

JOURNAL OF AFRICAN LAW

Vol. II

Spring 1958

No. 1

NOTES AND NEWS

LAND TENURE IN UGANDA

Partly as a result of existing processes and policies, and partly as a direct result of the stimulation afforded by the Report of the Royal Commission on Land and Population in East Africa, land tenure in East Africa is today a very live subject, and much change is either taking place or planned in the land laws of the East African territories. In Uganda the recommendations of the Royal Commission on the tenure and disposition of interests in land (cf. Chapter 23 of the Commission's Report) have been generally accepted (with some exceptions) by the Protectorate Government, and it is the policy of Government to put these recommendations—as they affect the tenure of land by Africans in rural areas—into effect, as conditions permit. The responsibility of carrying out this policy is the major task of the Ministry of Land Tenure.

The Ministry of Land Tenure in Uganda is responsible for all aspects of land tenure in the Protectorate, both in the towns and in the rural areas, and it is not confined in its activities to the field of African land tenure. It is thus responsible, *inter alia*, for registration of title, valuation for rating and other purposes, map production (both of topographical and cadastral maps), and for conveyancing and control of the Crown's interests in land. The executive work of the Ministry is carried out by the Department of Lands and Surveys, which is responsible to the Ministry. The present Minister of Land Tenure is the Hon. Z. C. K. Mungonya, C.B.E.; and the Permanent Secretary to the Ministry is Mr. J. C. D. Lawrance, whose name will be familiar as the author of the study of *The Iteso*, recently published by the Oxford University Press.

The Ministry intends to publish from time to time hitherto unpublished sources on Uganda land tenure, the purpose being to make available to officers whose work is concerned with land tenure and to other interested persons some of the unpublished, and consequently inaccessible, material on the subject. In pursuit of this intention, the Ministry has already issued a booklet, entitled *Land Tenure in Uganda*¹ (which it is hoped will be the first of a series), and which contains several valuable contributions, notably the late Mr. Gayer's report on land tenure in Bugisu, and a study

¹ For details of contents, etc., see Bibliography of African Law, *post*, at p. 72.

of succession to land in South Kigezi. The Ankole Landlord and Tenant Law, made in 1937 by the Ankole District Council, is published for the first time in this booklet. The Ministry has also issued a most useful *Bibliography of Land Tenure*, which attempts to include references to all published works on land tenure in Uganda, and to all statutory law and published case law affecting land tenure. The references have been classified by provinces and districts, and explanatory comment is usually added to each reference. The result is an invaluable guide to the Protectorate's land law, which carries on from the more abbreviated bibliography to be found in the *Bibliography of published sources relating to African land tenure* published by the Colonial Office in 1950 (cf. pp. 114 and following). The Bibliography exposes in the clearest way the gaps in our knowledge of Uganda land tenure. This entirely praiseworthy attempt to assist the practical man and the student of the law of Uganda deserves the sincerest form of flattery, imitation by other territories.

As already stated, the major task of the Ministry is the implementation of the Uganda Government's policy in the field of African land tenure; details of that policy will be found in the booklet published by the Protectorate Government, entitled *Land Tenure Proposals*, in 1955. Briefly, the eventual aim of this policy is to grant individual titles in land to Africans in rural areas as and where conditions are ripe for this development. It would not be a practicable undertaking now or in the near future to grant individual title to land throughout the length and breadth of the Protectorate; this would be a task likely to prove far beyond the financial and technical resources of the Government. It would, moreover, be a pointless undertaking in many areas (especially in the north), where customary forms of tenure are on the whole standing up to economic and other changes which are spreading over the country. There are, however, conditions in certain districts, notably over-population or the presence of valuable cash crops, which make the issue of individual titles to land a matter of some urgency. The number and nature of court cases in the different districts to some extent give an indication of where this need is apparent.

