1903 made it clear that persons occupying land under customary tenure were never regarded as owning the land; they were no more than tenants at will of the crown. The colonial government could and often did grant both freehold and leasehold titles to persons who applied for such land, with the customary occupiers thereafter being required to move off the land or remaining specifically as tenants at will of the new owner.

This system of land tenure remained in place until certain changes were made, prior to independence in 1962. First, it was agreed between the British government and the Ugandan authorities that a referendum would be held in the lost counties to determine whether they should be returned to Bunyoro or remain as part of Buganda; no mention was made of the ownership of land in the area. The referendum took place in 1964 and the lost counties voted to become part of Bunyoro again, forming the district of Kibaale. The

problem of Baganda landlords and Banyoro tenants remained.[2] Second, it was agreed that crown land should be transferred to the state of Uganda and vested in and managed by a Land Commission, but that in Buganda, crown land should be vested in and managed by the Buganda Land Board. For the Baganda, this was the return of their 9,000 square miles taken by the Uganda Agreement of 1900. The changes were provided for in the Public Lands Ordinance (1962), passed before independence.

The arrangements agreed to in 1962 lasted less than four years. When the Independence Constitution was overthrown in February 1966 and replaced, first by the Constitution of Uganda (1966) and then by the Constitution of Uganda (1967), the kingdoms in Uganda were abolished. As a consequence the Buganda Land Board was terminated, and all public land in Uganda was vested in the Land Commission. The Public Lands Act (1969) gave legislative backing to this new arrangement, but it left untouched the position of customary tenure. Land occupied under customary tenure was public land and could still be alienated in freehold or leasehold, but only with the consent of those occupying the land under customary tenure. No change was made to tenure in Kibaale District.

In 1975, another attempt was made to deal with the land question. The Land Reform Decree abolished mailo land and all freehold land. All land became public land, held on up to a 99-year lease from the state. At the stroke of a pen, mailo landowners became tenants of the state, and all landlord/tenant relationships were governed by the decree. As before, however, customary tenure was untouched, although the position of customary landholders was significantly worsened; land that they occupied could be alienated without the need to obtain their consent.

This remained the position, in theory at least (for the Land Reform Decree was never fully applied) until the enactment of the Constitution of Uganda (1995). During this 20-year period, two parallel strands of land management manifested themselves. On the ground, there was a confused and chaotic operation of land tenure systems. This led to a multiplicity of land disputes, lack of security of tenure for those occupying land under customary tenure, the exclusion of women from land utilization decisions, widespread degradation of land due to unsustainable methods of resource use and encroachment into protected areas.

At the policy level, it was a different story. From the mid-1980s, the World Bank began to involve itself in agriculture policy reforms, and land tenure reform commenced as an offshoot of that initiative. In 1987, a working group on land tenure recommended that the effect of the Land Reform Decree be studied and a sound national land tenure policy be formulated, conducive to agricultural development and consistent with positive steps to rehabilitate and update the Land Registry. This study recommended in 1989 that the Land Reform Decree be repealed and that a new policy should facilitate the development of a market for land based on freehold titles. Mailo owners, mailo tenants, leaseholders on public land and customary tenants (those holding public land under customary tenure) should be able to obtain freehold title to the land they occupied and freely deal with it thereafter. Mailo owners would be compensated for land occupied by tenants that was converted to freehold land through a process of leasehold enfranchisement.

These recommendations were accepted by a group that met to consider them, and a technical committee was then set up to convert these policies into legislation. That committee produced a draft law, which was,

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[2] Resentment about the referendum continues to this day. Among the reasons given as to why a referendum on political parties in mid-2000 should be regarded with suspicion is the "rigged" referendum on the "lost counties" in 1964. To some, the referendum was "rigged" in that it was confined to the inhabitants of the lost counties (as opposed to all inhabitants of Buganda) and was therefore bound to produce the result it did. To the Baganda it assumed the answer it was supposed to determine: the lost counties were not part of Buganda.

in some respects, a repeat of the Public Lands Act (1969), but with some significant differences; for example, mailo land was not reinstated, but freehold tenure was. Customary tenure remained in its usual state of limbo, but the possibility of conversion to freehold via a process of adjudication was provided for. Leasehold titles could be automatically converted to freehold title. The draft law proposed a high degree of administrative management of land via the Uganda Land Commission.

Further consultation took place on these proposals. Another committee was established to carry out a nationwide consultation exercise, particularly with respect to the implications for customary tenure of conversion to freehold. As a result, a new bill was put together by the Technical Committee on Land Tenure Law Reform, which reported to the agricultural secretariat of the Bank of Uganda in June 1993. This new bill steered an uneasy course between freehold tenure on the one hand, and state control, to be exercised by the Land Commission, various district level bodies and local authorities on the other.

It is at this point that the constitutional dimension of land tenure reform must be considered. Starting in 1992, a major exercise in constitution-making got under way in Uganda, and land was a key issue. After much debate, various important and not wholly consistent provisions were adopted in the constitution that came into effect in October 1995, which need to be set out.

CONSTITUTIONAL PROVISIONS ON LAND

The preamble to the Constitution consists of 29 national objectives and directive principles of state policy. Directive XI deals with the role of the state in development. Paragraph (iii) states:

> In furtherance of social justice, the State may regulate the acquisition, ownership, use and development of land and other property, in accordance with the Constitution.

Directive XXVII deals with the environment. Paragraph (i) states:

> The State shall promote sustainable development and public awareness of the need to manage land, air, [and] water resources in a balanced manner for the present and future generations.

Article 26 of the Constitution provides that every person has a right to own property either individually or in association with others and further provides limitations on the state's power compulsorily to acquire private property. This may only take place if it "is necessary for public use or in the interest of defence, public safety, public order, public morality or public health," and prompt and prior payment of fair and adequate compensation is provided for.

Chapter 15 of the Constitution, comprising articles 237–245 deal with land. Article 237 is central to the Land Act:

> (1) Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.
>
> (3) Land in Uganda shall be owned in accordance with the following land tenure systems:
> (a) customary;
> (b) freehold;
> (c) mailo; and
> (d) leasehold.
>
> (4) On the coming into force of this Constitution:
> (a) all Uganda citizens owing land under customary tenure may acquire certificates of ownership in a manner to be prescribed by Parliament; and
> (b) land under customary tenure may be converted to freehold land ownership by registration.

(5) Any lease which was granted to a Uganda citizen out of public land may be converted into freehold in accordance with a law which shall be made by Parliament.

(8) Upon the coming into force of this Constitution and until Parliament enacts an appropriate law under clause (9) of this article, the lawful or bona fide occupants of mailo land, freehold or leasehold land shall enjoy security of tenure on the land.

(9) Within two years after the first sitting of Parliament elected under this Constitution, Parliament shall enact a law:
(a) regulating the relationship between the lawful or bona fide occupants of land referred to in clause (8) of this article and the registered owners of that land;
(b) providing for the acquisition of registerable interest in the land by the occupant.

It is clause (9), which drove the enactment of the Land Bill by July 2, 1998, the second anniversary of the first sitting of Parliament elected under the Constitution.

Four matters are of particular note. First is the conferring of rights of ownership on persons occupying land under customary tenure. No longer are they customary tenants on public land. Under the Land Reform Decree, all land in Uganda was previously public land, and even under the public lands acts and the earlier crown lands ordinances, all customarily occupied lands were public lands. As a result, the effect of this ownership provision is to confine public land as a category to land actually owned by public authorities or clearly set aside for public use.

Second, mailo land is restored. In practice, as successive committees recognized, the incidents of mailo tenure are the same as the incidents of freehold tenure, but the symbolic significance of mailo land was too great to be ignored by the Constitution. However, given its restoration, it was equally necessary to tackle the problem of landlord/tenants relations on mailo land, especially as commitments were made to the peasants in Buganda on this matter by the National Resistance Movement (NRM) during the civil war that preceded the collapse of the Obote II regime and the coming to power of the NRM in early 1986.

Third, it was also necessary to grapple with the continuing problem of land relations in Kibaale District. It was impossible to reach agreement within the Constituent Assembly on these matters, so clauses (8) and (9) were inserted to deal with this problem: a temporary freezing of the status quo with the long-term solution thrown into the lap of the new Parliament. No definition of lawful or bona fide occupant was provided in the Constitution.

Fourth, clause (5) provided for leasehold enfranchisement in respect of leases of public land—not automatically, but in accordance with provisions to be made by Parliament. This provision however was consistent with the aim of eliminating public land, which is the cornerstone of Article 237. No effort was made to address the issue of any potential conflict of land rights between customary occupants of leasehold land and the leaseholder. That, too, was left for Parliament to sort out.

To complete the record, the other articles of Chapter 15 may be summarized. Articles 238 and 239 provide for the establishment and functions of the Uganda Land Commission. Articles 240 and 241 establish District Land Boards to hold and allocate land not held by any person or authority and to facilitate the registration and transfer of interests in land, providing for them to be independent of the commission and any other person or authority, but requiring them to take account of national and district policies on land. Article 242 empowers the government to make laws regulating land use and Article 243 requires Parliament to establish land tribunals to deal with land disputes. Article 244 requires Parliament to make laws regulating the exploitation of minerals, and Article 245 requires Parliament to enact laws to protect the environment.

