

A Fit-for-Purpose Approach to Register Customary Land Rights in Uganda

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Key words: Customary land tenure, Certificate of customary ownership, Land tenure systems, Land administration, Fit-for-Purpose, Uganda

SUMMARY

This paper deals with the procedure of registration of customary land rights in Uganda and the requirements associated with it. It also elucidates the German “One world – no hunger” initiative and its emphasis on securing land rights of smallholder farmers in the context of customary land in Uganda.

The paper will also demonstrate the experiences, emerging impacts, challenges and lessons learned of the RELAPU project in Eastern Uganda and will describe the implementation of a Fit-for-Purpose land administration approach for the registration of customary land rights under the land legislation of Uganda while ensuring its sustainability and taking into account opportunities for innovation.

Finally, the paper presents some concluding discussions and lessons learnt.

ZUSAMMENFASSUNG

Der Beitrag beschäftigt sich mit dem Verfahren zur Registrierung von Customary Landrechten in Uganda und den damit verbundenen Anforderungen. Dabei wird auch auf die deutsche Initiative "Eine Welt - kein Hunger" und deren Schwerpunkt bei der Sicherung der Landrechte von Kleinbauern in Uganda eingegangen.

Im Weiteren werden Erfahrungen, Auswirkungen, Herausforderungen und gewonnene Erkenntnisse aus dem RELAPU-Projekt in Ost-Uganda aufgezeigt und die Einführung eines Fit-for-Purpose Ansatzes für die Registrierung von Customary Landrechten nach der Gesetzgebung Ugandas beschrieben, unter Beachtung von Nachhaltigkeit und Berücksichtigung innovativer Verfahren.

Abschließend stellt der Beitrag Diskussionspunkte und Erfahrungen vor und prüft, ob es sich bei dem RELAPU Projekt um einen Fit-for-Purpose Ansatz handelt.

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1. INTRODUCTION

With about 43 million citizens and a rapid population growth, Uganda is one of the most densely populated countries on the African continent. Uganda is gifted by nature with a wide variety of natural resources. Much of the country is heavily influenced by lakes, rivers and extensive marshy areas. Uganda has an area of appr. 242,000 square kilometres, of which 18.2% are open water and swamps, and 81.8% is land (2010, MLHUD). A lot of land are tropical forests and national parks/nature reserves. It is noteworthy that lakes, rivers, wetlands, forests and parks/reserves as well as their buffer zones are protected by law. Only a total of 42% of the available land is arable land.

Uganda's economy relies on agriculture, which has led to incessant conflicts over land and protection of natural resources. At the time of the country's independence, 1962, there were a lot of empty spaces across the country. Today, as a result of the increasing population, almost all land has been occupied by people. The need for land has increased its value - making it a very important resource than it was many years ago. This inevitably leads to conflicts over land, as the growing numbers fight over the same piece of land. The growing population creates a high demand for land and an enormous pressure on the natural resources for food, fuelwood, clay mining for bricks and other raw materials.

Approximately 70% of the available land of Uganda is administered as customary land and only very few customary land owners possess an actual land title. In the past, the recognition of customary land rights was only marginally important and also undermined by civil conflicts, demographic and sociocultural changes. It was not until 1995 that Uganda created a legal framework for the registration of the prevailing customary land tenure. Legislation and policies have since been put in place promoting official land titles and modernizing land law for customary ownership and land governance.

In spite of an adapted methodological approach, there are still significant deficiencies in the implementation, essentially due to financing issues and inadequate implementation policy. In practice, the initiated reforms are lagging behind and this fuels doubt and suspicion about the norms and the real agenda of governmental authorities. So far, the reforms fail to generate confidence in both land legislation and respective authorities as protectors of smallholders' claims/rights to land.

2. LEGAL FRAMEWORK

In pre-colonial Uganda, land was held in accordance with the customs and traditions of the people. Traditional systems which differed among the diverse ethnic groups that resided within a region determined how land rights were enjoyed, defining social structures along tribal, clan and cultural institutions such as the kingdoms and chiefdoms (TeCoDLaM, 2019). Land was available for communal use, held for grazing purposes and small-scale subsistence agriculture and no single individual owned land. Land tenure and management were perpetually customary under communitarian tenure arrangements.

During the past 125 years, Uganda's land legislation experienced an eventful development. When the British took over power in 1893 the dominant economic structure was one of small-scale peasant agriculture and the prevailing tenure system was customary tenure. In 1903, two new systems were introduced, the leasehold and the freehold as grants from the Crown over so-called Crown land. In addition, a feudal quasi freehold system called Mailo (only in Central Uganda, a landlord-tenant landholding system unique to Uganda) was established under the 1900 Buganda agreement for the kingdom of Buganda and under further agreements with local chiefs a native freehold system for the kingdoms of Toro and Ankole. All land not alienated under Mailo, freehold or leasehold became Crown (public) land. The colonial laws introduced for the British protectorate did not accommodate customary tenure (Kihangire, 2011). This continued even in post-colonial times and customary tenure systems remained disregarded until 1995 when Uganda got a new constitution after many years of unrest and civil war.

2.1 The Constitution, 1995 and the Land Act, 1998

The 1995 Constitution is the fundamental legislation on land in Uganda. Under Article 237, land in Uganda belongs to its citizens and is vested in them in accordance with the land tenure systems provided for. For the first time, customary tenure was accorded formal recognition as a landholding system in Uganda with a potentially registrable interest.

The Land Act was passed in 1998 to put the 1995 constitutional reforms into operation. It embodies the Constitution's principle that land belongs to the people. The Act provides for administration of customary tenure and three other tenure systems, it regulates land use and provides mechanisms for dispute resolution.

According to the Constitution all Uganda citizens owning land under customary tenure may acquire certificates of ownership as prescribed by the Land Act, and land under customary tenure may also be converted to freehold land ownership by registration. Reliable information on the extent of customary tenure is lacking (sources disagree), but it is estimated that today about 70 percent of the available land in Uganda is held under customary tenure systems¹. Therefore, customary laws regarding land, family structures life and inheritance are extremely important.

¹ According to (MLHUD, 2010) land tenure system in Uganda comprises 68.6% customary land, 18.6% freehold, 9.2% Mailo and 3.6% leasehold tenure.

2.1.1 Uganda's Tenure Systems

The Constitution recognizes 4 tenure systems of equal importance, namely customary, freehold, Mailo and leasehold tenure. This provision is re-enacted in section 3 of the Land Act where the tenure systems are defined in detail (Table 1). This clause totally reverses the previous system where land was vested in the public land. The Constitution restored the freehold and Mailo tenure systems, which had been abolished by the 1975 Land Reform Decree, enacted by the Idi Amin government and acknowledged the prevailing customary tenure systems. Now, individuals' rights to land have been secured by virtue of occupation. The state no longer controls ownership of all land in Uganda.