To what extent do the recommendations of the Royal Commission, and the policy of the Uganda Government deriving therefrom, represent a fundamental change or innovation? It can be argued that individual ownership of interests in land has existed in Buganda (and to some extent in the Toro and Ankole Districts of the Western Province) for many years, and indeed in other parts of Uganda as well. Mr. Lawrance's own description of Teso land tenure (cf. *The Iteso*, pp. 241 *et seq.*) shows that individuals among the Iteso now commonly enjoy individual interests in land, interests which include the right to cultivate and excavate the land, the right to build on the land, to commit waste (as by cutting down trees), to bury the dead there, to subdivide, to lend, and generally to take the use and fruits of the land without any control or interference by political or social authority (i.e. the "Land Authority" or the head of the extended family group). Among the Iteso, in

contradistinction to the rule in many other tribes, even land which has been inherited is the individual property of the heir or the person to whom it has been distributed by the heir. The holder of an individual interest has a limited power to transfer his interest or part of it. Certain types of transfer for value are either forbidden or unknown—e.g. outright sale of his whole interest, lease for a money rent, mortgage; but the holder may sell things planted in or erected on the land (e.g. permanent crops or houses). The only reasons why one might deny the existence of individual interests among the Iteso are the absence of a power to alienate the whole interest in the land, and the fact that present individual interests are not registered.

The major recommendations of the Royal Commission's Report as applied to Uganda appear to be (i) the creation of individual interests free of social or political control where these do not at present exist, (ii) the grant of a power to alienate such individual interests for value, (iii) the registration of such titles after a process of settlement of title. Since the individual interests mentioned at (i) will, it is intended, be enjoyable by any "individual", and since "the word 'individual' would, of course, include any group of individuals which can act as a single entity, such as a co-operative society",¹ tenure of individual interests by an undivided family registered as such an "individual" would be possible under such a law.

The Royal Commission, and the Uganda Government with them, link the creation of individual alienable interests in these terms with registration of title; it would, of course, be possible by a simple change in the substantive law to permit persons already holding such individual interests as those described for the Iteso to alienate those interests freely by way of sale, mortgage, etc., without at the same time introducing registration of title. It is to be regretted that the Commission thus confused two severable concepts—power of alienation, and registration. But the Commission went further, in linking the extension of the power to deal with interests in land to improvements in land-use. Further individualisation of land law and agricultural betterment could, of course, be kept separate.

The desire to improve land-use leads the Uganda Government to associate *remembrement* (or consolidation of holdings into more workable units) with the introduction of registered individual titles to land. One may note that the policy statement envisages the creation of District Land Tenure Boards, which will not be concerned with matters of land use, but will facilitate the systematic settlement and registration of title in their areas, and the issue of individual registered interests. On the other hand the boards will be concerned in the drafting of local land tenure regulations. The creation of statutory local land-authorities in place of the customary land-authorities may well be a desirable step in some places; though it may be important to try to ensure the maximum

¹ Cf. *Land Tenure Proposals*, p. 7.

of continuity between the old system and the new. The need for consolidation of over-fragmented holdings is also obvious.

Among the areas where the need for consolidation is apparent is Kigezi District in the Western Province, for example, where there is very heavy pressure on the land, and fragmentation has already taken place to an alarming extent. In some areas it is estimated that the average number of holdings per person is forty, and some of the fragments are exceedingly small.

The Protectorate Government very rightly place the maximum emphasis on the voluntary character of this change in land tenure, and are attempting to carry out the introduction of systems of registered individual alienable title by persuasion rather than by compulsion. The obstacles in the way of the introduction of such a scheme are formidable ones. The Africans may not understand the exact purport of the changes (the loose way in which words like "individualisation" and "communal" are often used by commissions and others talking about African land tenure is partly to blame here), and they are in any case highly suspicious of any change affecting their land. It may be difficult to put across the need for consolidation of holdings; it is desirable that some measure of consolidation should have taken place before registration is introduced, and consolidation must be on a voluntary basis if it is to succeed. It is not surprising that the Government's proposals have in places aroused considerable suspicion and opposition.

The land law of Buganda is a special problem. The mailo lands are already subject to a form of individual ownership, and much has been written about, and many statutory enactments affect, the tenure of mailo lands. The register of mailo lands has in the past been unable to cope with the mutations and changes of ownership of the registered interests; so that Government is now engaged on the reform of the register. Other problems affect the mailo lands. The present system of inheritance in Buganda is unsatisfactory; the certification of heirs is administered by the Clan Heads, who operate outside the orbit of the courts.

Transfers between the races, especially from Africans to non-Africans, are not affected by the new land tenure policy, as it is not the Uganda Government's intention to amend the Land Transfer Ordinance, 1944, which forbids transfers to non-Africans outside Buganda without the Governor's consent. It is reported that there is some dissatisfaction in relation to the consents for transfers of mailo land to non-Africans, as required under the Buganda Land Law, 1908.