

UGANDA LAW REFORM COMMISSION



WORKSHOP REPORT

**ADVOCACY WORKSHOP FOR THE WESTERN REGION
CHATTEL SECURITIES BILL, NO.12 OF 2009 AND THE
GEOGRAPHICAL INDICATIONS BILL, NO.3 OF 2008**

HELD AT ACACIA HOTEL 10TH – 11TH DECEMBER 2012

MBARARA

WORKSHOP REPORT

ADVOCACY WORKSHOP FOR THE CHATTEL SECURITIES BILL NO.12 OF 2009 AND GEOGRAPHICAL INDICATIONS BILL, No, 3 of 2008

10TH – 11TH DECEMBER 2012

1.0 Introduction

The Uganda Law Reform Commission organized a two day workshop from 10th– 11th December 2012. The workshop was intended to create awareness of the Chattels Securities Bill, No. 12 of 2009 and the Geographical Indications Bill, No. 3 of 2008 and gather views from the different stakeholders on the bills with the intention of their improvement and guiding Parliament on the stakeholder's views. The bills are in Parliament undergoing scrutiny by the Legal and Parliamentary Affairs Committee

The workshop attracted participants from the business community, financial, Savings and cooperative associations, local producers, local governments, Ministry of Justice and Constitutional Affairs, the Judiciary, Directorate of Public prosecutions law enforcement officers (**Attached is a list of participants annexed "A"**) The workshop was facilitated by Mr. Patrick Nyakaana, Ms. Jackie Akuno and Mr. Kenneth Rutaremwa.

The workshop brought together participants from the districts of Mbarara, Bushenyi, Rukungiri, Rubirizi, Ntungamo, Sheema, Kiruhura, Mitoma and Kable.

2.0 Welcome remarks

Ms. Jackie Akuno, welcomed participants to the workshop and thanked them for sparing their time to take part in this workshop. She pointed out that this workshop is timely as the two bills are being considered by the Legal and Parliamentary Affairs Committee, of

Parliament. She noted that the objectives of the workshop were to discuss the bills and share experiences on how the bills can be used to foster economic development in the region.

3.0 Opening remarks

Mr. Patrick Nyakaana, the Commissioner in charge of law reform, welcomed participants to the workshop and noted the importance of using chattels as securities and geographical indications for business development. He told participants that the government of Uganda is committed to enhancing business development, that explains why the government embarked on reform of commercial laws. He observed that for people to develop their businesses, they need financing. He noted that many people in rural areas do not have land titles and as such banks have refused to advance loans and mortgages to secure money to improve their business. As a result many people have fallen victims of money lenders, whom he said have grabbed and taken peoples land and properties.

Regarding the geographical indications Bill, he noted that a law on protection of geographical indications will enhance products and goods from the region to compete favourably with goods from other regions in the country.

He called on the participants to discuss the issues and ensure that they understand the two bills. He implored the presenters to use plain English language that is easily understood by the participants so that the discussions are meaningful.

He declared the workshop open.

4.0 SUMMARY OF PRESENTATIONS

4.1 Background to the commercial law reform project, by Patrick Nyakaana

Mr. Nyakaana informed participants that in 2004, Uganda through the Uganda Law Reform Commission embarked on a Commercial Law Reform Project aimed at reviewing laws and regulations that relate to business. The Uganda Law Reform Commission is a government institution created by the Constitution with the mandate to

review and keep under constant review the laws of Uganda with the view of improving them and bringing them in conformity with the aspirations of the people of Uganda.

The commercial law reforms were aimed at improving the doing business environment, enhancing access to finances, business financing, and promotion intellectual property in Uganda. He noted that initially 27 laws were identified and prioritized for reform. Out of the 27, 12 laws have so far been enacted into law, and these include the Companies Act, Contract Act Trade Marks Act, Copyright and Neighbouring Rights Act, Trade Secrets Act, and Hire Purchase Act.

Other laws reformed are in the process of enactment in Parliament and Cabinet. The Chattel securities Bill, Geographical Indication Bill and the Industrial Property Bill are among the others that are now before Parliament.