Table 1. Salient features of tenure systems in Uganda

Characteristics	Customary	Freehold	Mailo	Leasehold
Holding in perpetuity	✓	✓	✓	⊗
Exclusive possession for a period of time	⊗	(✓) <i>according to section 3(2) Land Act a period less than perpetuity may be fixed by a condition</i>	⊗	✓
Exercise full power of ownership	<i>subject to local customary rules</i>	✓	<i>subject to the customary and statutory rights of those persons lawful or bona fide in occupation of the land</i>	<i>by both, the landlord and the tenant, subject to the terms and conditions of the lease and having due regard for the interests of the other party</i>
Separation of ownership of developments on land permitted	⊗	⊗ <i>(unless freehold title is encumbered by a leasehold)</i>	✓	⊗
Governed by customary rules	✓	⊗	⊗	⊗
Right to use as collateral	✓	✓	✓	✓
Right to bequeath	✓	✓	✓	✓
Conversion of right possible	<i>to freehold title</i>	⊗	⊗	<i>to freehold title</i>
Transactions in connection with the land	<i>subject to terms and conditions and local customary rules</i>	✓	✓	<i>subject to the terms and conditions of the lease</i>
Evidence of interest	<i>Certificate of customary ownership</i>	<i>Certificate of title</i>	<i>Certificate of title</i>	<i>Certificate of title</i>
Survey by professional land surveyor mandatory	⊗ <i>(unless a conversion to freehold is to take place)</i>	✓	✓	✓

- The customary tenure as defined under section 3 Land Act, 1998 refers to a system of land tenure governed by customary rules generally accepted as binding and authoritative by the class of persons to which it applies. Customary tenure is applicable to a specific

area of land and a specific description or class of persons as well as to any persons acquiring land in that area in accordance with those rules.

- Freehold is essentially an individualized type of land tenure which significantly reduces community control over land. It involves holding of registered land in perpetuity or for a period less than perpetuity which may be fixed by a condition.
- Mailo involves the holding of registered land in perpetuity just like freehold but permits the separation of land ownership from the ownership of developments on land made by a lawful or bonafide occupants.
- Leasehold tenure is defined as the holding of land for a given period from a specified date of commencement, on such terms and conditions as may be agreed upon by the lessor and lessee, including a sub-lease.

For the registration of freehold, Mailo or leasehold, the Registration of Titles Act, 1924 must be observed.

2.1.2 Tenureship by Occupancy

A particular form of land possession is the tenureship by occupancy of Mailo land. Tenants on registered Mailo land, known as lawful or bonafide occupants (defined by section 29, Land Act), can acquire a certificate of occupancy on the (Mailo) land they occupy (Section 33 Land Act) and if they so wish, they can negotiate with the registered owner of the Mailo land to be able to acquire a freehold title. The tenant has to pay an annual nominal ground rent per year. The tenant by occupancy also has the right to pass on his tenancy in a will.

If the tenants so desire, they can negotiate with the registered owner of the Mailo land to be able to

- acquire a Mailo title for the land held by them (buy-out after subdivision and titling),
- to arrange for a land share for the land which is subject of occupancy with the Mailo land owner (after subdivision and titling), or
- enter into a leasehold agreement (after titling).

2.2 National Land Policy

In 2013, the Uganda National Land Policy (NLP) was approved by Cabinet (MLHUD, 2013). It provides a governing framework for land matters across all the land tenure systems in Uganda. Land is a national priority, as it represents the most essential pillar of human existence and national development. The National Land Policy harmonizes the diverse needs for human settlement, production, and conservation by adopting best practices in land utilization for the purpose of growth in the agricultural, industrial and technological sectors.

2.3 Current Challenges

In principle, Uganda has created favourable preconditions for reforming the land law through a progressive constitution and new laws. The 1995 Constitution restructured the legal and regulatory frameworks regarding land, harmonizing the statutory law on freehold, Mailo and

leasehold tenure and acknowledging the prevailing customary tenure. Today, customary tenure is at par with freehold tenure with the same degree of legality and security, but requires less registration effort. The procedures for customary land registration which do not require surveying by a professional land surveyor could be considered a Fit-for-Purpose approach.

However, it should be noted that some provisions envisaged by the framers of the 1995 Constitution and 1998 Land Act have not been put into practice as yet. This has mainly been due to a lack of resources and the Government of Uganda remains committed to actively implement parts of the Land Act, specifically with regard to customary land tenure throughout the country and to tenancy by occupancy on Mailo land in Central Uganda.

The land users of both forms of landholding have been presented the prospect of certificates of customary ownership (CCO) and certificates of occupancy (CO) respectively. Unfortunately, the issuance of these certificates is associated with challenges. For instance, there are high levels of insecurity amidst the majority of Ugandans as the land legislation is not well-known. In addition, the access to such information is very limited and many people have little trust in the government. Consequently, the rural population cannot exercise its right to secure access to land which is a key component in the fight against poverty and hunger.

3. THE GERMAN SPECIAL INITIATIVE “ONE WORLD - NO HUNGER”

The G7 group of nations has set itself the goal of freeing 500 million people from the scourge of hunger and malnutrition by 2030. Eradicating hunger and malnutrition is also one of the development aims agreed upon by the international community that make up the 2030 Agenda for Sustainable Development. These targets can be achieved if all the different forces within society – actors from the worlds of politics, civil society, science and research, and the private sector – contribute and play their part. German development cooperation is playing its part by means of the so-called initiative “ONE WORLD – No Hunger”. The German Federal Ministry for Economic Cooperation and Development (BMZ) is investing some 1.5 billion euros a year in the key areas of food security and rural development (2016, BMZ).

The initiative works in six areas:

- Enhancing food and nutrition security and building resilience
- Preserving and restoring healthy soil
- Fostering and disseminating innovation in the agricultural and food economy / industry sector
- Securing land rights, particularly for smallholder farmers
- Ensuring that rural structural transformation is fair
- Promoting sustainable fisheries and aquaculture

The special initiative comes into play in partner countries that are particularly affected by hunger and malnutrition. In countries focused by the special initiative (Figure 1) the average

percentage of the population that is malnourished is 21 per cent. Currently, 17 countries are cooperating with the BMZ to prioritize food security and rural development.



Figure 1. Projects of the One World – No Hunger Initiative (BMZ, 2018)

3.1 Strengthening Smallholder Agriculture

The special initiative is making an important contribution towards fighting the root causes of displacement because investments in rural development, sustainable agriculture and food security play a crucial part in stabilising the regions in question. One priority of the special initiative is strengthening smallholder agriculture. This is where the greatest potential can be found for achieving the goal of producing enough food for a growing world population, as the majority of farms in developing countries are small farms. Most of these farms are still working with traditional methods, that is why it is possible to achieve significant improvements in terms of harvest yields and poverty reduction.

It is important that farmers are good stewards of their soil and their water resources to ensure harvesting their crops in the long term. This is key for food security. Secure land use rights and access to land are crucial for the implementation of the human right to food. Only if people have access to fertile land, water and other natural resources, can food security be achieved. Farmers who can be sure that they will not be removed from their land, will make investments and use the land in a productive and sustainable manner. Under these conditions, development is possible.