THE LAND ACT OF 1998

One important conclusion from this background to the Land Act is that while much policy-related work had taken place on land tenure issues in the preceding 15 years, the government had not produced any white paper or even a green paper on a national land policy. Insofar as a national land policy exists, it has to be pieced together from the Land Act, other laws, and statements by the president and ministers both in discussing the act and such matters as agricultural development, environmental protection and poverty alleviation. The act itself has been represented at various times as being a positive contribution to all those three matters. Irrespective, however, of what the government hopes the act will achieve, what does the act say: what bodies with what functions have been created to carry out what purposes in what manner? The act addresses six principal concerns.

Customary Ownership

The Constitution provides that persons occupying land under customary tenure shall henceforth be owners of the land they are using and occupying, and may obtain a certificate of customary ownership as documentary evidence of that ownership. This is to be achieved via a process of adjudication and demarcation of boundaries and rights in the land conducted by Parish Land Committees (PLC), which will pass up their recommendations on applications for certificates to the District Land Boards (DLB). On the recommendation of a DLB, a recorder, located at sub-county level, will issue and register a certificate of customary ownership. The act makes provision for third-party rights in land—rights of persons other than owners to use the land for certain specific purposes—to be recorded at the time of adjudication and the certificates will be issued subject to those third-party rights being protected. Adjudication of customary rights is entirely voluntary and is based on a process of sporadic adjudication; no specific provision is made for systematic adjudication of areas of land on the basis of a majority decision by persons in the area to proceed down that route.

Persons owning land under customary ownership may undertake the full range of transactions in land—both commercial (sale, lease, mortgage) and family (gifts, devises by will). Where certificates of customary ownership have been issued, they will be the medium of transactions, which to be valid, will have to be recorded in the register. The act expressly states that a certificate of customary ownership "shall be recognized by financial institutions…as a valid certificate for purposes of evidence of title," though no sanction is provided if financial institutions decline to comply with that peremptory and somewhat unrealistic command.

Persons owning land under customary law, instead of applying for certificate of customary ownership, may proceed to apply for a freehold title. The same processes of adjudication of rights will have to take place, but the demarcation of boundaries and the measurements of the relevant plot will have to comply with the standards set out in the Survey Act, and registration of the title will be under the Registration of Titles Act, a much longer and more costly process than obtaining a certificate of customary ownership. Freehold ownership may be granted, subject to conditions that will be designed to protect third-party rights.[3]

Tenants' Rights

[3] The act provides for persons wishing to own and manage land under customary or any other tenure on a communal basis to form themselves into a Communal Land Association. This will be able to hold land that may be used by persons or families on an exclusive basis and hold and manage land to be set aside for the common use of members of the association, in accordance with rules agreed to by members.

Tenants of private landlords—known in the act as lawful or *bona fide* occupants of land—are enabled to obtain certificates of occupancy in respect of their occupation by a process similar to that available to customary owners wishing to obtain certificates of customary ownership. Certificates of occupancy are issued by recorders and are registered in the simplified register kept at sub-county level. Tenants by occupancy have in effect perpetual leases, for which they are required to pay only a nominal rent (though they may lose their lease if they do not pay the rent and have no reasonable excuse for not so doing). They may bequeath their lease as of right, but with respect to commercial transactions (sale, subleasing, mortgaging), they must obtain the consent of the landlord. In the event of a dispute between landlord and tenant, for example, on the consent to a transaction, appeal lies to a Land Tribunal.

Tenants wishing to sell their leasehold and landlords wishing to sell their freehold reversionary interest must first offer their interest to, in the first case, the landlord, and in the second case, the tenant. Where agreement cannot, even with the aid of the services of a mediator, be reached on the sale, the parties may sell their respective interests on the open market. As an alternative to sale, the parties may agree between themselves either to subdivide the land in agreed proportions, each becoming the freehold owner of a portion of the land, or to become joint owners of the land. In urban areas, the local council may require, as a condition of granting permission for development, that landlord and tenants agree together on a program of planned development, which must include arrangements for the future ownership and occupation of the development. This provides the legal basis for the parties to agree to land sharing or land readjustment projects.

Tenants are empowered by the act to acquire their landlord's interest (leasehold enfranchisement), but the act does not give the tenant any right to require the landlord to sell his or her interest to the tenant. This is despite Article 237(9)(b) of the Constitution requiring that Parliament shall enact a law "providing for the acquisition of registerable interest in land by the occupant," which would seem to imply that the occupant should be given the right to acquire the landlord's interest. This provision was directed particularly at the long-standing tenure problems in Kibaale District, and it is this opportunity to acquire the landlord's reversionary interest that was the original driving force behind the creation of the Land Fund (see below).

Tenants holding leases granted out of former public land are also empowered to apply to the DLB in which the freehold reversionary interest is vested for leasehold enfranchisement. Where the application is in respect of less than 100 hectares, it may be granted if certain conditions connected to the lease are met. The enfranchisement is free. Where the application is in respect of more than 100 hectares, then, first in addition to conditions relating to the lease, the application must be in the public interest (undefined in the act), and second, the applicant must pay the market value for the freehold reversion.

Decentralized Land Administration

The act repeats and fleshes out the provisions of the Constitution on District Land Boards. The most important of these is that in the performance of its functions, a DLB shall be independent of the Uganda Land Commission and shall not be subject to the direction or control of any person or authority, but shall take into account national and District Council policy on land. For each of the 45 districts, a DLB must be set up to hold and allocate land that is not owned by any person or authority; facilitate the registration and transfer of interests in land; take over and exercise the powers of a lessor in respect of leases granted out of former public land; and compile and keep under review compensation rates payable where land is to be compulsorily acquired. Boards may acquire land, alter, improve and demolish buildings, and sell lease or otherwise deal with land held by them. Expenses and fees of the boards are to be charged to District Administration funds.

Below the DLBs are the parishes. For each of the approximately 4,517 parishes, there shall be a Parish Land Committee (PLC), and in each of the 64 gazetted urban areas and divisions of a city, an Urban Land Committee (ULC). PLCs are the first port of call for those wishing to acquire certificates of customary

ownership, and they are responsible for carrying out the processes of adjudication of boundaries and rights. Their recommendations on titling and on the protection of third-party rights are passed on to the DLBs and, if accepted, form the basis for the issuance of a certificate of customary ownership by the recorder. As such, they play a fundamental role in the implementation of the act.

Land Tribunals and the Mediator

The act provides that courts, other than the High Court, shall cease to have jurisdiction over land disputes. Instead, for each district there shall be a District Land Tribunal consisting of a chairperson, who is qualified to be a magistrate grade I, and two other members. All the members of the tribunal are to be appointed by the chief justice on the advice of the Judicial Service Commission. For each sub-county, urban area and division of the city, there shall be respectively a Sub-county Land Tribunal and an Urban Land Tribunal. All these members are to be appointed by the Judicial Service Commission. The act, however, is silent on which body will be responsible for administering and funding the running costs of the tribunals.

The land tribunals have jurisdiction over land disputes relating to the grant, lease, repossession, transfer or acquisition of land, whether arising under the act or otherwise, and whether between individuals or involving the land commission or other authorities with responsibility relating to land. Tribunals also have jurisdiction over amounts of compensation payable for land compulsorily acquired. District Land Tribunals hear cases on appeal from sub-county and urban tribunals, and appeals follow from the DLTs up to the High Court.

In addition to land tribunals, the act provides two alternative channels for dispute settlement. The first is customary dispute settlement and mediation: traditional authorities may continue to exercise their functions of determining disputes over customary tenure or acting as mediators between the parties to a dispute. Second, a mediator may be appointed by a land tribunal to assist parties to reach an amicable settlement. A mediator is not required to have any special qualifications; they must, however, be people of high moral character and proven integrity who must exercise their functions in accordance with the principles of natural justice and with general principles of mediation and conciliation.

The Uganda Land Commission and the Land Fund

The act provides for a Uganda Land Commission, a body of five persons, all of whom are appointed by the president with the approval of Parliament.[4] The commission's principal function is to be the government's estate agent and property manager, and to that end, it may undertake the full range of transactions and activities in relation to land. One important activity is to arrange for the surveying and titling of the land used, occupied or set aside for public purposes in Uganda—in effect the residue of public land. In the past, when virtually all land was public land and it was a simple process to order people occupying land under customary tenure to move from the land, there was no need to survey and register land used, occupied or set aside for public purposes. Now, however, when most land is privately owned, the lack of clear boundaries to public land is causing grave problems for public development projects.

The act gives another function to the commission—to manage the Land Fund that is also established by the act. The fund comprises monies appropriated by Parliament, loans obtained by government, grants from donors and funds from other sources approved by the minister responsible for lands in consultation

[4] Sections 47(1), 48(1) (5) and 49(1) (5) and 50 (a) of the Land Act repeat verbatim parts of articles 238 and 239 of the Constitution which deal with the Uganda Land Commission. Technically therefore the Land Commission was established by the Constitution with further details being provided for by the act.

with the minister responsible for finance. The fund is to give loans to tenants to enable them to acquire the registerable interests referred to in Article 237(9)(b) of the Constitution; to enable government to purchase or acquire registered land to enable tenants by occupancy to acquire registerable interests pursuant to the Constitution; to resettle persons made homeless by government action, natural disaster or any other cause; and, to assist other persons to acquire titles. The fund was to be established by 2 July 1999—one year after the act came into force.