He highlighted the importance of legal reforms to the doing business environment; with enabling legislation, businesses will thrive and the country will be able to attain economic development.

Mr. Nyakaana pointed out that with the enactment of the new Companies Act; persons will now be able to form single member companies, and ensure that companies are well managed. He implored the business community to use the newly enacted commercial laws so as to develop their businesses. He called on participants to identify and forward to the Commission any areas of law in the business sector that require reform so that the Commission can address them through reforms.

4.2 Background to the Chattel Securities Bill

Ms Akuno, Principal presented the background to the Chattels Securities Bill. She noted that prior to the drafting of the Bill in 2004, the Uganda Law Reform Commission carried out a study for the reform and review of the current Chattels Transfer Act, Cap,70. The study was aimed at reforming the Chattels Transfer Act, Cap 70 in order to modernise the law relating to mortgaging chattels as security; identifying challenges and problems associated with chattel mortgaging, to stream line the chattel securities transactions and to establish a chattel securities registry among others things.

She informed participants that the Commission undertook wide consultations which resulted into a study report from which the bill is based. She noted that currently chattel mortgaging is regulated by the Chattels Transfer Act.

She observed that the study found that chattel mortgaging was common in Uganda and was being done informally. Few transactions were complying with the Chattels Transfer Act, as many were not registered with the registry. She further, noted that many people were executing instruments of transfer with the lenders which is contrary to the spirit of the chattel mortgage regime. Most chattel mortgage transactions were being carried out in rural areas, mainly because people in rural areas do not have land titles to take out mortgages and loans using their land. The chattels mainly used as security include growing crops, cattle, goats, household properties like chairs, television sets and music systems.

She informed participants that the Chattel Securities Bill was prioritized in 2006 by the Presidential Investors Roundtable as being key to business development. The Chattel Securities Bill is now before the Legal and Parliamentary Affairs Committee for scrutiny and people are open to write to the Committee and present their views on the bill.

In conclusion she noted that chattel securities laws are important in streamlining chattel securities transactions and protecting lenders and borrowers.

4.3 Plenary discussions

During plenary, participants welcomed the initiatives made by the Commission to carry out advocacy on the Bill; that such initiatives are long over due and should be carried out frequently on all Bills before Parliament so that the public can be aware of the proposals and laws in the offing. It was noted that consultations on the Bill had not been undertaken in Mbarara during the preparation of the Bill and that usually bills are debated and passed in Parliament without involving concerned persons.

Participants pointed out that the law was long over due because in rural areas; people rely on chattels to secure money and get access finances for their business development. They were outraged that money lenders make borrowers sign instruments of transfer and at the time of payment they hide so that they can transfer the ownership of the property to themselves. It was noted that this is a very big problem and the Bill should address it.

Participants also decried the lack of awareness about existing laws and proposed that the Commission should provide district commercial officers with all the new laws so that people can access them at that level.

Participants noted that registration of companies in Uganda is very expensive and as such this has inhibited people from registering companies. It was further noted that company registry being in Kampala has also greatly contributed to failure to register companies. It was proposed that the registry of companies should be decentralized to allow easy access to registration services.

Participants sought clarification on the status legal status of SACCOs and grassroots organizations that lend money to members. Clarification was sought as to whether they are licensed to lend money and who regulates them. Some participants were of the view that because they are not regulated they have grabbed people's properties. Participants were informed that SACCOs are regulated by the Ministry of Trade, Industry and Cooperatives and are regulated by law. On the other hand the grassroot groups and associations are usually registered as companies, which some acquire licenses as money lenders for those that lend without license it is illegal for them to charge interest.

4.4 Clause by clause discussion of the Chattel Securities Bill.

Mr. Rutaremwa, presented the Chattel Securities Bill to the participants. In over view, he informed participants that the object of the Bill is to regulate the making and enforcement of security interests in chattels, to repeal the Chattels Transfer Act and provide for other related matters.

That the bill is intended to overhaul the current legal regime and provide a comprehensive chattels securities law that is commensurate to Uganda's state of development, promote private investment and access to finance.