3.2 Responsible Land Policies

From the above perspective, the initiative aims to ensure that both the land utilization as well as safe and fair land rights are recognized as a precondition for sustainable development. It supports Germany's partner countries in fostering responsible land policies.

Land rights are an important prerequisite for making investments and for managing the land in a productive and sustainable way. This is where the program Responsible Land Policy applies. Germany's partner countries Benin, Ethiopia, Lao PDR, Madagascar, Paraguay (until March 2018), Peru and Uganda are receiving support through this program.

The project focuses on three fields of action (GIZ, 2019):

(i) **Securing land use and land ownership rights for the rural population through improved procedures**

In Peru, the main emphasis is on land titles for the areas of indigenous communities, while in Benin and Uganda it is on individual households, whose legal security is strengthened through property titles and long-term leases. In Madagascar, the project focuses on linking secure land rights and the rehabilitation of forest areas with food security.

(ii) **Drafting and implementing responsible land policies with civil society involvement**

The project team supports civil society groups that participate in the implementation of new procedures for securing land rights. For instance, they perform an important role in monitoring conflicts and shaping dialogue processes, and act as service providers.

(iii) **Raising the awareness of private agricultural investors for responsible land policies through national transparency initiatives**

The project team supports dialogue forums that bring together various actors to discuss the challenges, opportunities and solutions for responsible land-related investments, for example.

Secure land tenure for local people is the top priority. In order to prevent corruption and nepotism, it is very important to ensure transparency and participation when land rights are gradually being formalised. Investments must be socially and environmentally compatible.

The target groups of the programme are small farmers and herders who live in regions with almost no rights to land use or land ownership, or where these rights are not secured. They include disadvantaged groups such as indigenous communities, displaced persons, refugees and young people. Women are given special consideration, since they play an important role in food security.

The project is guided in its work by two documents adopted by the UN Committee on World Food Security: the "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (2012, FAO) and the "Principles for Responsible Investment in Agriculture and Food Systems" (2014, CFS). These

guidelines constitute the basis for responsible land policy and the protection of customary land rights. They say that before authorities permit the sale of a piece of land, they must assess the impact of that sale on local people and on the environment. In addition to formally established property and use rights customary rights must be protected, too.

Initially, the project is scheduled to run until October 2021. The program has a budget of 41.2 million euros, of which 4 million euros are co-financed by the European Union.

3.3 Responsible Land Policy Uganda

A component RELAPU (Responsible Land Policy Uganda) is currently being implemented in two districts of Teso sub-region in Northeastern Uganda as well as in three districts in Central Uganda.

Customary ownership rights (Teso) and occupancy rights of lawful or bona fide tenants on private Mailo land (Central Uganda) are systematically documented by an inventory of the existing land rights with the help of informal “land inventory protocols” (2018, Huber). This will create the preconditions to trigger a step-by-step formalization of customary ownership or tenancy rights. The aim of the project is to support the issuance of certificates of customary ownership (CCOs) for customary land rights in Teso sub-region and to enable negotiation processes between tenants and landlords on private Mailo land in order to establish lasting harmonious relationships.

In accordance with the above mentioned general project goals, RELAPU in Uganda has three fields of actions:

- (i) Improve the institutional framework and procedures to secure tenure rights in Central and Eastern Uganda.
- (ii) Increase the engagement of the civil society in the formalisation and implementation of a responsible land police.
- (iii) Address private agriculture investors and financial institutions in order to raise awareness about responsible land policy along internationally agreed guidelines and the national land policy (NLP).

The project includes components of capacity development, sensitization and mobilization of communities, alternative land dispute resolution, recordation and mapping of occupancy rights using Fit-for-Purpose land administration tools.

Subsidized by the RELAPU project, systematic mapping and documentation of customary land rights is carried out at sub-county level by teams comprising members of the respective Area Land Committees, local village councillors, clan leaders, elders and land inventory assistants. In view of the very sensitive land issue, demarcation and mapping are undertaken after careful sensitization and awareness creation in the community. Mapping and documentation are carried out only after free and prior consent by the customary land owners. Despite the systematic approach, nobody is forced to have land surveyed and inventorized.

The process of capturing and management of land rights data relies on open source software. The software has been adjusted to fit to the specific context and needs of land registration in Uganda.

The project generates land inventory protocols (LIP) which are informal evidence of the claims to land as a first step to the recognition of land rights. In addition, customary land owners may apply for a certificate of customary ownership, the legal document recognized by the Land Act. These documents are issued subsequently and the applicants only pay a small fee.

4. PROCEDURE FOR CERTIFICATES OF CUSTOMARY OWNERSHIP

Customary tenure is the predominant form of tenure in Uganda and applies to former public land that has not been registered. Any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land pursuant to the Land Act (Section 4, Land Act, 1998) but has no obligation to do so. Currently, the system is request-based. That is why registration has so far been done only sporadically.

Yet, as of late, research suggests a growing demand for land registration among communities, but also strong insecurity about the best way to carry it out. The majority of people support the idea of registering their land as one way to better secure and protect it (Atkinson, 2016). However, tools, processes and structures needed to register land, including customarily held land on a large scale, are at times unclear or even contradictory. There have been allegations that “despite the legal recognition of all land tenure systems in the country, customary tenure continues to be treated as inferior compared to all the other forms of tenure in Uganda” (Massa, 2015).

4.1 Main Actors

4.1.1 Area Land Committees

The Land Act provides for the establishment of Area Land Committees (ALC) which are set up in each sub-county, gazetted urban area or division of a municipality. Area Land Committees consist of a chairperson and four other members who serve on a part time (case by case) basis. Their term of office is three years and the members are eligible for re-appointment for one further term. Currently, there are about 2000 Area Land Committees in Uganda.

Area Land Committees are the first point of call for fresh land applications as stipulated by law (2016, MLHUD). The committees are “ears and eyes” of the District Land Boards and assist them in an advisory and facilitating capacity on matters relating to land including ascertaining rights in land. The committees receive the land applications on behalf of the District Land Board and they shall gather all information and compile all documents needed for the decisions of the board.

With regard to customary land, their main task is to determine, verify and mark the boundaries of all interests in the land which is the subject of the application and to facilitate the adjudication process. Thereby, the committee shall inspect the land, produce all necessary documents and compile an inspection report setting out its findings and recommendations with reasons to the District Land Board (Sections 5 and 6, Land Act, 1998).

In order to come to its decision, this committee shall also apply customs, traditions and practices of the community with regard to management of customary land. However, it is obliged to safeguard the interests and rights of women, absent people, minors and persons with a disability (Sections 5 and 27, Land Act, 1998).

Land disputes are widespread in Uganda, with many escalating into violence, land grabbing or conflicts over inheritance. Although traditional leaders may determine or mediate in disputes over customary tenure, the Area Land Committee may also act as a mediator with the agreement of the parties to a dispute about land (Sections 5 and 27, Land Act, 1998).

