

A PRESENTATION TO THE PARLIAMENTARY COMMITTEE ON THE LAND AMENDMENT ACT ON THURSDAY 15TH.05.2008.

BY N. Amany Mushega.

Thank you Mr. Chairman for your kind introduction. You have asked me to give the committee my honest views. Surely I will give you my honest views. Some of you may not agree with them, but never the less, they are my honest and well considered views.

The 1900 Buganda Agreement and those of Ankole, Tooro, and Bunyoro created a new and very curious land tenure system that had long been abandoned or abolished in the countries that were fighting by proxy, to colonize and control Uganda.

This was the imposition of the landlord Tenant relationship, now called system. It was abandoned in England by the land consolidation move that was termed by Historians, "the enclosure system."

In France, it was abolished through the French Revolution which, among other things, gave land to the tillers.

Unlike in Zimbabwe, Kenya, Algeria and South Africa etc, where land grabbed for white settlers (cruel as it was) was, for commercial farming and wealth creation, in Uganda, land was given to appease the compliant chiefs and collaborators. It was not for production but to give tithes or rent (*Busulu*). This could be in cash or kind. Hence the new breed of landlords, preferred land already occupied not empty land, since production was not on their agenda. So peasants, who had been enjoying the use of their *bibanja*, suddenly became serfs on their own land.

More than a century later, and a half century since independence, we still have this curious system affecting those that were not party to the deal.

I need to point out that, some of the current landlords and tenants are bonafide purchasers for value, who may wish to use the land for commercial production. They find out that they cannot. Yet they have paid good money to acquire the land.

So what do you do, you law makers, who are now in charge?

When you are in charge, you inherit both assets and liabilities. If you are a head of a house hold, you ensure the house and surroundings are tidy irrespective of who threw the dirt around. What is this law trying to do or achieve?

First, it is entrenching the two over the same piece of land.

Secondly, it is trying to bring the other system, the customary tenure system, on board.

Let me deal with each at a time.

First, who is going to benefit?

1. The landlord?
2. The tenant?
3. The economy?

In my humble view, none of the above. The landlord cannot develop the land because it is occupied. He/She cannot use it to borrow, trade, or easily sell the land. It is encumbered, to the extent that the landlord is simply carrying a mere piece of paper, called a title.

The tenant cannot carry out meaningful commercial farming either. He/She can not trade in it or easily dispose of it, in part or whole, to go into other more meaningful economic ventures or attend to other urgent family matters such as school fees. It is not easy to build on it commercial buildings. In short, the intended law is making an already bad situation, worse. It is a fetter around the necks of both the landlords and the tenants (squatters), who it is purportedly, trying to save. It is a hot potato for those in power. As the saying goes, about a hyena, it is too hot to swallow but too sweet to let it go. Neither of them can easily sell, even if there is an urgent need to do so. Neither of them can borrow from banks nor trade in the land. By not only retaining this archaic and moribund scheme, but also entrenching it, we are putting both the landlord and tenant, on **land use katebe**, perpetual poverty and backwardness.

- If we want to industrialize.
- If we want to modernize Agriculture, from peasant to commercial farming.
- If we are serious about raising house hold incomes.

Then we can not be seen to be running with the hare and hunting with the hounds. We have to make a choice. We must study, consult and from a balanced and informed point of view and make a choice. Hard as it might be, we are either on the side of the landlord or tenants. There might be variations depending on a particular area or case. But the direction must be clear from start. For example, in one area, a landlord might be ready to be compensated, while in another case tenants are more than ready to move, if adequately compensated. But at the end of the day, we must avoid the situation, where there are more than one owner of one piece of land, all entrenched.

We must end up with one bonafide legal owner of any piece of land but not entrench two equal, unmovable owners, with conflicting interests.

Land is a very sensitive matter. It is one of the sticky issues in the quest for fast tracking the East African Federation. A country, with large tracks of land and low population density, fear that those with land shortage and a heavy population densities may, in the event of the federation, invade or grab their land. It is at the core of the Middle East conflict. It is a major issue in Zimbabwe. It was at the

centre of the Mau-Mau rebellion and contributed to the recent post elections violence in Kenya. It was at the centre of the ranch restructuring exercise. We did not restructure ranchers. We redistributed part of the land in the ranching areas.

In the case of the ranches, a study by eminent persons, was carried out. In spite of its short comings, and/or imperfections, the land redistribution was carried out relatively smoothly. If we handle this matter speedily, with all the forces and numbers at our disposal, those after us, will pay dearly.

It is said that rampant illegal evictions by heartless landlords, is the main reason, for rushing this law.