He informed the participants that chattel security means the giving of personal property or chattel other than land as security for a loan or debt; that secured transactions generally deal with guarantying and giving of chattels or personal property as security for a loan or debt. In essence that chattel security secures the performance of obligations usually the repayment of the loan. That these transactions are usually used or entered into with individuals as opposed to banks to secure payments of loans or debts rather than banks.

The participants were informed that the Bill is divided into ten parts. Part I deals with preliminary matters of commencement and interpretations. Part II deals with creation of security interest and rights of a secured party. A security interest in a chattel is created if the parties intend the same to operate as security. Any transaction that includes executing a transfer is not covered under the bill. A security interest must confirm rights on the secured party to enforce it against any persons; this is intended to protect the persons who lends against third party interests.

Under the Bill, a security interest is perfected by registration of the interest with the registrar of chattels. Failure to register an interest doesn't invalidate it.

Parts III and IV deal with perfection of a security and priority of competing interests created on the same chattel. The Bill allows different interests to be created on the same security, however, the first to be perfected will always take priority; if they are all not perfected then the first to be created will take priority. In Part IV the Bill establishes the register of chattels securities and the form it will take. The participants were informed that currently the registrar of chattels securities is the Registrar General of the Uganda Registration Services Bureau.

Part V of the bill deals with the preparation and drafting of instruments that create a security interest over property. All instruments creating a surety interest must be dully attested by at least one witness and registered. The purpose of registering the instrument is to bring notice to the whole world that a security interest has been created on the chattel. If an instrument is not registered it will be bind among the parties and not binding on any third parties.

When a security interest is created on a chattel, certain rights and obligations ensue to the parties to the instruments. To the lender/secured party the following rights ensure; the right to enforce the instrument and recover any monies advanced, right to compensation, right to take possession of the chattel and sell it off in case of default and, the right to appoint a recover.

On the other hand, on the creation of a security interest, the following rights ensue to the debtor/borrower; the right to redeem his or her chattels, the obligation to pay all the monies advanced with interest and other charges as agreed, the obligation to insure the chattel and not to dispose of the chattel during the term of the instrument.

Mr. Rutaremwa observed that the Bill promotes transparency and entering into instruments creating a security on the chattel. That the bill in Part X prohibits acts that are contrary to honest commercial practices such as defrauding or attempting to defraud the grantee, which will be a criminal offence. He pointed out chattels or property on which a security interest/mortgage may be created. That these include; stock in business, sheep, goats, cattle, horses, pigs, poultry and other domestic animals of values, crops, household property and any other personal property.

4.5 Plenary discussions

It was observed that the title of the Bill is complicated and not easily understood, that it should be changed to “mortgaging of personal property” which is easily understood

among the public. That technical terms used by lawyers at times leave the public confused.

Participants sought clarification on what happens if animals die or crops are destroyed during the period of the security interest. They were informed that insurance is core to the whole process that usually creditors will require that the debtor takes out an insurance policy.

Concerns were raised over security interest sought to be created on household property especially where persons are married. It was noted that in rural areas, men have given as security house hold property without involving their spouses, when the spouses come to learn of it when they come to take the property. It was proposed that in such circumstances the law should require spouses to give consent or such property be excluded from being used as security for purposes of protecting families.

Participants also noted the rampancy of money lenders who execute transfer instruments and end up grabbing people's property. That there is need for the government to intervene and regulate the money lenders (*Kafuna*) otherwise people will continue to their property.

It was also noted that there is need to engage banks and other financial institution so that they understand the contents of the bill and the law when passed because some banks are carrying out these businesses without following the law. There is need to involve the local authorities, local leaders and persons of responsibility at the time of executing these transactions. This these will reduce on incidents of fraud.

Participants further noted that creating more than one security interest on a single chattel should not be allowed as it will facilitate fraud. They were informed that whereas the bill allows the practice, to create further securities will require the consent of the first secured party.

DAY TWO – DISCUSSIONS OF THE GEOGRAPHICAL INDICATIONS BILL NO. 3 OF 2008

5.0 “Overview and background to the Geographical Indications Bill, No.3 of 2008” – Presentation by Kenneth Rutaremwa, Legal Officer, Uganda Law Reform Commission

Mr. Rutaremwa informed the participants that the process of coming up with the bill started in 2000 when the Uganda Law Reform Commission conducted a study on the protection of geographical indications (GIs) as a tool to enhance product quality and competitiveness.