4.1.2 Local Physical Planning Committees

Competing interests make it necessary to ensure proper and planned land use management. Section 44 of the Land Act prohibits to lease out or otherwise alienate any natural resource (natural lakes, rivers, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes) because this land shall be held by the Government or a local government in trust for the people and be protected for the common good of the citizens of Uganda. Section 45 provides for any land use to be in conformity with the Country and Town Planning Act (repealed and replaced by the Physical Planning Act, 2010). In addition, section 3 of the Physical Planning Act declared the entire country a planning area and the act shall apply to the entire country in all respects. Physical planning is therefore a function of government and is executed by Physical Planning Committees (PPC) that have structures at the district, sub-county and urban authority levels.

All applications dealt with by the Area Land Committees shall be forwarded to the respective Physical Planning Committee of that area for their planning input. The local Physical Planning Committee (LPPC) is established at the sub-county and is constituted by members of the sub-county council (Section 11, Physical Planning Act, 2010). When considering land applications, Physical Planning Committees shall ensure that natural resources, easements (e.g. road reserves or utility wayleaves) and common property resources (dams, public water sources and public open spaces) are protected. They shall also subject all land applications to National Environmental Management guidelines and standards for the protection of natural resources. In addition, accessibility to any piece of land being applied for is a prerequisite for approval and must be ensured.

4.1.3 District Land Boards

Article 240 of the Constitution, 1995 provides for the establishment of District Land Boards to be set up in each district. Pursuant to section 57 Land Act, a District Land Board consists of a chairperson and not less than four other members. Their term of office is five years and the

members are eligible for re-appointment for one further term. Currently, there are about 130 District Land Boards in Uganda.

Pursuant to Article 241 of the Constitution, a District Land Board 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. The District Land Boards are in charge of all land in the district that is not owned by a person, an authority and not vested in or acquired by the Government of Uganda. The boards hold and allocate such land in the districts. They also facilitate the registration and transfer of interests in land. In addition, they shall compile and maintain a list compensation rates payable with regards to crops, structures of a non-permanent nature and further items to be described.

4.1.4 District Land Offices

District land offices are set up in each district in order to provide technical services through its own staff, or arrange for external consultants to the land board. Their role is also to supervise and coordinate land matters in the districts, to implement land policies and to liaise between the district and the Ministry of Lands, Housing and Urban Development (MLHUD). However, the land offices are not land registration authorities.

4.1.5 Recorders

In Uganda, the registration of land (freehold, leasehold, Mailo) under the Registration of Titles Act is organized under MLHUD, Department of Land Registration with decentralised Ministerial Zonal offices (establishment still in progress). However, there is an exception for customary land rights. For purposes of registration of customary land rights, there shall be a Recorder who is answerable to the District Land Board (Section 68 Land Act). The registration authority is the respective lower local government and the Recorder is

- a) in a rural area: the sub-county chief,
- b) in a gazetted urban area: the town clerk, and
- c) in a division of a city: the assistant town clerk in charge of the division.

The Recorder is responsible for keeping records relating to certificates of customary ownership but also to certificates of occupancy (leases on Mailo land, in Central Uganda only).

4.2 **Application and Approval Process**

The application process for customary land (Figure 2) involves the above mentioned actors. Applicant(s) fill the prescribed application form in triplicate and pay the required application fee (5,000 UGX \approx 1.3 US\$) and inspection fee (varies by district, e.g. 200,000 UGX \approx 54 US\$ in Katakwi and Soroti districts in 2019) and hand over the application to the respective land committee (ALC).

Land Registration Process Flow (Certificate of Customary Ownership)

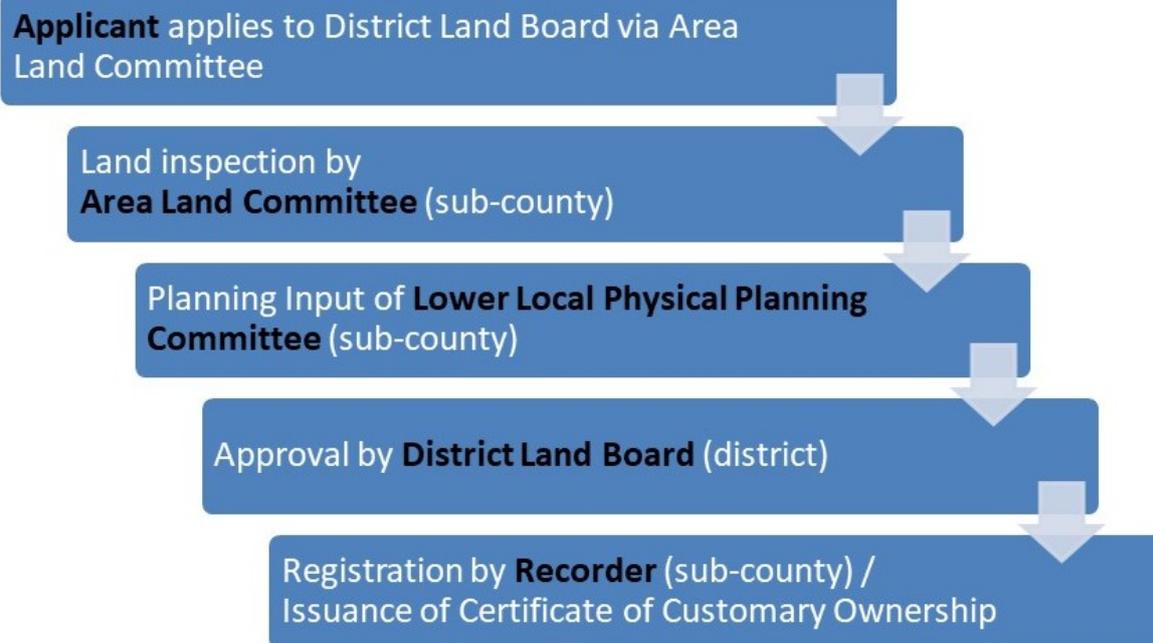


Figure 2. Steps and main actors of registration of customary land

The ALC will issue a public notice for not less than 14 days informing members of the public about the intentions of the applicant(s) to obtain a CCO. The notice will indicate the particulars of the applicant(s), the location and size of the land, the venue, time and date of inspection and invite the applicant(s), neighbors and other concerned persons to be present. At the specified date, the ALC will then visit the location to ascertain ownership, boundaries and other rights on the said land.

In case of complaints, the ALC may adjudicate to resolve the matter based on the customs of the people and the stipulations of the Land Act and Land Regulations. Where the dispute has not been resolved, they may refer the parties for further mediation or advise the parties to go to court.