1. Why don't we stop these rampant evictions using the current law and then take note of its short comings?
2. Why don't we bring the culprits to book?

Why don't we limit this hurried law, to the areas where evictions are rampant or likely to occur, rather than using the Herod method of killing all young boys hoping to get Jesus in the process.

Secondly, why bring the whole country under uncalled for tension. Why bring the relatively quiet customary land tenure areas on board. In fact old kings of Ankole, Bunyoro and Toro were more foresighted. They realized that they had idle or empty land. They encouraged the Bakiga to move in, who put these lands to productive use, created wealth and increased the tax base and prosperity. When I was young the immigrants Bakiga were looked at as hard working people to emulate. What is the situation today with the creation of numerous Districts.

In the meantime, what has been done to address the problem of the evictees even with the current "weak laws". If we can deploy at the High Court in the event of an unfavorable judgment, if we can arrest and throw an MP on a pickup, what have we done to protect or ameliorate the conditions of the six hundred families, evicted. Laws are never made to have retrospective effect, unless they clearly state so. There is no such provision in this amendment.

The problem is not weak or bad laws. It is that when it suits us, we do not implement the very laws we ourselves have enacted. We alter them before even testing them on the ground. Sometimes, we treat them like pieces of paper.

Way forward

1. Carry out a through study by eminent and respected persons and experts. Not by fortune seekers, not by vote seekers or hunters, not by opportunists or favour seekers. We should have a study on the lines of the Odoki commission, prior to the constitution making exercise or the Kajjubu Education Review Commission.

Part of the problem, is not just the letter of this Bill, but the fear of the unknown and perceptions. A study openly done professionally and objectively, will help to dispel some of this fears and perceptions.

2. As stated earlier, target either the landlords or tenants for compensation, in part or full, depending on whether you are taking the whole or part of the large land. It is not an easy choice but one that must be made for the good of the economy, peace of mind, and stability of the country. Part of leadership role, is to peacefully resolve seemingly intractable problems but not easy answers and quick fixes. The money for compensation should be known by all, and budgeted for. It may not be enough in a single budget year. But a journey of a thousand kilometers starts with a single step. We start and clearly state that this year we shall handle areas or districts A B C. Next year E F D etc. Everyone will know what is in the offing as it will be open and transparent, rather than a system where some people are compensated randomly or selectively, as if it is a favour or reward.

The British who are part of this, by originating this curious system, should be approached to contribute to this compensation fund. I am sure that if the approach is systematic, transparent and easy to account, many others who wish us well, in our correcting past wrongs, will come on board and support our onward march to transformation and economic development.

3. Tax land above certain acreage to protect small holders and farmers. This is to avoid vast areas of land being idle and minimize speculation in land. Tax un-developed plots in cities and municipalities to start with. Why leave free, a person with idle plots of land in up market areas, whose value shoots up every month and tax someone with a small shop or someone who has done some development on the land. Besides this approach will avail land for development and widen the tax base. We can learn from countries which are the size of Uganda even with limited natural resources but who give us aid. How did they develop? What is their tax system like? What are the life styles of their leaders and people?

Let land be for proper use and this needs time and study by competent people from a disinterested approach.

4. One of our weaknesses is that we don't have study groups, or centers or Think Tanks Organizations, which carry out research in specific areas, encourage informed debates and come out with a set of alternative recommendations on specific issues, which could assist decision makers. I recall that Elly Karuhanga, Austine Ruzindana and Wafula Ogutu among others had started the Uganda Think Tank Organization, but am not aware of what befell it.

The amendment, Genocide and Sectarianism.

I stated earlier that, land is very sensitive. I have read and heard talk about sectarianism and genocide in relation to this proposed law.

I have heard about sending people to forests and death, because of their sectarian talk.

Forests were not made for sending there people you disagree with dead or alive. Amin's regime used Namanve forest and that is more than enough dark history for our country. Let me quote an eminent Uganda.

" because of the african people's resilience we did not perish. That is why we survived colonialism and kiboko (canes). We survived here because of our strong genes. Africans do not perish easily. Where ever you throw them they germinate. They are like pumpkins. You throw the seeds on a rubbish heap, thinking that you are dumping them, tomorrow you find that a pumpkin has grown. The question is, '*are we going to repeat past mistakes?*' We survived narrowly. We can not afford to repeat past mistakes. That's why anybody who is talking tribalism is a new enemy. If such people succeed, I don't know if we shall survive this time."