Women's Rights to Land

This matter was not among the central economic and constitutional imperatives that lay behind the enactment of the Land Act, but it emerged during the public consultative process on the bill and has since assumed considerable importance both within and outside Parliament, and it has played an important part in the development of the project.

Women's groups had been very active and effective in arguing for changes to the bill so as to enhance women's rights to own land. Women were concerned that Clause 40 (now Section 40), which provided for certain restrictions on the transfer of land by family members—spouses had to consent to any such transfer of land on which the parties ordinarily resided, and a transfer without such consent would be void, but consent could not be unreasonably withheld and appeal against a refusal of consent lay to the Land Tribunal—did not go far enough. Women's groups wanted to see introduced into the Bill a provision dealing with land ownership rights between spouses generally.

Toward the end of June 1998, an amendment to the bill to deal with the question of married women's rights to ownership of land was proposed. The gist of the amendment was that land acquired by either spouse before marriage remained the property of that spouse; too often, particularly in customary law, a married woman would in effect forfeit any land she owned. Land acquired after marriage by either party either as the matrimonial home or as the land for the maintenance of the family would automatically be jointly owned by the spouses. (The amendment as moved did not specify whether joint ownership would be as joint tenants or as tenants in common, a matter of considerable importance.) The amendment was published for debate. However, the amendment did not appear in the published version of the act—it has since become known as the "lost amendment" and argument continues to rage as to what happened in the

final stages of the debate on the bill.[5] In June 1999, the speaker ruled that the amendment had never been passed by Parliament so that amending legislation would be needed if the matter of spouses' land rights were to be provided for.

One of the conditions of the project was that the lost amendment should be reintroduced into Parliament before the end of the first session in 1999. It was not, and DfID quietly dropped the condition. The project itself was active in developing a revised and fuller version of the amendment, that was agreed to by the MP who had introduced the original amendment (by then a minister) and various NGOs in January 2000. It was to be introduced as one of the amendments in the Land (Amendment) Bill, which the Ministry of Water, Lands and Environment (MWLE) was preparing to bring to Parliament. In February 2000, however, the cabinet[6] decided that the amendment should not be part of the Land Act, but instead be part of the Domestic Relations Bill, a highly contentious piece of legislation being drafted by the Uganda Law Reform Commission. The general assumption was that the lost amendment had been killed off for good.

THE STRUCTURE AND FUNCTIONS OF THE PROJECT

Project Purpose

The principal purpose of this chapter is to offer some comment and analysis on the DfID project to assist the implementation of the 1998 Land Act. In order for this to be comprehensible, it is necessary to set out very briefly the management and operational structure of the project and the activities undertaken and accomplished. The overall goal of the project as stated in the project document (prodoc) was:

> Sustainable development and livelihood security through effective implementation of the Land Act.

The purpose of the project was:

> To lay the foundation for the effective and equitable implementation of the Land Act.

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[5] There is no agreement on what happened. Most women MPs claim the amendment was passed but in the final hectic hours of debate—MPs were kept in the chamber at nights and during the last weekend of June to ensure the passage of the bill—the amendment somehow slipped through the net, and when the bill received presidential assent on July 2 (deadline day), the amendment was not in the act. The speaker (who became speaker during the course of the bill's progress through Parliament, having previously been the minister for lands and as such started the bill through Parliament) was sympathetic to the women's concern and made plain that if it could be shown that the amendment had indeed been passed he would certify to the First Parliamentary Counsel that a mistake had been made and a corrigendum would be published incorporating the amendment into the act. The chairman of the Sessional Committee, who played a key role in getting the act through Parliament, made plain his support for the amendment and his willingness to ensure that time would be found formally to pass what had already been agreed. The problem was that there seemed to be no firm evidence that the amendment had been moved, let alone passed. At the crucial period of the debate, the proposer of the amendment was not in the chamber and it was not clear whether the actual amendment had therefore ever been formally moved. Another version of events is that the amendment was not formally moved because the cabinet had not indicated its acceptance, which was necessary before any such amendment could be moved at that juncture. Another version is that the women's caucus was stitched up by the male MPs who didn't like the amendment and saw to it that it did not appear in the published version of the act. The mover of the original motion, at a meeting attended by the author in January 2000, admitted that she was responsible for the failure of the amendment to get through Parliament, owing to her ignorance of parliamentary procedures.

[6] The cabinet meeting in question was chaired by the president, a rare event. Usually Cabinet is chaired by the vice president, a woman. The president followed up the decision by making speeches advising women that their demands might destabilise society and the economy.

The project was designed to lead to three outputs:

- Basic awareness by the general population of the content of the law and its implications through the production of a range of resource materials, public information campaigns, and support to local governments and NGOs to mount their own such campaigns.
- The essential least-cost institutional framework for effective and equitable implementation of land tenure reform through support for the development of guidelines and regulations governing the operation of land administration and dispute settlement, through training and through the development of a financial and management plan for the Land Fund.
- A realistic and affordable medium- or longer-term implementation plan developed and fully incorporated into the national planning and budget process through the provision of technical advice.

It is important to note that these three outputs, taken almost verbatim from the prodoc, are not so much outputs *of the project,* but hopes for how the world outside the project will change *as a result of* the project. The project could therefore meet all its targets and complete virtually all its activities, objectively verified by stated indicators, but with some of the outputs neither fully nor even partially achieved. For instance, given that land tribunals were not established, there was no possibility that the project could *during the life of the project* make any contribution to cost-effective dispute settlement, even if guidelines and regulations had been developed and training materials prepared. Similarly, with the Land Fund, given the view of the Land Act Implementation Study (LAIS) Report on the Fund (see below), the project would have been acting in a counterproductive way if it had assisted in the development of a financial and management plan to enable the Land Fund to execute its statutory functions.

Project Management

A fundamental feature of the project was the multi-institutional nature of its management and operation. The basic principle behind this was that implementing the Land Act necessarily involved institutions, agencies and persons over and above officials in the Ministry of Water, Lands and Environment (MWLE), and the project must therefore engage with these other entities. Indeed, the act is based on this principle: land administration is decentralized so that local authorities and the Ministry of Local Government assumed important roles, taking over, in effect, roles and functions previously exercised by officials in the MWLE.

The project itself, with the amount of activity geared to sensitization, training and the production of information about the act aimed at laypersons, had to use the skills of persons and the experience of institutions other than those of the ministry. Given this basic principle, it followed that the units of management and of operation of the project were themselves multi-institutional. The Multi-Institutional Steering Committee (MISC), which determined the policies of the project, consisted of officials from central government, of which only two were from MWLE, members from local authority associations and members from organizations in civil society, with the project coordinator as secretary. The Technical Advisory Panel (TAP), which was designed to exercise quality control on the project outputs, consisted of four officials from the Directorate of Lands and Environment (DLE) of the MWLE, representing technical land management expertise, and four other persons from the public and NGO sectors, representing different skills and organizations, with again, the project coordinator as secretary.

The engines that drove the project were focus groups; they did or were responsible for the basic work, and when they functioned well, outputs were forthcoming and project activities were realized. When they did not work well, the reverse occurred. All the focus groups were multi-institutional, and in all, the officials

from the DLE were in a minority, emphasizing that while they were the biggest single group in any focus group (except the Sensitization Focus Group), implementing the Land Act was a team effort.

The final piece of the multi-institutional and multidisciplinary jigsaw was the Project Secretariat, which managed and coordinated the project. It consisted of a senior Ugandan administrator as coordinator to provide the administrative and managerial expertise and act as liaison with other relevant ministries and governmental agencies; a senior technical adviser focusing on legal and policy issues; and a social development adviser to focus on sensitization and training and doubling up to assist the DfID project officer and the coordinator in the management of DfID funds. The DfID paid for the latter two officers.

Project Tasks

What did the project accomplish? To what extent were these accomplishments likely to enable the project to meet its purpose? And what have been the constraints and difficulties that may have impeded the project's forward momentum? These questions may be addressed by reference to the three project outputs outlined above.

Output 1: Basic Awareness by the Population of the Land Act

The main efforts of the project were devoted to this output. The Sensitization Focus Group (SFG) advised and assisted by the social development adviser held regular meetings and were very active in commissioning the preparation of a multiplicity of publications designed to acquaint the population with the contents of the act and the rights accorded to them by the act. By the end of March 2000, however, only the *Citizens' Guide to the Land Act* in English and Luganda had been published and distributed to the districts and various other persons. Five other local language versions had yet to be published. The translations took much longer than expected and were plagued by inaccuracies and the inevitable difficulties in translating Anglo-Ugandan legal concepts into languages not as advanced in legal terminology as English. It was almost inevitable that distilling, translating and simplifying a complicated piece of legislation would take time.

Another delay was over a poster and radio campaign held up for two months by a ruling by the coordinator that the Ugandan Central Tender Board had to sanction any contract for services valued at over £850 and the Tender Board's subsequent requirement that radio outlets not hitherto utilized by the project be approached to participate in the radio campaign. This matter was only resolved when the first secretary (Development) of the British High Commission made it plain that British aid funds did not have to go through such a process.