Where there is no dispute or where the dispute has been resolved, the ALC physically inspects the land, tracing, ascertaining, verifying, determining and marking the boundary of the land in the presence of the applicant(s), neighbors, owners of adjacent land and other interested parties. In the course of this, the ALC surveys the land and prepares a sketch map of the boundaries showing dimensions, directions, permanent features, natural resources, road reserves etc. Finally, it will make an inspection report with remarks and the committee's recommendations to the DLB.

Before submission to the DLB, the ALC is required to forward all applications to the respective LPPC for its planning input in accordance with the Land Act and the Physical Planning Act (MLHUD, 2016). It should be noted that up to now this rule has largely been ignored.

The LPPC will communicate its decision to the applicant and the DLB. The file will then be lodged with the District Land Board which considers the application referring to the report and recommendations of the ALC and LPPC.

Where the application is approved, with or without conditions, restrictions or limitations, the DLB sends the documents to the Recorder with the request to issue a certificate of customary ownership to the applicant(s). The Recorder then registers the details of the application and issues the certificate of customary ownership to the applicant(s), a copy of the CCO is retained. The fee for issuing a certificate of customary ownership is 5,000 UGX.

4.3 Survey of Customary Land and Survey Documents

In general, parcel formation (freehold, Mailo, leasehold) requires cadastral survey by registered land surveyors. Uganda's Survey Act and Survey Regulations require high standards of accuracy for the spatial framework and survey of land which makes the cost of acquiring a land title too high for most Ugandans (standard plots between 400 and 1300 US\$). Taking that into account, the Land Act, 1998, read with the Land Regulations, 2004 places only very low requirements on the capturing of spatial data, survey and mapping of customary land.

The law and its subsequent regulations (Land Regulation Nos. 31-34) provide for a simple hand drawing of a sketch map after the boundaries of a piece of land have been measured using a tape. It is not necessary to draw the sketch to scale and the total area shall only be estimated. No spatial framework is needed and the sketch maps are not geo-referenced by any other means. No cadastral index maps have to be established for customary land.

Drawing of the sketch map (Figure 3) does not require qualified skills and can be done by the Area Land Committees themselves. The sketch serves the same purpose as a deed plan attached to certificates of title.

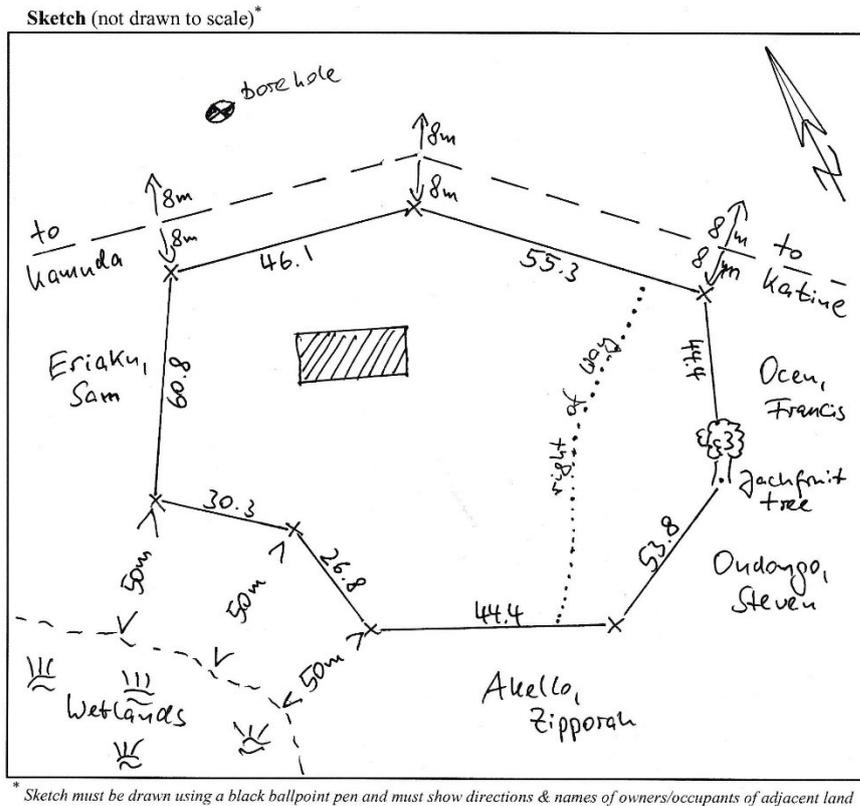


Figure 3. Sketch Map (example)

4.4 Boundary Marking

On receipt of an application for a certificate of customary ownership, the Area Land Committee shall determine, verify and mark the boundaries of all interests in the land which is the subject of the application (Section 5, Land Act, 1998).

In Teso sub-region it has always been a practice that the clan committees promote the planting of boundary trees locally known as *Ejumula* (*Jatropha curcas*/Physic nut) and *Eligoi* (*Euphorbia tirucalli*/firestick plant) to prevent boundary conflicts (Figures 4 and 5). Quite often, the customary land owners leave a strip of land uncultivated between parcels of land to act as a natural boundary hedge. This also helps to prevent soil erosion (Omaada, 2009).

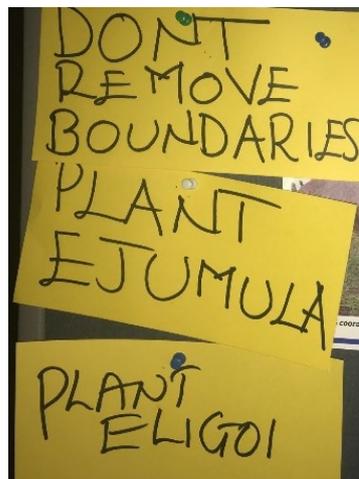


Figure 4. Appeal for boundary demarcation



Figure 5. Field assistant carrying Eligoi cuttings for boundary marking

The land legislation infuses the use of traditional practices of boundary tree marking using traditionally adopted local tree species that have a special attribute of resisting drought, fire and do not spread across the boundary.

The land law in Uganda not only allows for the use of customary boundary marks but expressly prescribes it. This reduces the costs of demarcation to zero. The committee shall use boundary marks commonly used in the respective area (Regulation 27, Land Regulations, 2004) when marking the boundaries of the land in the presence of the applicants, neighbors, owners of adjacent land and other interested parties (Figure 6).



Figure 6. Public hearing / boundary demarcation with Eligoi cuttings in the presence of the participants

5. THE RELAPU APPROACH FOR CUSTOMARY LAND

The aim of the RELAPU project in Northeastern Uganda (Teso sub-region) is to systematically secure customary land rights in selected sub-counties (currently: Asuret, Katine and Tubur sub-counties in Soroti district, Omodoi and Toroma sub-counties in Katakwi district).