As a member of World Trade Organisation (WTO) and a signatory to the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, Uganda is required to put in place measures towards protecting intellectual property rights. One of the intellectual property rights recognized by the TRIPS Agreement is the protection of geographical indications under Article 22. As a least developed country, Uganda was given an extension of up to 2012 within which to comply with the TRIPS Agreement and 2016 for matters relating to pharmaceuticals.

It is against this background that the Uganda Law Reform Commission undertook a study to explore how geographical indications as a branch of intellectual property law can be protected.

Geographical Indications as a branch of intellectual property is aimed at offering protection to products that have marks or indications that they originate from a particular area. He gave examples of GI that have been protected over the world such as "*FLORIDA*" for oranges; "*IDAHO*" for potatoes; and "*WASHINGTON STATE*" for apples from the USA and "SWISS" watch for watches made from Switzerland. Or *CHAMPAGNE* wine from a French region called champagne. In Uganda there are some products that have acquired reputation as originating from a particular region without formal protection these include *KASESE WARAGI* as a spirit originating from Kaseses district, *LIRA LIRA* as a local brew originating from Lira district in northern Uganda

He noted that Geographical Indications play a very important role in fostering economic development, business development and most of all competitiveness of products on the market. He highlighted some of the importance of protecting goods and products using geographical indications to include;

- (i) Geographical Indications legally helping to identify and formally recognize a good or goods as originating in a delimited territory or region where a noted quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
- (ii) Geographical Indications can prove to be a valuable asset for organic producers and marketers because they can complement and are in alignment with the precepts of organic agriculture. They can foster market-based support for local traditions and cultures.
- (iii) Viable GIs essentially build a legally protected brand and a reputation in the marketplace. They are not easy to achieve and also not easy to erode because they depend less on common factors of competition in the field of agrifood production such as costs of production.
- (iv) GIs are necessary for quality controls, they have helped customer confidence and quality in the products as such. There is certainly no doubt that an economically affluent world would be willing to pay premium prices for quality products.
- (v) Geographical Indications protection is a “tool of sustainable development” capable of protecting traditional knowledge and promoting local community production.

Geographical indications are different from trademarks in that whereas trademarks point consumers to the proprietor or enterprise that offers the product or services, geographical indications point consumers to the geographical area of the product's origin or features of the product attributable to the origin.

Trademarks function to distinguish a specific product from similar products in the market place and to indicate a product's trade origin, while GIs essentially function as an indication of the geographical origin of a product.

In conclusion, Mr. Rutaremwa informed participants that protecting geographical indications will help to developed local industries and producers in the region.

5.1 Plenary discussion

The participants noted that the bill is key to product identification; they however, noted it was noted that whereas the law is necessary, there is also need for the Government to support and fund local industries and producers to ensure that they develop by producing goods that can compete internationally.

Participants sought clarification on the ownership of goods protected by geographical indications considering that they are indicative of a place which would mean that the goods should be owned and benefited from by everyone. They were informed that geographical indications are not owned individually; they may be owned in groups and people can come together and seek to use the mark or symbol after its registration a geographical indication is owned by the community.

Participants noted that the law on to protect geographical indications will be instrumental in protecting products from the western region that are unique to that area. However, participants raised concern as to who will determine the uniqueness in these products. Participants were informed that experts will be involved in testing the products that are sought to be protected

5.2 “Unpacking the Geographical Indications Bill, No. 3 of 2008 clause by clause discussions”. Presentation by Jackie Akuno, Principal Legal Officer, Uganda Law Reform Commission

Ms. Akuno informed participants that the object of the Bill is to provide for the registration and grant of geographical indications.

The Bill defines a geographical indication as any indication which identifies a good as originating from a particular country, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributed to its geographical origin. That such an indication may be a name, phrase or mark such as Swiss watch, Kasese Waragi, Mbarara Milk, Made in Uganda, Kabale potatoes to mention but a few.

Clauses 8, 9, 10 and 11 of the Bill do provide for who is entitled to apply for a geographical indication or designation of origin. She highlighted the following as entitled to apply for registration.