Were all these publications and campaigns likely to lead to the achievement of Output 1? It may be argued that they were more likely to than not. However, it may equally be argued that the general population will never become aware of the content of the law and its implications within the time-span of the project. First, while an effective, clear and simple campaign can get messages across in a fairly short span of time, the messages being put across on the Land Act were complex, and it proved very difficult to simplify them; the assumption in the prodoc that a media campaign would enable simple messages to get across may not hold. Second, even professionals and government officials didn't know the full implications of the act. Third, although considerable numbers of the population do have access to radio, developments in the media sector that have resulted in a fragmentation of the radio audience into smaller and smaller units listening to specific radio stations will inevitably mean that significant sections of the population may not hear the messages relayed over only some stations.

The second aspect of the work of the SFG was to plan sensitization and familiarization campaigns in the field and contribute to them. One nationwide sensitization campaign was undertaken in all districts and although inevitably it reached only a small number of people, these tended to be opinion formers within the districts, and the feedback was positive.

In a society that is still in many respects reliant on oral rather than written communication—outside the professional and administrative elite in the urban areas—these sensitization and familiarization courses and the subsequent follow-up sensitization meetings they facilitated were likely have a major impact on increasing the awareness of the general population about the act. To that extent it was not unreasonable to hypothesize that by the end of the project, if, first, all the literature being produced by the project had been widely distributed; and, second, a wide range and considerable numbers of familiarization courses and workshops had taken place, it is more likely than not that Output 1 will have been achieved.

Much more problematic is whether the achievement of Output 1 will contribute to the realization of the purpose of the project or the overall goal of the project. On the purpose, two matters have to be considered: first, a decline in public expressions of opposition to the act; and second, uptake by the population of the facilities and services provided by the act.

The first matter may be addressed by identifying four public expressions of opposition to the act. First, traditional authorities in Buganda were concerned about the loss of 9,000 square miles of land. On this, it may be noted that there has been no loss insofar as the status of former public land in Buganda has been altered; the Constitution and not the act did this. Opposition is essentially political, with the general public in Buganda being manipulated to oppose the act by being misled as to its contents. This opposition may well change when the full import of the act is brought home to those in Buganda who stand to benefit from it.

Second was the landlords concerned about the loss of their "right" to get rid of their tenants as they saw fit without let or hindrance. It is quite possible that opposition from this group will grow in proportion as knowledge about their rights percolate down to tenants, who in turn begin using their rights. Increased opposition from landlords could then, paradoxically, be taken as a measure of success of the second leg of the purpose.

The third public expression of opposition was women concerned about the lost amendment and men concerned about the possible "finding," i.e., enactment, of the lost amendment. A major and long-term program of sensitization will be needed to convince men of the justice and workability of provisions about common ownership of matrimonial land. Women will remain dissatisfied if the provisions are not enacted. The project was in a no-win situation: whatever was done or not done on this issue would stimulate opposition to the act and was outside the control of the project.

A fourth source of opposition to the act was the general population. Many were sensitized to the advantages that could be gained from using the services and facilities the act provided. They have since become irate that they cannot actually use the act because boards, committees, recorders, land tribunals and mediators are either not in place, have not been resourced adequately, or have no regulations in place that enable them to function. Effective sensitization, therefore, might stimulate rather than lower opposition to the act.

As for the second matter, the uptake of the facilities provided by the act, by March 2000 this was a non-starter. The people had not begun to take up the opportunities provided for under the act because they could not, for reasons that will emerge later.

Output 2: Least-Cost Institutional Framework for Implementation
There were considerable problems with this output, arising from factors beyond the project. Indeed, the objectively verifiable indicators (OVIs) set out in the prodoc attached to this output are not within the powers of the project to ensure. The OVIs may be considered seriatim.

First, by the end of September 1999, 43 out of the 45 district land boards were in place and had started work on administering land in their districts. They were not, however, then, nor indeed by March 2000, in a position to issue certificates of customary ownership, which was an important part of their functions. Few parish land committees, the lower level institutions that commence the process of titling and report to the DLTs were in place. The land regulations had not been enacted. Very few districts had their full complement of land officials as stipulated in the Act. There was no money in local government budgets to fund the boards. The training of board members had not yet taken place and the budgetary arrangements for paying for the boards had yet to be implemented.

The state of affairs on land tribunals was even gloomier. No tribunal members had been appointed by March 2000, and the process for appointment was clearly going to be so long-winded that it was unlikely that any tribunals would be in place before the end of 2000. Amendments to the Land Act had been developed by the senior technical adviser at the request of ministers as far back as June 1999 to try to overcome the logjam on tribunals, but these had yet to be brought to Parliament before it was adjourned in May 2000, for upwards of two months.[7] No tribunal (procedure) rules had been made by the chief justice by the end of March 2000, as was his duty under the act.

Two further matters may be considered, which although not specifically referred to in the project log frame, are relevant to this output: the land regulations and the arrangements for land-fund management. Each are worth considering as they demonstrate some of the difficulties the project had in achieving outputs and matching outputs to purpose. On the land regulations, the Rules and Regulations Focus Group (R&RFG) and the Survey Methods and Standards Focus Group (SM&SFG) examined and revised the draft land regulations prepared under a DfID consultancy by a local and an international consultant in December 1998. The TAP considered and accepted the work of the two focus groups at a meeting in early April 1999, and the draft was then passed on to the ministry for consideration and onwards transmission to cabinet, the First Parliamentary Counsel (FPC) and Parliament.

Unfortunately, these further steps took over a year to complete. Ministry officials considered that once the project had completed its work, the draft should go straight to the FPC. Agreement was reached between ministry officials and the FPC on the draft, but ministers were not brought into those discussions. Ministers were then presented with the agreed draft to take to cabinet. They considered the draft for the first time in May 1999, and proposed changes to a draft that the FPC had apparently indicated should not be further changed before being submitted to cabinet. Ministry officials did not act on proposed ministerial changes for six months, as work on the regulations got caught up in disputes within the ministry about the project and the role of officials and ministers in implementing the Land Act. Once the regulations were taken up again in November 1999, work proceeded very slowly. Although the draft regulations were finally approved by the cabinet in February 2000, they had not been formally put to Parliament before its adjournment in May 2000.[8]

The management of the Land Fund had not progressed even that far by the end of March 2000. If the SFG is the success story of the focus groups, the Land Fund Focus Group (LFFG) is the reverse. After a year of meetings, the group had produced nothing. The group wrote an interim report to the permanent

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[7] As of June 2000, it seems that the cabinet has rejected the proposed amendments to the Land Act on land tribunals (having agreed to them in principle in February), so the whole question of the management and financing of the tribunals is up in the air once again.

[8] Information received in June 2000 was that the relevant committee in Parliament has decided that it wants to consider both the land regulations and the land fund regulations together. The latter have not yet been drafted, so the prospect of the former being in place and facilitating the operation of the act have receded into the distance.

secretary on the matter that the cause of their lack of productive labor was the constant blockages that the senior technical adviser had put on their initiatives. The senior technical adviser's position was that the problems were caused by the group's disinclination to focus on their core activity as set out in the prodoc—developing the management structures and processes and the regulations to go with them for the operation of the Land Fund—in preference for a much wider role of considering the management and funding of land reform programs generally, a role for which the group was not equipped. Consequently, the senior technical adviser was unwilling to agree to DfID funding or to recommend to the ministry spending on this wider activity. In this, he was supported by the first project coordinator.

Efforts to arrive at some modus vivendi between the two positions did not prove successful. The appointment of a consultant to work on the Land Fund—provided for in the prodoc and strongly supported by the minister of state for lands—did not help matters. The consultant recommended a very small role for the Land Fund in the future implementation of the act, with a limited budget, while the group maintained that the fund should occupy a central role in implementation and funds must be found for this to be made possible. An offer by the senior technical adviser to fund a workshop to work on the details of management structures and the principles to be put into regulations in the light of the consultant's report received no response from the group. Thus project institutions did not work and outputs were not forthcoming. The steering committee was not invited to mediate on the impasse; in retrospect, perhaps it should have been. However, the chairman of the steering committee in his capacity as permanent secretary was aware of the problem, but took no action on it.[9]

What contribution to the purpose of the project did Output 2 make? The answer is: none. The principal reason for this was that the project assumed that the ministry would work reasonably efficiently and effectively and that there was a commitment within the ministry to implement the Land Act. Neither assumption was correct, as will be explained in more detail below.

Output 3: Medium- and longer-term implementation plan developed and fully incorporated into the national planning and budgeting process
A Land Act Implementation Study (LAIS) was to be the project vehicle to kick-start this output. The LAIS's purpose was to assist the government of Uganda to determine appropriate and affordable implementation priorities, by examining the institutional, financial and technical needs for implementation and assessing the social, economic and environmental implications of the Land Act. The study concluded that as set out in the act, implementation was beyond the financial capacity of the government. Even when modified in ways proposed in the study, implementation would still involve a considerable financial burden for the country, without any clear and identifiable social or economic benefits to be gained.