So far, land governance in the Teso sub-region complies with the customs of Iteso and Kumam communities as documented in the Principles Practices Rights and Responsibilities (PPRR) by Iteso Cultural Union (ICU) and Kumam Elders' Forum (KEF) respectively (ICU, 2008). Customarily, people acquire land rights through inheritance, purchase, renting, gifts etc. Proof

of land ownership is simply because a person was born on that land and has always lived on it and is regarded by everyone else as ‘owner’ of the land. People of Teso never had official papers proving ownership of their customary land as provided for the Land Act but rather rely on oral history and the recognition by neighbors and clan members acknowledging that a specific family/group of people own a certain portion of land (GIZ (RELAPU), 2019).

This practice of no written documentation delineating legitimate rights holders and property boundaries is very risky and can turn people to landlessness especially with increasing land grabbing across the county with wealthy people targeting the poor and vulnerable. Furthermore, parts of the Teso sub-region had suffered insecurity since the late 1980s. A long and most devastating conflict, with regard to war victims and property, were the two decades of insurgency in Northern Uganda that started in 1988, mounted by the Lord’s Resistance Army (LRA) against the National Resistance Movement (NRM) Government but also caused by armed cattle rustling by neighboring tribes.

All these conflicts resulted in the destruction of the social, cultural, economic and political infrastructure of the sub-region, with devastating consequences for the population. The effects included large scale internal displacement of communities, general lawlessness, gross violations of human rights, violent abuse of women and girls. All of this resulted also in environmental degradation of settlement areas. For people in Teso, the main cause of land conflicts is unequivocally the displacement in the wake of those conflicts (Kandel, 2014). Many internally displaced people who finally return to their home villages find their land being used by other people and have difficulties in identifying the boundaries of their families’ properties. Too often this results in land disputes.

Although there is the possibility of registration of customary land after the Land Act was enacted about 20 years ago, little use has been made of it, as there is insufficient information about the registration process. People consider freehold the only fully-fledged option for the registration of their land and feel that this tenure is even more valuable than customary land registration. However, they cannot afford the costs of survey of their land which is compulsory for freehold registration. On the part of the government, there were also no efforts to put the Land Act into practice for customary land. The above mentioned circumstances make projects for systematic registration of customary land even more difficult.

Community members together with lower local governments, traditional leaders and other stakeholders need to acknowledge the fact that the absence of clear land boundary marking has led to rampant land conflicts due to uncertain boundaries and lack of land documents to proof ownership in the past. The paradigm of relying on oral knowledge provided by elders as a means of proving ownership needs to be appreciated in the first place and built on using Fit-for-Purpose approaches of land mapping and documentation (GIZ (RELAPU), 2019).

5.1 Project Implementation

The project implementation process in the Teso sub-region started in mid-2016 with preliminary activities. Actual field activities commenced in January 2018 in both Soroti and Katakwi districts. The implementation is carried out in five sub-counties with over 3,000 households and about 18,000 people covered and about 2,400 parcels mapped by the end of March 2019. Households will be supported to acquire land inventory protocols (LIP) and certificates of customary ownership (CCO).

The implementation of the project takes place in three phases (Figure 7):

- (i) Preparation of communities by civil society organisations
- (ii) Data capturing and mapping by local government/Area Land Committees
- (iii) Verification and documentation by land administration institutions

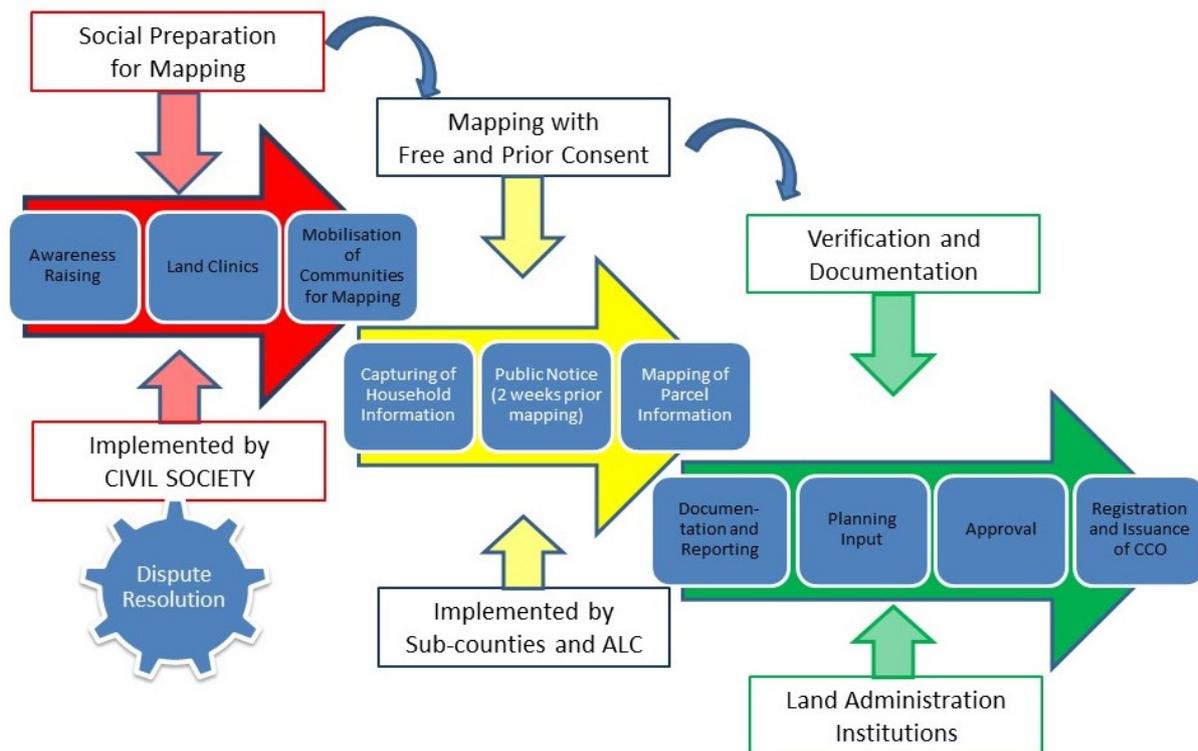


Figure 7. RELAPU process flow for customary land in Teso sub-region

Instead of a top-down approach, the project is characterized by the intensive involvement of local civil society organizations, local governments and land management institutions. GIZ is supporting the local partners logistically and financially, however the task and responsibility for implementation and control of the project remain with the partners. This promotes sustainability but also identification with the objectives of the project as well as acceptance by partners and population. In this way the capacities of the mandated local land administration structures (Area Land Committees and Recorders) at sub-county level are being established.

Systematic land mapping and documentation is applied with special consideration on Free Prior Informed Consent (FPIC)² by the land owners. This means that (Wikipedia, 2019)

- people receive satisfactory information on the key points of the project such as the nature, size, pace, reversibility, the scope of the project, the reason for it, and its duration,
- consent is sought well in advance of any activities, and
- all this happens in a process determined by those affected and where participation and consultation are key,

to allow people to have the right to self-determination and self-governance in government decision making processes over projects that concern their lives and resources. To put it briefly: No property will be surveyed without the owner's consent.