- (a) any association (irrespective of its legal form or composition) of producers or processors working with the same agricultural product or foodstuffs and
- (b) natural or legal persons (in exceptional cases).

Geographical Indications are protectable only if they have been entered in the register. When geographical indications are registered it may be used by any operator marketing agricultural products or foodstuffs conforming to the corresponding specification within the area or region they operate in. On registration, the person applying for registration may put in place regulations that will be followed by users of the geographical indications.

Clauses 5, 6, 12, 13, and 14 of the Bill offer protection to geographical indications. Protection is offered by registration and upon registration no person may register a similar mark or indication and an owner of a registered indication is given powers to institute proceedings to prevent unlawful use.

Under Clause 14, of the Bill a registered geographical indication is protected for a period of 10 years which may be extended upon expiry.

Ms. Akuno highlighted remedies for infringement or unlawful use of a geographic indication which range from seizure, confiscation of products, forfeiture or disposal or even destruction of the contravening materials such as wrappers, signs or packages and suspension of importation of goods in violation of the geographical indications as covered under clause 23.

5.3 Plenary discussion

Concern was raised as to whether the local people have capacity to follow up applications for registration and get grants if there are experiments supposed to be done. Further That there is need to decentralized the registry of geographical indications so that people can have easy access to registration facilities. It was proposed that the district commercial officers should be given powers to receive applications and forward them to the registry.

It was noted that for better regulation and to avoid misuse of a geographical indications, all registered GIs should be accompanied by strict regulations of use backed with sanctions. This will help in controlling quality among the users of the registered geographical indication.

5.4 WAY FORWARD - PROPOSALS AND RECOMMENDATIONS

5.4.1 Proposals and recommendations on the Chattels Securities Bill. No. 12 of 2009

1. There is need to petition Parliament to expedite the enactment of pending commercial laws. These laws are very important yet Parliament has ignored them and concentrated on political matters.
2. There is need to create awareness among the business community on how best they can utilize the laws that have been enacted.
3. The Government should avail district commercial officers with all the commercial laws so that they can advise the public from an informed point of view.

4. The Chattels Securities Bill should exempt matrimonial property like beds and mattresses from being used as security because it will lead to conflict in homes.
5. The Chattel Securities Bill should provide for the requirement of spousal consent before chattels and personal property used in a home by married people is given as security.
6. The local authorities should be involved in the whole transaction to avoid fraud.
7. The local authorities should have a register of chattels belonging to a person within their jurisdiction, where a person seeks to use the chattel as security.
8. The Government should intervene and regulate money the lending business because the money lenders are grabbing people's property without following the laws.

5.5 Proposals and recommendations on the Geographical Indications Bill, No 3 of 2008.

1. Government should support local industries that are producing wines and other products through financing so that they can grow. For example Isingiro wine, Bushenyi wine and honey.
2. Geographical indications are very important to the local industries and producers of agricultural products yet they are not known by people. The Government should carry out wide awareness and sensitization campaigns.
3. The registry of companies and other intellectual property rights should be decentralized at least to the regional level so that people do not have to incur expenses to travel to Kampala.
4. The Uganda Law Reform Commission should carry out more advocacy programs for the bills in Parliament so that stakeholder's country wide can give their views.
5. All registered GIs should be accompanied by strict regulations of use backed with sanctions.

5.6 Closing remarks

His Worship, Muhimbise Gordon thanked the Uganda Law Reform Commission for giving participants an opportunity to discuss the Chattels Securities Bill and the Geographical Indications Bill. He thanked the presenters for being elaborate and articulate on matters in the Bills.

He further thanked the participants for sparing time to participate in the workshop and for their views expressed throughout the workshop. He called on the participants from the legal profession to ensure that they disseminate the information received from the workshop to fellow colleagues who have not attended.

His Worship Muhimbise implored the district commercial officers and community development officers to open up dialogue in communities to discuss matters relating to chattel mortgaging/chattel securities. He noted that whereas the Chattel Securities Bill if passed into law, will enhance development people should be cautioned and reminded of their obligations under the law, which is to ensure that they pay back money lent to them. He noted that today there are many cases in court involving money lending which shows that there is a problem that needs to be addressed.