Notwithstanding the lack of benefits likely to follow the implementation of the Land Act, the LAIS report recognized that the act introduced major reforms into the system of land holding, had considerable political capital invested in it and that it would be a significant setback for the development of Uganda if its promise could not be realized. The report, therefore, identified a range of development initiatives in the form of nine heads of activities that would be needed to build capacity to the point where the act could be effectively implemented. The report offered a coherent and integrated vision of what would be needed if

[9] The permanent secretary did not reply to the complaints of the group set out in its Interim Report submitted to him in August 1999. This upset the group, which resubmitted its report in January 2000, with a request for a response. The group almost certainly suspected that the senior technical adviser had had a hand in the non-response of the permanent secretary, but this was not so. The permanent secretary was overwhelmed by paperwork, and the senior technical adviser's memoranda and other papers were often not attended to.

implementation were to have any chance of success and what, inferentially, might be the subject of donor assistance.

A three-day workshop bringing together all key stakeholders to discuss the draft report in August 1999, resulted in broad agreement with its analysis, the suggestions for changes in laws and administrative arrangements to facilitate implementation, its proposals for how to proceed and where donor inputs could be invited. The only major disagreement was on the Land Fund, where the members of the group discussing that, dominated by the LFFG members, without addressing the LAIS report's findings that the fund, as set out in the act, would be financially ruinous, economically disastrous, socially regressive, and unappealing to donors, nonetheless considered that the need to tackle historical injustices—in particular, buying out landlords in the "lost counties" and allocating the land to tenants—required that the fund be activated to the fullest extent possible, as soon as possible.

The LAIS report was one of the if not *the* most important activity of the project: it was to form the basis for future government and donor input into the planned implementation of the Land Act. After the report was submitted to the minister on September 6, the senior technical adviser wrote a memorandum to the permanent secretary to urge rapid action. The minister of state (Lands) called a meeting to decide how to proceed. Against the advice of the senior technical adviser, it was decided to "recycle" the report back into the project, with TAP meeting to review it followed by the MISC doing the same.

What then transpired was exactly as the senior technical adviser feared would happen: the report was more or less buried by the DLE. It was the DLE meeting as TAP[10] in October, which produced a thin comment that more or less dismissed the LAIS analysis and all the proposed savings on implementing the act. The DLE, which by September had "captured" the project by getting the first project coordinator removed and one of their members put in her place, then made no move to call a meeting of the MISC for six months. Thus by the end of March 2000, no progress had been made on developing a medium- and long-term implementation plan on the basis of LAIS. The Ugandan joint team leader of the LAIS team was right when he said at a workshop in January 2000, that the report had been sidelined.[11] There was then no possibility that output 3 would be achieved by the initial end date of the project.

The Institutional Environment of the Project

In keeping with the writing of any document for an aid project, there had to be a risk appraisal, an assessment of the principal risks to the project, and what action would be taken to meet those risks. One of the risks, as described in the prodoc, was "lack of motivation within the Ministry of Water, Lands and Environment…." Later, it was thought that members of the MWLE Directorate of Lands probably didn't support the participatory implementation strategy and the devolution of authority over land administration. But, in fact, senior members of the Directorate of Lands were openly and continually hostile to the project. This hostility ultimately stymied the project's activities and goals, as well as on the morale of the members of the project's secretariat. No purpose would be served by recounting the details of the sustained, unjustified attacks on the project, its personnel, members of the ministry and the DfID itself by members of the DLE. Suffice it to say that the attacks, which started as internal ministry

[10] As noted above, TAP was 50:50 DLE officials and others. The meeting to consider the LAIS report was called at short notice, included other members of the DLE and few if any non-DLE members, and met out of town possibly because DLE officials are paid extra to sit on committees away from their offices in the ministry.

[11] The workshop was given for the visiting head of the Sustainable Livelihoods Division of DfID, to enable him to learn something about the project. The two DfID advisers to the project put together the program, which provided for the Ugandan joint team leader of the LAIS to make a presentation. The DLE attempted to remove him from the program.

conflicts, were given wide publicity by the DLE when made to the Parliamentary Sessional Committee on Natural Resources and to all the media.

Behind these unpleasant attacks lay a fundamental structural problem: the DLE had difficulty in coming to terms with the new multi-institutional and devolved approach to land management. Such an approach appeared to leave them without a clear and useful role in the ministry, and was coupled with the threat, as they saw it, of being "agentized." The project was seen as the primary vehicle for their marginalization, and they reacted accordingly. This part of the chapter seeks to explain how this came about.

Whatever the published aims of the project—assisting land tenure reform as a contribution to poverty alleviation and sustainable development—it was, in practice, a project about institutional reform and capacity building. There was, at best, a heroic assumption that if capacity were to be built in the way envisaged, poverty alleviation and sustainable development would follow. But seeing the project as capacity building allows one to understand (without in any way condoning) the attitude and activities of the officials in the DLE, who consistently opposed the project from its commencement. Why was this? To plagiarize the aphorism that Dean Acheson used about the British government in 1962, the act had created a situation wherein the DLE had lost an empire, but had not yet found a role. The project was the outward and visible sign of this and was therefore bound to attract opprobrium from the DLE.

To elaborate: until the Constitution came into effect in October 1995, most land in the country was public land, and the central government was the primary manager of that land. District land boards were very much subordinate to the Land Commission and the ministry responsible for land. Within the ministry, officials with technical and professional qualifications relating to land—surveyors, valuers, lawyers, physical planners—managed the land. This had gone on for so long that it had become an article of faith, part of the ideology of land management within the DLE. Not only was it right and proper that technically and professionally qualified officials should manage land, but it would be wrong and improper and subversive of good land management if persons without those skills and qualifications should engage in the business of land management, either directly or indirectly.[12]

Even after the Constitution was promulgated, nothing much changed. True, the Constitution had made some pretty radical pronouncements about who owned the land and who was to manage it, but the basic law of land management remained the same. Then along came the Land Act, which turned the world of the DLE upside down. Overnight, officials were stripped of their powers of land management, which were vested in district land boards. Even worse, the inherent powers of land management that are inseparable from land ownership also disappeared from the public domain and became vested in millions of peasants and urban dwellers.

Perhaps most shattering of all was that the loss of powers was accompanied by loss of control over resources—funds hitherto available to the center were to be allocated to the districts. What, then, was to be the future role of the officials, and what access would they have to public and donor funds? At the very least, they assumed they would be in charge of implementing the act so they would be in a position to control the pace and nature of change, and so the allocation of resources for implementation. In order to achieve this, they had established a task force within the ministry on the morrow of the enactment of the act to plan for the implementation of the act.

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[12] One must see this attitude in the context of the history of postindependence Uganda, where politicians and military dictators put unqualified placemen in powerful administrative positions and regularly abused administrative powers to enrich themselves. The 1995 Constitution was meant to herald a new beginning: only properly qualified officials regularly appointed would constitute the public service. To DLE officials, the project seemed to facilitate the bypassing of that principle.

Even that, however, was denied them. In the eyes of the DLE, the higher echelons of the ministry disregarded the DLE and conspired with the British government to introduce a project that involved personnel from outside the ministry. Such personnel was perceived as having no professional or technical knowledge about land to make decisions about land management and how capacity to manage land should be developed in the future. At the outset of the project, the task force was to be abandoned. A major feature of this project was a study about the long-term management of land in Uganda, in which nonprofessionals with limited knowledge about land in Uganda were to dominate. It was hardly surprising that members of the DLE did not wish to give such a study an air of legitimacy by participating in it while being in a minority, or that, when they had the chance, they would undermine it.

The professional and technical officials were, in their eyes, sidelined *by the project*. In truth, they were sidelined by the Constitution and the Land Act, in the sense that they were no longer to be the primary managers of land in Uganda. What is worse, the bodies that assumed their functions are specifically stated by the Act " not [to] be subject to the direction or control of any person or authority…." So the officials could not even indirectly manage land by operating through district land boards. The project's purpose was to facilitate the implementation of the Land Act, and that necessarily involved concentrating on the new institutions of land management.

The saga of the Land Fund, which on the surface appeared to be a rather petty squabble between officials and the senior technical adviser, can be better understood in the light of the analysis offered here. Of all the new institutions introduced by the Land Act, the Land Fund was the only one for which the administration was located at the center. It thus became absolutely essential for officials in the ministry to argue that the Fund should be seen as *the* most important institution created by the act and that those charged with developing its structures and management processes should be facilitated to expand their role and thus the role of the fund. The senior technical adviser was seen as the agent responsible for cutting the DLE down, and this fueled the bitterness of the dispute between the LFFG —composed entirely of officials from the center—and him.

Further support for this analysis is provided by the subplot of the development of the budgets for land activities in the ministry. The Ministry of Finance allocated £1.2 million, £2 million and £3.2 million for Land Act implementation in the three years 1999–2002. This was, however, coupled with a decision by the Ministry of Finance that the directorate or the bulk of it should be "agentized," that is, converted into a self-funding executive agency operating at arms length from the ministry and that no funds should be allocated to the normal land management activities of the DLE from the financial year 1999–2000 onward. This decision had nothing to do with the project and had been taken before the project commenced; it was, however, taken with no consultation with the officials in the DLE and further soured relations between them and the whole process of implementing the act.

The DLE was thus faced with a loss of power over land via the act and loss of resources for land administration via a Ministry of Finance decision. Neither was acceptable to the officials, and alongside the fight against the project they set out to fight the decision over funding. Unfortunately, the project was at the center of this fight, too. The project coordinator, already anathema to the DLE owing to the fact that she was an outsider with no land management expertise, was brought in by the minister precisely to ensure that the DLE was kept at arm's length from the project. The same person was also the undersecretary in the ministry responsible for the budget and, as such, was responsible for ensuring that the Ministry of Finance's decision on funding for land management was adhered to.