This was President Museveni quoted from his speech in the New Vision of 13/05/2008. Add the words "**practicing tribalism**" to "**talking tribalism**" to read "**talking and or practicing tribalism**" and I am in total agreement. That is why the Anti Sectarian Law should be amended to cover both. Those who talk and those who practice Sectarianism. History never repeats itself. It is people who think that they are clever or invisible, who do exactly what those before them did and sooner or later cause trouble. When similar results occur, they are too shy to take the blame and instead blame history for repeating itself. I repeat, history never repeats itself. It is people who repeat similar mistakes and harvest similar results as of those who did the same thing before them.

Rwanda and Hitler have been referred to. Let me give you my own personal experience. The elder sister of my own mother in law, was living in Rwanda with her children and her grand children. During the genocide, her children were murdered. She just switched off and lost her memory, etc. The woman who was vibrant and full of life, was just there and not knowing or remembering anything. She remained like that till her death recently.

On my many visits to Rwanda, I was taken to places where the remains of genocide victims were collected, in their hundreds and thousands. This is before they were buried. My Rwanda colleague told me that, he wanted to give me a shock treatment. It is a site and memory one would never want to experience or see again. I saw too, pictures of those in the Congo forests. The real planners of these gustily things, usually run away. Those who have planned and prepared for and inspired genocide, be it Hitler, in Rwanda, Amenia, East Pakistan, were never just talkers only or ordinary people. They were planned and incited by those holding power. Sectarianism, like genocide is never put in effect by those who just talk, much as I condemn them. It is mainly those, who practice it, even when they talk the opposite or nicely. Any leader worth his salt, should be talking about putting in place and

strengthening institutions, practices, mechanisms and laws etc that make it impossible for such things to happen, or to nip in the bud any attempt.

Let me quote for you honorable members what I said to the Summit of the East African Community, as I bid farewell to them. I said,

“Your Excellencies after I had been appointed and after a few months at work, I was disturbed by a constant thought or dream. Recently as I went through my papers packing, the same came back again. It went like this: ‘If the old Community had not been mercilessly torn apart and had been nurtured and had grown, where East African would be? What would East Africans be like? Zambia which had applied would have joined. Rwanda and Burundi would have joined. There would have been no genocide and if attempts were made, there would have been enough internal capacity to stop it or contain it. Somalia would have joined and instead of being what it is today it would be a prosperous part of the region. Probably when Mozambique got her independence, it would have looked north to a prosperous region. The people of the region would be a prosperous and proud lot. Probably our Ministers of Foreign affairs and Energy would now be in Vienna explaining to and assuring the world that the nuclear plants that we are building, are for peaceful purposes to meet our ever growing demand of energy for our industries etc. That we have no plans to develop a nuclear weapon. It would be a better problem, than healthy looking officials going to the world bodies pleading that our citizens are famine and disease stricken. Alas! All this did not happen.

The Chinese have a saying that a thumb before the eye blocks out a mountain. As East Africans, we put our thumbs before our eyes and block the mountain. But the mountain did not move away. It is still there. To every cloud there is a silver lining. The Community is back and promising. Rwanda and Burundi are knocking. As I leave this institution, I am fully confident that in 20 to 25 years time, our people will be healthy going to do their Doctors to seek advice as to what foods they should eat to keep their weight down. They will be proud and carrying their heads up.

There is no shop you can buy pride and respect. They are sweated for; they are earned the hard way. I thank you, Your Excellencies, for setting the region on the right track.” End quote.

Let us remove our thumbs from our very eyes and look at the mountains before us. And together plan how to scale them for we either scale them together or perish. Whether we perish separately or together is immaterial.

We should all of us leaders, political, spiritual, traditional, cultural avoid practices and talk that create or lead to suspicion, envy, hatred, deprivation,

marginalization etc. Avoid practicing one thing and preaching another. We should avoid using the bogy of genocide. I remember during the debate of the restoration of Ankole Kingdom, some of those who supported restoration accused openly that those opposing the restoration, were planning genocide. Imagine. Genocide is a terrible crime never to be tolerated or taken lightly.

Leaders should be giving people hope and not despair, encouragement and not threats.

Conclusion

We cannot have landlord and tenant (occasionally called squatter) in this age of modernization, this system has, and continues to hold, those under it to perpetual uncertainty, relative poor living conditions, nascent hostility (to put it mildly) and a cause of instability.

To be shy, or take political advantage, is to perpetuate the problem and enhance the devaluation of the very land we are trying to protect. We need to move forward.

It should not be addressed as an emergency or something new. It has been with us for over 80 years. It needs a thorough study and analyses so as to find a lasting solution. We should avoid partial solutions or just scratching the surface.

Something needs to be done about those who have been or continue to be evicted.

We should avoid talking loosely or lightly about serious crimes and evils like genocide and sectarianism. Above all we should avoid hurried decisions on serious and fundamental issues, like land.

Thank you all, Honorable Members.