Finally he called upon the Commission to ensure that the proposals and recommendations agreed upon at the during the workshop are presented to parliament for consideration.

He declared the workshop closed.

ANNEXTURE “A”

LIST OF PARTICIPANTS

	NAME	DESIGNATION	DISTRICT
1.	Byamukama LD	Bushenyi District local government	Bushenyi
2.	Tiwaitu Cleophas	Rukungiri District Local Government	Rukungiri
3.	Atwiine Esther	Ntungamo District Local Government	Ntungamo
4.	Isaac Singura K	MoJCA Mbarara regional offices	Mbarara
5.	Sam Wekesa Masaba	District Community Officer Ibanda	Ibanda
6.	Agaba James	Ibanda District Local Government	Ibanda
7.	Birekeraho Frida	Secretary Finance – Ibanda District	Ibanda
8.	Tungakwo Isaac	Kitumba SACCO	Fort Portal
9.	Muhimbise Gordon	Magistrate, Judiciary	Mbarara
10.	Lydia Ahimbisibwe	M/s. Ahimbisibwe, Agaba & Co. Advocates	Mbarara
11.	Kamugisha Joseph	Kamugisha & Co. Advocates	Bushenyi
12.	Sanyu Stephen	Businessman, Fort-Pharmacy Limited	Fort Portal
13.	Isingoma Dickson m	Kasunga Training Center	Fort Portal
14.	Kagurusya Nicholas	PIBID	Mbarara
15.	Kyompaire Edith		Bushenyi
16.	Tagobya Prospe	Rukungiri Municipal Council	Rukungiri
17.	Tibamanya Benon	Ntungamo Local Government	Ntungamo
18.	Byaruhanga Jackson	Igara Growers Tea Factory	Bushenyi

19.	Matsiko Vicent	District Community officer	
20.	Owaruhanga Cynthia	Extension Worker Ntungu Coffee	Isingiro
21.	Bahiirwa Petronella	Isingiro Organic Food Processing	Isingiro
22.	Rukandeema Andrew	Tweyombeke SACCO	Kabale
23.	Twinamatsiko Enoch	Advocate/ Matsiko & Co Advocates	Mbarara
24.	Bitwababo Bernards	Law Enforcement Officer	Rubirizi
25.	Tumwebaze Nathan	Rubirizi Local Government	Rubirizi
26.	Asiimwe Michael	Rubirizi Local government	Rubirizi
27.	Kansiime Rebertson	District Local Government	Kiruhura
28.	Musiime Benon	NAADS officer	Mbarara
29.	Charles Birungi	Sociologist, Uganda Law Reform Commission	Kampala
30.	Nshemereirwe Mary Bwengye	Kyeizooba SACCO	
31.	Moris Tumushabe	Centenary Bank	Mbarara
32.	Grace Tugume	Centenary Bank	Mbarara
33.	Mubangizi Robert	Bushenyi Farmers and Bee Keeping Association	Bushenyi
34.	Hajji E Jumba	Mbararara Local Government	Mbarara
35.	Karyisha Amos	Manager SACCO	Kiruhura
36.	Mujuni Christopher	Businessman	Kabale
37.	Tumwesigye Felly B	Mbarara District Local Government	Mbarara
38.	Gahaire Rogers	Kabwohe SACO	
39.	Mugisha Jonathan	Policeman	Sheema
40.	Kyosiimire Jolly	Kakyekka Women SACCO	Mbarara
41.	Tusiime Sarah B	Judiciary (Magistrate)	Bushenyi

42.	Turyamubona Alexandra	Community Development Office	Mitooma
43.	Mugumya Stanley	Businessman	Bushenyi
44.	Atuhaire Naboth	State Attorney Directorate of Public Prosecution	Mbarara
45.	Partick Nyakaana	Commissioner in charge Law Reform, Uganda Law Reform Commission	
46.	Jackie Akuno	Principal Legal Officer, Uganda Law Reform Commission	
47.	Kenneth Rutaremwa	Legal Officer, Uganda Law Reform Commission	