The DLE waged a bitter battle against the coordinator and the project with unsubstantiated allegations made over some four months to ministers within and outside the ministry, to Parliament, to the government's anticorruption agency and to the press about the project and its alleged mismanagement.

Ultimately, the DLE won; ministers very publicly sacked the coordinator in mid-August 1999, and allowed the DLE to select one of their number to take over the post. Immediately, the DLE, which up to that point had not been prepared to discuss the 1999–2000 budget with the undersecretary, agreed to form a task force with officials from other ministries involved in Land Act implementation to revise the budget. A revised budget allocated considerable sums for expensive 4x4 vehicles for officials in the DLE and for other central expenditures.

This revision was but a prelude to the DLE's proposed expenditure plans for the next three years. First, the officials decided to dispense with the multi-ministerial task force, despite a specific direction from the minister that it should continue with the work of preparing the budgets for the following years. Second, the proposed budgets allocated over 80 percent of projected funds to the center and less than 20 percent to the decentralized local agencies that were mandated to implement the act. The figures for the Land Fund say it all. The budget proposed that £2.75 million be allocated to the Land Fund over three years, while only £1.12 million be made available to the 45 districts via conditional grants (earmarked for specific purposes) from the center during the same period. The contrast is even more striking when the figures are put in percentage terms of the proposed government budgets for the three years:

2000–2001: Land Fund: 17%	Conditional grants: 13%
2001–2002: Land Fund: 25%	Conditional grants: 11%
2002–2003: Land Fund: 29%	Conditional grants: 8%

The officials were determined to hold on to resources and powers at the expense of any program to implement the Land Act. To the extent that the project appeared to obstruct that aim, it had to be opposed until they could get control of it and then emasculate it thereafter.

The project was not completely blameless, however. Since the project was designed to be about poverty alleviation and sustainable development, it had to meet the developmental criteria of both DfID and the government on those matters. Indeed, putting the matter the wrong way round, poverty alleviation and sustainable development drove the project; if it couldn't be related to those aims, it wouldn't have got off the ground. But concentration on these lofty aims, which it was thought could be met by capacity building of the citizens and decentralized land administration bodies, diverted attention from what, arguably, was the most important need for capacity building: the reengineering of the skills and knowledge of the officials at the DLE. The project, in other words, had been designed, perhaps unwittingly, to concentrate on the new institutions of land management *at the expense of the old institutions*. They had been cast adrift by the act. The directorate was not to be in control of the project; it seemed that they were outside the scope of the project—they neither ran it nor seemed to be beneficiaries of it.

Was it any wonder, then, that the principal aim of the DLE from the commencement of the project was to obtain control and argue that without that control the project was not "owned" by the government? A project about the management of land in Uganda, they believed, could only be legitimate if it were run by the professional land managers employed by the government. Perhaps more cynically, one could say that the DLE's perception was that if it gained control of the project, officials would be in a position to reassert their central role in land management and sideline all these other organizations and persons who had been allowed to usurp that central role. The fallacy of that was obvious: as noted already, it was the act, not the project, that had removed the professional officials from center stage. Nevertheless, it was the design and outputs of the project that fueled the resentment of central officials by not specifically including them in capacity building.

If DLE officials showed interest in accessing the government budget after winning the battle of coordination, the reverse was the case with the project. There was no doubt that the pace of and interest in implementing the Land Act within the ministry diminished once the original project coordinator was

replaced in mid-August 1999. In part, this was because from mid-August to late November, there was no full-time project coordinator[13] (that in itself was symptomatic of a loss of enthusiasm and momentum within the ministry), but there were other factors at work, both structural and personal.

First, the DLE had from mid-August effectively taken over the project, which became just a part of the DLE. The very approach that the minister of state (Lands) warned against in a meeting with members of the DLE and the senior technical adviser in November occurred (that is, that he did *not* want the project to become part of the DLE and so be swallowed up in Ministry bureaucracy). Thereafter, too often, project matters were referred to the director by the project coordinator before any action was taken and this inevitably either slowed things down or stopped them altogether.

Second, it was not just that the project became part of the bureaucracy of the DLE. A determined effort was made, entirely in keeping with the mind-set of the DLE, to turn it from a multi-institutional project, in which equal partners work together to implement the Land Act, into a subprogram of the DLE in which the pace, direction and nature of implementation were to be determined solely by the DLE. The evidence for this was overwhelming. First, there was the refusal to continue the task force work in developing future budgets and the medium- and long-term plan after the task force completed its first task of rewriting the 1999–2000 budget in November. Second, there was the sidelining of the MISC (the DLE unilaterally changed its name to the *Inter*-Institutional SC, which was in itself significant); only one meeting took place between mid-August 1999 and the end of March 2000, compared with four meetings between February and mid-August 1999. Third, there was the heavy emphasis in the DLE's Budget Framework Paper, produced in February 2000, that the overwhelming amount of resources for Land Act implementation would remain under its control. The involvement of others, including donors, would be very much that of junior partners with no directive or policy-making role. Fourth, there was the sidelining of the LAIS report, with its emphasis on many institutions and the primacy of decentralized land management. Fifth, there was the permanent Secretary's decision—part of the concordat that ended the standoff between the higher management of the ministry and the DLE—that he would delegate most matters of land management and project implementation to the director of the DLE. That meant that from mid-November 1999, when the director returned to duty from six months enforced leave,[14] the permanent secretary showed only spasmodic interest in Land Act implementation. Implementation had passed into the hands of those not committed to implementation.

The upshot of the state of affairs as at the end of March 2000 may be put thus. When the senior technical adviser wrote the issues and options paper on possible future DfID input into land reform in Uganda on

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[13] The member of the DLE selected by the DLE to be coordinator never formally took office. The first Coordinator refused to hand over the post on the grounds that she had been appointed to it by the head of the Civil Service and could not be removed by the permanent secretary of the ministry. Then the member of the DLE decided that his health would not permit him to take on such a stressful job (without any increase in pay), but he would remain as acting coordinator designate for a month or so. After he ceased to be even that, there was a hiatus when no one was coordinator. Another member of the DLE was finally prevailed upon to take the job, but it was not until mid-December that the post was formally handed over.

[14] He had been sent on leave in May 1999, on the grounds that he was the orchestrator of an attack on the project via a DLE manifesto sent to ministers and others on April 29. Despite ministerial directives to withdraw the letter (which made some fairly serious allegations against DfID as well), members of the DLE refused, and the director paid the price. Ministers tried to get him out of the civil service altogether, but his colleagues (some of whom were a good deal more responsible than he for the manifesto) defended him with ministers, Parliament and the Public Service Commission and stopped the move to oust him.

the morrow of the submission of the LAIS report in late September 1999, it was not clear how the project would develop and how Land Act implementation would proceed in the aftermath of the removal of the then project coordinator. By the time he left at the end of March, the position was clear. The DLE had succeeded on all fronts; the project was just a rather small part of the DLE's activities. Land Act implementation and its resources have been subsumed under the DLE members' drive to equip itself with the latest vehicles and "high-tech" toys, attend study tours and international conferences, and gain qualifications. They would proceed without regard to whether these activities would have any positive impact on poverty eradication and sustainable livelihood development, or on implementing the act. By not providing them with positive benefits, the project had set a course of events whereby the officials in the DLE would act on the basis that their survival necessitated the emasculation of the project and the non-implementation of the act.

The analysis so far has concentrated on the problems that the DLE had with the project and their successful efforts to preserve their own positions at the expense of the project. The directorate was not alone, however, in finding its traditional functions had been partially undermined by the act. Much the same analysis can be applied to the Judicial Service Commission (JSC) in relation to the land tribunals. The JSC, chaired by a senior judge (who late in 2000, became chief justice) and the chief justice are mandated by the act to appoint members of the land tribunals and the chief justice, to make procedural rules for the tribunals. Up to the end of 2000, no members had been appointed and no tribunals were operative. This inactivity was imposing an increasing social and economic cost on the country. People were being killed over land disputes because there seemed to be no other means of settlement, and advice was being given by local authorities to people involved in disputes to allow the land in dispute to lie fallow, pending settlement.

What was not fully appreciated was that the chief justice and the JSC, whose raison d'être is to advance the interests and work of the courts and the judicial system, had suddenly been required to establish a rival judicial system designed to marginalize the courts in probably the most important area of dispute settlement in the country, namely, land disputes. It is not surprising, therefore, that the only public speeches the chairman of the JSC made about land tribunals was to suggest that since there had been unavoidable delay (sic) in getting them off the ground, the act should be amended to restore the jurisdiction of courts to deal with land disputes. And when the JSC did finally begin to put together a program for appointing chairpersons and members in early 2000, it found it needed 4x4s, considerable sums of money for allowances (both of which were, apparently, to come from the Land Act implementation budget), and that the process would take many weeks, if not months, to complete. Here, too, perhaps the project should have included, within its components, some element of capacity building for the JSC in relation to the roles and functions of tribunals.