Fit-for-Purpose (FFP) method of land administration is adopted. This entails the use of simple GNSS devices and digital tools to collect and store data on people-to-land relations (parcel coordinates, personal data of different rights holders, and various types of rights) (GIZ (RELAPU), 2019).

5.1.1 Social Preparation of Communities

In the light of recent history involving immanent land conflicts in the Teso sub-region and lack of information about the registration of customary land, it is indispensable to prepare the population for the project, particularly the political and cultural leaders as well as the elders and clan leaders.

In Uganda, a land registration project cannot be carried out against the resistance of the population. In general, people are very sensitive about land issues and skeptical of government activities on land. It is presumed that many of the current disputes and uncertainties about land ownership arise out of lack of information on the rights, restrictions and obligations under customary rules or prescribed by laws and policies. For this reason, the project aims to ensure that households, governmental and non-governmental partner organizations in the project sub-counties are acquainted with the principles of customary land rights, options for registration of land and relevant provisions in the Uganda National Land Policy as well as with dispute resolution methods respectively. This information is disseminated to the communities using appropriate measures, e.g. community meetings/dialogues, music, dance and drama and local talk radio. In addition, so-called land clinics are being held where individual questions are dealt with and answered by land experts.

The RELAPU project puts emphasis on women rights as well as the rights of marginalized groups to land, to ensure that they are not left out during land inventory, demarcation and mapping processes.

² Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) states: *States shall consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

Capacity development is a prerequisite for land policy implementation. The project contributed to capacity development at the national level by training over 30 senior land managers as trainers. These include land officers, registrars, land surveyors, physical planners from the Ministry Headquarters and Zonal Offices. In addition, the project facilitates the induction of newly recruited members of District Land Boards, Area Land Committees and Recorders.

5.1.1.1 Dispute Resolution

The land administration system in Uganda comprises formal and informal institutions for land dispute resolution. The project is building on these institutions to resolve new disputes that arise out of the land inventory project. One of the challenges of land administration in Uganda is the absence of functional, low cost alternative dispute resolution institutions for handling land cases. This lack has denied justice to many land rights holders, mainly women and other marginalized groups. The formal court systems have proved to be very expensive, detached, and too bureaucratic and hence not beneficial to the underprivileged members of society (Huber, 2018).

The project therefore promotes the use of Alternative Dispute Resolution (ADR) for resolving land disputes. The advantage of ADR methods is that they are low cost, fast and are prone to offer a harmonious outcome for community members. The project organized the establishment of Village Dispute Resolution Teams (VDRT) which were elected by the communities (election at village level to form a hybrid between formal and informal structures with representatives from all important areas: youth representative, women representative, a clan leader representing the clans in the village (traditional), one elder (traditional), Local Council 1 chairperson, representing the formal structure). The intention was not to create new structures but a combination of society groups that can deal adequately with emerging land disputes. As the members of the VDRT are chosen by the community, they enjoy a high reputation and the trust of the people. The VDRT are expected to objectively listen to all and be impartial.

The VDRT are required to understand mediation and referral procedures as stipulated under the law and good practice. The teams are instrumental in providing mediation services to conflicting parties identified and referred from the pilot sub-counties before and during the land inventory process. The VDRT members have better capacities in land dispute resolution as they have been trained in mediation and conflict resolution whereas clan leaders were not trained.

Land disputes that arose during the preparatory meetings, dialogues or at the land clinics are reported to the VDRT for further processing. Ideally, if the conflict is solved, data capturing and mapping can start. Otherwise the land in dispute cannot be administered and the parties will be referred to formal dispute institutions.

5.1.2 Data Capturing and Mapping

GIZ has directly contracted the lower local governments at sub-county level as the implementers for the mapping project. The local governments involve and facilitate the respective Area Land Committees as required by the Land Act and recruit supporting technical staff (field assistants, GIS technician). This approach takes into account the local structures,

responsibilities and legal preconditions as well as sustainability aspects. Investments and training directly address the project partners which enables them to continue with the registration of customary land rights even after the end of the project.

Needless to say that the members of the ALC and the local government have received training prior to the mapping and the necessary equipment to fulfill their tasks (Figure 8). The demarcation exercise in each village is undertaken only after sensitization and awareness creation of the villagers took place.



Figure 8. Technical training of field team members

Only such land will be mapped that the owners applied for (free and prior consent). Households will be supported to acquire land inventory protocols (LIP) and if they wish, certificates of customary ownership (CCO). In the project villages, almost 100% of the customary land users have recognized the advantages of the project (land inspection by the ALC is free of charge) and have consequently applied for a CCO.

Administratively, the mapping is fully undertaken in accordance with the Land Act and Land Regulations. However, there is one exception to this rule. Due to the large number of land portions to be mapped under a systematic approach it is not possible that all land is inspected by the full committee taking into account the prescribed quorum of three members. For systematic mapping activities in the villages which is done concurrently, field teams have been established that consist of one member of the respective Area Land Committee, a parish chief, a village councilor, an elder and a technical field assistant employed by the local government. At the regular weekly meetings, the respective ALC members then report to the committee which will take its decisions in accordance with the required quorum.

5.1.2.1 Technical Equipment

The collection of land use and users' data involves a distinct set of skills. The process of capturing and management of land rights data relies on open source software named "Cadastre Register Inventory Saving Paper" (CRISP). CRISP is a software tool for collecting and editing land use and land user information by means of a variety of surveying and database techniques.

CRISP was commissioned by GIZ and developed on the Land Administration Domain Model (party, right and parcel). The software is designed to fit to the specific context and needs of land administration in several countries under the One World – No Hunger initiative. The aim is to produce an integrated tool that will allow low-skilled field teams to perform everything from the moment they enter a village to the handing over of documentary evidence and the final reports. In Uganda, the software can be used for registration of customary land rights and rights of tenants by occupancy on Mailo land. All attributes related to the right claimants as required by the Land Regulations are captured in CRISP.

CRISP consists of three software components: a database (PostgreSQL), a spatial database extender (PostGIS) and the CRISP tool itself. The user is always interacting with the CRISP tool. When operating CRISP, it links up to the other components to get and store data. The software is designed to run on Windows based PC, laptop and tablet computers. Windows 10 is preferable. It can be operated with a mouse, finger/touch screen or stylus, but for rapid entry of textual data, a keyboard is more functional. One key requirement is that all hardware must have a standard image capturing device (camera). If not built into the computer, then a USB webcam must be connected. However, the system also allows for the import of photos captured with external cameras. In addition to that, fingerprint readers can be connected.

There are several ways to use digital mapping and aerial or satellite imagery in CRISP. Shapefiles (e.g. administrative boundaries, wetland boundaries, reserve boundaries) can be imported and exported directly from the database.