Another general point may be made to add substance to this analysis. I have noted earlier that the project was based on a set of assumptions about the purpose of the Land Act that are, in the view of the LAIS report, highly unlikely to be borne out in practice, and these assumptions dictated the activities to be pursued by the project. In consequence, too little attention was paid to the actual central thrust of the Land Act in practice: *that it is a major exercise in institutional reform,* and such exercises generate a whole host of problems, challenges and opposition that need to be addressed if reform is to have any chance of being successful. In *Getting Good Government*, which focuses on capacity building in the public sectors of developing countries, Grindle suggests that:

> …good government is advanced —although by no means ensured —when skilled and professional public officials undertake to formulate and implement policies, when bureaucratic units perform their assigned tasks effectively, and when fair and authoritative rules for economic and political interaction are regularly enforced and observed….Getting good government means, among other things, efforts to develop

> human resources, strengthen organizations and reform (or create) institutions in this sector. Table 1–1 (below) indicates that these three dimensions of capacity focus primarily on personnel, management, or structures and imply distinct activities if they are to be developed, strengthened, or reformed. (1997, 8–9)

TABLE 1–1: Dimensions and Focus of Capacity-Building Initiatives

Dimension	Focus	Types of Activities
Human resource development	Supply of professional and technical personnel	Training, salaries, conditions of work, recruitment
Organizational strengthening	Management systems to improve performance of specific tasks and functions; microstructures	Incentive systems, utilization of personnel, leadership, organizational culture, communications, managerial structures
Institutional reform	Institutions and systems; macrostructures	Rules of the game for economic and political regimes, policy and legal change, constitutional reform

The study goes on to make the point that ideas about the role of the state have changed over the years, but that there is now a general consensus that:

> effective government performance [has become] central to a changed definition of the role of the state in development and to its ability to create the institutional conditions for market-oriented economies, secure and productive populations and democratic political systems (1997, 32).

Building effective state capacity is a continuous process with no easy solutions. In designing projects, there is a need to take account of a wide range of factors, many of them outside the immediate subject matter of the project, which will affect the likely success of the project.

These points are no doubt well known. They are made here to draw attention to the fact that a project focusing on capacity building is a complex exercise—in its design, implementation and measurement of success – and one that may need to extend over several years. It goes beyond training—along with sensitization, the principal focus of human resource capacity building in the project under review here – and embraces organizational structures, management practices and the "rules of the game," all matters that are central to effective land tenure reform programs in Uganda. Any such project would have to extend beyond the confines of one ministry so that, although it might focus on one central matter—land tenure reform—it will have to be designed to encompass all the principal actors and stakeholders involved in that activity.

Capacity building and institutional reform are intimately linked. The following quotation from Grindle brings this out.

> Few can have witnessed or participated in capacity-building initiatives without being impressed by the extent to which organizations are deeply embedded in their environment and the extent to which this larger text must be considered in

> addressing their capacity. For this reason capacity development often requires addressing problems of institutional reform.
>
> Institutional reform means altering the rules of the game in which organizations and individuals make decisions and carry out activities…. Thus capacity building through institutional reform would involve initiatives such as the development of legal systems, policy regimes, mechanisms of accountability, regulatory frameworks, and monitoring systems that transmit information about and structure the performance of markets, governments and public officials…. (1997, 19–20)

Implementing the Land Act fits into this analysis remarkably well. The Land Act has introduced a new (land) legal system—new organizations to administer and decide disputes about land. It has introduced new policy regimes—the emphasis in the act is to facilitate the acquisition and protection of titles to land vested in private individuals and entities. It has introduced new mechanisms of accountability—the somewhat awkward relationship between the district land boards, district councils and the center. And it offers new regulatory frameworks—the whole act is a framework in relation to land management. Where it is weak is on new monitoring systems, and it is precisely in that area that the project could, if the introduction of the Land Act had been understood in this light, have focused some attention that would, in turn, have necessarily involved officials at the centre. Similarly, we cannot understand the perceptions and actions of officials in the DLE and in the JSC as being, at least in part, driven by their deeply embedded environment, to which too little attention was paid in the pressure to get on with implementing the act.

On this analysis, the inescapable conclusion is that the problems of the project went beyond personal relationships and structural issues. The project was based on an incorrect appreciation of the issues that needed to be addressed if implementing the Land Act were to proceed with any likely degree of success: these are, quite simply, issues of governance; capacity building in the context of institutional reform that needed to embrace all elements of existing organizations and personnel therein that were undergoing change mandated by the act. As it was, the project, in practice, was a contributory factor in the breakdown of relations between officials in the MWLE and between some officials within the ministry and DfID. It was also a causal factor in some officials in the ministry behaving in an unprofessional manner, and in some cases, it probably delayed rather than promoted implementation. To some extent, it delayed the development of the necessary restructuring of the role of ministry officials responsible for land management; it was used as a stick to beat the ministry with in connection with the slow progress of the implementation of the act and as a pawn in various intra-ministry battles over access to resources and compliance with proper procedures.

This is not in any way to decry what the current project succeeded in accomplishing between its commencement and end of March 2000. Significant progress was made in the development of excellent materials for sensitization, and training and sensitization in the field got off to a good start. The land regulations were an early successful product of the project; it was not solely the project's responsibility that they were not carried forward. Ditto with efforts made to get the land tribunals started. The centerpiece of the project, the LAIS report, was the product of a very successful multidisciplinary, multinational team effort that produced a first-class report on time, which provided the essential policy basis and analytical framework for the government to develop its long-term strategy for implementing the act.

Self-assessment

Writing in *Getting Good Government*, Clive Gray quotes from the UNDP study on *Rethinking Technical Cooperation: Reforms for Capacity Building in Africa*:

> The expert concentrates on getting the work done rather than on training, is often good at his job but bad as a trainer, upstages the counterpart in influence, and sometimes blocks the

> counterpart's progress by staying too long. Counterparts are too few and often are not right for the job, are selected too late in the life of the project, are too lightly trained, or quit for better jobs. (cited in Gray 1997, 414)

This seems a useful peg on which to hang an attempt at self-assessment, although it by no means covers all the points that could be made on the relationship between expert and counterpart. It is sensible at this juncture to use the personal pronoun 'I' to sum up my own role in the project.

I concentrated on trying to get the job done; namely, the achievement of project outputs in order to meet the project purpose. When it seemed to me that an output was not being achieved or that there was a blockage in a project activity, I endeavored to suggest ways to overcome the blockage or to speed up the achievement of the output. I either met with counterparts (taking that term to mean officials in the DLE), the permanent secretary and/or the minister of state (Lands), or wrote memoranda to try and get things moving. This, it must be admitted, was not always successful, and this was usually because the root cause of the blockage was not susceptible to rational administrative solutions, which I was apt to suggest.

This leads on to a point, not sufficiently addressed by the above quotation. It is not just training that an expert fails to give, but also the nuances of African public administration, which often relies far more on informal networks to get things done than on formal rules and procedures. Moreover, the expert is usually excluded from the networks, even when he or she knows about them. This was certainly the case with this project. I relied on the formal bureaucratic procedures to get things done; so did the permanent secretary, the minister and the first coordinator, all relatively new to the ministry. By contrast, the officials in the DLE were much more adept at using informal networks, bypassing regular procedures and channels to ensure that they could get their way. Examples are their use of MPs, other ministers and civil servants, and the press to attack the project and the minister. I had many contacts in the higher reaches of the Ugandan political and legal establishment, but I did not make use of them. I played it by the book.

I did not engage in any process of formal training. That said, occupying the same office as the project coordinator and discussing with successive coordinators what I was doing, what they were doing, and how to overcome problems of the project or in the ministry is bound to lead to the transference of some ideas and approaches—good and bad—from myself to the coordinator (and in the case, certainly, of the first coordinator, vice versa). It is necessary to distinguish between coordinators here. I worked with the first coordinator for over five months, and I think some of my approaches to land matters probably did assist her. The second coordinator from the DLE who succeeded her never moved into the office, so there was in practice very little day-to-day contact with him during the two or so months in which he acted in a part-time capacity. It is more difficult to say whether any of my approaches or skills were transferred to his successor, with whom I worked for just over four months. His point of reference was the director, and he continued to work as much with the DLE as in the project.

This is where the point about the counterpart in the UNDP quotation is relevant. The first coordinator was selected for the job by the minister and was a good choice. She was a good administrator, if a little rigid, was not part of the hidebound thinking of the DLE, was sufficiently senior to get through to senior people in other ministries, had worked in many other ministries and therefore had a knowledge of how the Ugandan bureaucracy worked, and clearly had the respect of other officials in those other ministries. She didn't know much about land issues, but was willing to learn. She also clearly wanted the project to make a difference. The other two coordinators could not have been more different. They were selected by the DLE as people who would *not* act independently of the DLE. They were not very senior; as professional officers, they had not worked in other ministries. The also did not know how the bureaucracy works (their

struggles to access funds from the 1999–2000 budget was eloquent witness to that),[15] and they did not have the contacts among officials in other ministries that would have enabled them to get things done. They did not want the project to make a difference insofar as "making a difference" meant doing things that the DLE would have preferred not to have done. So, in some respects, while the first coordinator and I were on the same wavelength, that was not the case with her two successors, and this made me less effective as an "informal trainer."

I did not network with the senior members of the DLE. That was a mistake. It might have prevented the standoff between the Land Fund Focus Group and myself that did not help the progress of the Land Fund. In my defense, I would say that while the first coordinator was in post, such was the animosity felt by the senior members of the DLE for her and the project that any informal relationships with them were out of the question. One member actually refused to speak to her even when they sat on committees together. After her replacement, the relationship between the DLE and the project thawed so that personal relationships became perfectly correct without being particularly warm.

I think, too, that there was some resentment at my easy access to the minister and the permanent secretary. But this was also mixed with disagreement with my attitude to ministers. I adopted what might be called the conventional British civil service attitude to ministers: deferential, glad to be of use; politic, cautious. That was not the approach of the DLE for whom ministers are in the way (as, on one notorious occasion, the director shouted at the minister at a meeting of TAP) and need not have much attention paid to them. So my easy access to ministers was quite probably because ministers quickly felt that I regarded them with respect and treated them as equals. Upstaging my counterparts was, in the circumstances, unavoidable. It may be noted that after mid-August 1999, when the DLE took the project over, the minister and the permanent secretary had fewer meetings with me alone and involved the coordinator and the director far more.

In retrospect, it is not too difficult to see where I could have done things differently. A greater effort at the outset of my work to bring the warring parties together might have helped. Although once the DLE's round robin-letter of April 29, 1999, attacking the project, its personnel and DfID had been delivered to Ministers, the battle lines were drawn, and there was, from then on, all out war against the project until the DLE's victory was achieved in mid-August. I should have had more personal contact with individual members of the DLE. The opportunity for this to occur with the two most influential members via working together on the LAIS team fell through when both of them, although invited to join the team and initially accepting, later decided not to do so. Toward the end of my contract, my memoranda began to be couched in fairly forthright language, which probably did not help the views therein to be acceptable.

These are micro matters. The macro matter is this: Did the organizational environment, administrative culture and mind-set of my counterparts in the DLE change as a result of my being a part of the ministry for one year and working alongside them on land issues? The answer is, *not in any way whatsoever*. Indeed, their conviction that they alone, as people with the requisite professional and technical qualifications, should manage land and be in exclusive control of the implementation of the Land Act was, if anything, strengthened over that year. They cut off every attempt to interfere with their monopoly, including, in their eyes, the project.

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[15] The inter-ministerial task force finished its work on revising the 1999–2000 budget in early November 1999, four months into the financial year. By the end of March 2000, less than 25 percent of that year's budget had been spent and the ministry's project 2000–2001 land budget was cut by 40 percent, on the grounds that, as it had failed to spend its 1999–2000 budget, it did not have the capacity to spend a larger budget.

The Role of DfID

An important dimension of the project was the interaction between DfID and the ministry. The DfID East Africa Uganda office was always very supportive of both land reform in Uganda and the project and helpful to both the senior technical and the social development advisers. The office was instrumental in getting the project off the ground and enjoyed good relations with both the minister and the permanent secretary. The office tried to encourage the minister and the permanent secretary to move forward on important aspects of the project, particularly budgeting and preparing the medium- to long-term plan. It was no fault of DfID that its efforts on that score were no more successful than those of the senior technical adviser's.

It was a different story, however, with the DfID Nairobi office, which had an overseeing role on the project. To put the matter bluntly, that office was insufficiently supportive of the project and its personnel when the project and the coordinator and the social development adviser were under continuous attack by the DLE between April and mid-August. This was despite specific requests and numerous opportunities at workshops and in reports for the DfID Nairobi office to show support. Obviously, this apparent lack of support for the project did not help; nor did it go unnoticed. The directorate kept going with their attacks on the project because they were never answered. They found a ready audience among MPs. In the world outside the ministry, the assumption was made that there was no smoke without fire. When a minister told the senior technical adviser, after he had given in to DLE demands that the coordinator be removed, that he had no friends, was he referring only to his Ugandan colleagues?

When DfID Uganda became more proactive in utilizing the government budget for 1999–2000 for the project, there was an immediate, if only temporary, improvement in the willingness of the DLE to work with other stakeholders. Once some external adverse comment was directed at the ministry on its performance in implementing the Land Act, there was a response to try and move things forward. One important comment was the statement on the Plan for the Modernization of Agriculture made at the donors' consultative group meeting in March 2000. It was not part of DfID's role to try and run the ministry. Still, if there had been more overt support for the project from the Nairobi office, it is difficult not to think that the project and so the ministry would have made more progress in achieving project outputs and implementing the Land Act.

Why was the DfID Nairobi office so apparently unenthusiastic about the project? Basically, for reasons as old as the existence of bureaucracy: a feeling that it was the rightful office to develop projects in East Africa. It had had its nose put out of joint by a pushy young DfID official in Uganda, who had developed the project and had, as it were, "bounced" the Nairobi office into supporting it. Quite apart from the clear evidence of lack of support shown to the project, information obtained unofficially by the senior technical adviser throughout his tenure in Uganda suggested that the DfID Nairobi office gave a very low priority to dealing with the project.

CONCLUSIONS

A recent World Bank publication has this to say about making aid more effective:

> [P]olicy-based aid should be provided to nurture policy reform in credible reformers. Experience has shown that donor financing with strong conditionality but without strong domestic leadership and political support has generally failed to produce lasting change.
>
> …[P]rojects need to focus on creating and transmitting knowledge and capacity. The key role of development projects should be to support institutional and policy changes that improve public service delivery…In many cases innovative approaches to service delivery will involve greater participation by local communities and decentralization of decision-making. (1998, 4–5)

The second of the two quotes is a fair summary of what any future land reform project in Uganda should concentrate on. The first of the two quotes is a fair summary of why any such project is unlikely to be successful if it were to be located in the presently constituted and managed MWLE.

Without in any way seeking to minimize my own responsibility for the comparative failure of the project during my appointment, my conclusion now, looking back from the outside, is no different than the analysis set out in an internal 'issues and options paper' of September 1999. The project was doomed from the start. There were, and still are, deep and probably irreconcilable differences between the DLE's view of how land should be managed and the Land Act implemented, and what the act (and the Constitution) requires and the minister of state (Lands) in particular would like to see happen. There are equally deep divisions between how the permanent secretary sees the ministry being run and how the DLE would like their bit of it run. There are, too, deep divisions between those in the government pushing for executive agency status for most of the functions of the DLE and the DLE.

The project straddled the fault line of all these divisions from day one and very quickly became the principal battleground (perhaps prize would be the better word) over which the contest raged. Output 1 of the project, dealing with dissemination of information about the Land Act, was on the whole achieved precisely because there was no real contest over it. Everyone was agreed on the need for sensitization and dissemination, and no senior persons from the DLE were involved in the focus group that was responsible for that output.[16] Outputs 2 and 3 were not achieved because there were contests over them over which the project had no control. The LAIS report was, on this analysis, at the very heart of the struggle for the soul of the implementation of the Land Act. Not surprisingly, then, the least progress was made in dealing with its proposals.

The overall conclusion that may be drawn from this saga might seem fairly obvious, but it clearly needs to be spelled out. Laws relating to land involve issues of governance, and governance involves the exercise of power and the use of public money by public officials. Any fundamental changes in those laws, particularly changes designed to remove powers from and therefore access to public money by public officials are likely to be opposed by those officials unless they can see some specific benefits flowing to them from the reforms.

Opposition may take many forms, but the usual kind and the one that was used in the Ugandan case was bureaucratic sabotage: undermining a project designed to assist in the speedy implementation of the Land Act by attacking it from the outside, and then, once that had proved successful and control had been obtained of the project, emasculating it and its outputs from the inside. The whole nature of the project (and this goes for aid projects, in general) facilitated this exercise. Implementation of the act was painted as donor driven and not putting the interests of Ugandans first. Opposition was portrayed as patriotic and being concerned with national "ownership" of the process of implementation.

In the particular case reviewed in this chapter, an additional factor was the comparative political skills and ruthlessness of the two sides. The officials in the DLE were more skilled and more ruthless in their opposition to the project and the act than were the ministers and the permanent secretary in their support of either or both. There was a lack of leadership in the ministry. From the time that the battle was well and truly joined early on in the project, the ministers allowed the DLE to run the show. DLE officials constantly ignored ministerial instructions with impunity. The permanent secretary was always looking for

[16] The DLE's budget strategy paper for the financial years 2000–2003 allocated huge sums of money to dissemination, all of which was to be controlled from or spent by the DLE.

a way to arrive at a compromise with the DLE, an approach the DLE regarded and acted on as a sign of weakness.

Without the appropriate political environment and support for land law reform and/or an aid project to support such reform in the key parts of the government machinery, reform will not take place. Moreover, whatever its merits and whoever, in general terms, is likely to benefit from it (and there are considerable merits in the Land Act, which properly implemented, would benefit the population at large), it is a waste of aid money to fund projects that lack that essential political support. As the Ugandan case showed, it is also a waste of money to fund the wrong project. A land reform program is first and foremost a governance reform program. A failure to grasp that fundamental point will render land reform programs promoted either internally or externally as wasted effort and resources.[17]

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[17] This narrative takes the story up to the end of March 2000, with a few references to later events. The project was due to end around April 2000. DfID agreed to a no-cost extension of the project—unspent funds could continue to be spent on project purposes but no new funds were to be committed. By the end of 2000, project funds continued to remain unspent as activities continued not to take place—without land tribunals in place no funds could be committed for training members. Allowing the project to limp on was perhaps as much due to the need not to have awkward questions asked within DfID as because there was any change of heart by officials within the ministry about implementing the act.