Collecting positional data is done with external GNSS receivers. The CRISP GNSS relay tool communicates with the GNSS device via Bluetooth or WiFi and delivers accurate positional data to be logged in CRISP (accuracy depending on the GNSS device). CRISP has a variety of tools for making a map of a portion. These have been designed to allow complex survey techniques and equipment to be used even by non-surveyors in the easiest possible way. However, it is also possible to simply digitize positions from the background map (aerial imagery) or to snap existing points. In addition to that, a sketch map with the screen's content is captured. The sketch map will display the dimensions of the boundaries and the numbers of the corner points.

In Teso sub-region, each field team is equipped with

- Windows tablet with keyboard and built-in cameras
- CRISP software package
- Small 99 channel GNSS receiver (GPS and GLONASS) with an accuracy of 2-3 m
- Fingerprint scanner
- Measuring tape

This equipment is used to determine the boundaries by WGS84 coordinates and to capture all social data which are needed for the land inventory protocols and the future CCO.

The sub-counties are also equipped with a solar power system (low level of electrification in most rural areas), a desktop computer system, a printer and office furniture.

5.1.2.2 Land Inventory Protocols

The project generates a Land Inventory Protocol (LIP) which is designed to be a social document that shows details on the customary parcels such as location, shape, dimensions, size and usage of the land as well as the details of the claimants of customary rights. In addition to that it provides geographic information (WGS 84 coordinates of corner points and centroid). This document is not provided for in the legal framework but is a non-legal, social evidence of the right to land as a first step to the recognition of tenants' land rights. During the preliminary studies it was realized that most tenants don't have any legal document that proves ownership to the land they claim rights over.

The LIP is an entry point to regularize their land rights and the project envisages that eventually this information empowers the claimants to pursue the subsequent stages for securing land tenure as provided for in the National Land Policy and the land legislation (issuance of certificates of customary ownership) without the need to repeat land inspection and mapping. For this reason, the LIP processes and procedures followed are in line with Uganda's legal and regulatory framework and traditional regulations and norms. Finally, the LIPs are to be endorsed by the Area Land Committee chairpersons. Captured user rights data will form the basis for increasing transparency over customary land. It is suggested that at a later stage the captured data will be integrated into the National Land Information System (NLIS).

After mapping the land, the LIPs are issued to the households. A LIP is quicker, cheaper and easier for the households to get than a CCO. Furthermore, it includes additional information, e.g. a family land rights tree. It secures the rights for all family members. Unlike the hand-drawn sketch map which is prescribed for a CCO, a LIP provides a map of the land in scale and contains coordinates of the boundary points as georeferenced. Although a LIP is a social and not a legal document, it serves as a support in case a household applies for an official CCO and it enables an easy restoration of border points.

In addition to the LIP, the project creates a comprehensive documentation of delimitation of customary land rights claimed by means of maps and associated lists of claimants for each village. These maps (Figure 9) are based on current orthophotos and serve the purpose to facilitate proper and orderly development of the village area and further steps in securing land tenure rights. Above all, the maps are instrumental for village displays (disclosure of mapping results), the required input of the local Physical Planning Committee and the deliberations of the District Land Board.



Figure 9. Village map of customary land right claims in Obiol village (Katine sub-county / Soroti district)

It should be emphasized that these maps are the first large scale village maps (1:2,500) in Teso sub-region and can be used for many purposes. In particular, they are indispensable for the evaluation of all physical planning aspects.

5.1.3 Verification and Documentation

After completion of the fieldwork the ALC compiles the files with the necessary documents for each portion and makes a final examination for completeness and compliance with formal requirements (Figures 10 and 11). The files shall be drawn up in accordance with the Land Act and Land Regulations. Special attention has to be paid to physical planning requirements. The ALC are seeking the support of the district physical planner for verification.

Subsequently, an information event will take place in the village with the display of the verification map and the list of claimants. This enables the community to express their views and to identify shortcomings (e.g. missing applicant name, misspelled names). After the event was held existing errors will be corrected and the LIP can be issued.



Figure 10. Compilation of files by Omodoi Area Land Committee



Figure 11. Final examination of files by the chairperson of Katine Area Land Committee

Section 44(4) Land Act is of particular importance for the land allocation: “The Government or a local government shall not lease out or otherwise alienate any natural resource referred to in this section.” In addition, section 3 of the Physical Planning Act declares the entire country a planning area, all developments either urban or rural are subjected to approval. For this reason, the ALC must take physical planning aspects into account and furthermore seek the planning input (approval) of the local Physical Planning Committee whereby three physical planning aspects have to be observed (MLHUD, 2016):

- (i) Protection of easements and common property**
It shall be ensured that easements (like communal accesses, road reserves, railway reserves, utility lines / way leaves) and common property (like dams, public water sources and public open spaces) resources are protected.
- (ii) Accessibility**
Accessibility to any piece of land being applied for is a prerequisite for approval, either by direct access from a public road or by means of right of way.
- (iii) Protection of environment**
Physical Planning Committees shall subject all land applications to National Environment Management guidelines and standards for the protection of natural resources such as rivers, lakes, forests, wetlands, wildlife reserves among others.

The protective clauses (i) and (iii) shall not only prevent constantly occurring encroachments but shall also secure the strict observance of buffer zones³ which, for example, in the case of

³ Buffer zones are protected areas (protection zone) adjacent to environmental protected areas (wetlands, lakes, rivers, forests or rocks) and defined by declared or physical boundaries of such environmental protected area and imaginary lines parallel to and in a given distance from such boundaries.

wetlands amount to 50m. The project works to ensure that the recommended road reserves and buffer zones are offset in the process of land mapping using the tape measures (Figure 12).



Figure 12.
Off-set of a
road reserve

Eventually, all the applications for CCO are subjected to final approval by the District Land Board. As the case may be, the approval can be subject to terms and conditions. Where the application is approved, the DLB sends the documents to the Recorder and requests him/her to register the file and to issue a certificate of customary ownership to the applicants.

6. CHALLENGES

In the course of the project work, a number of challenges to long-term sustainability have emerged. Most of these challenges are fundamental in land registration in Uganda. The most striking problems are described below.

6.1 Ongoing Political Disputes and Unsolved Conflicts

Land matters are core issues in Uganda. The RELAPU project came at such a critical time that the Government tabled the highly controversial Constitutional Amendment Bill 2017 in Parliament to change Article 26 of the Constitution (Protection from deprivation of property). The bill sought to give government powers to acquire land without prior adequate compensation in order to carry out projects. It was aimed at facilitating faster land acquisition for public projects in order to avoid stalling or delaying Government infrastructure and investment projects due to compensation wrangles and disputes arising out of the compulsory land acquisition process. In 2018, the Government officially withdrew the controversial bill, and in

April 2019, new plans were proposed now seeking to reform laws relating to the development, management, and maintenance of public roads (Roads Bill, 2018). The bill aims among other things at giving the Minister of Works powers to expand road reserves for national roads in both urban and rural settings to 40 meters on the left and 40 meters on the right from the center of the road instead of the previous 50 feet (appr. 15m) on either side of the road. Overall, the public discussion about these bills has contributed little to confidence building in land matters.

Until today there are conflicts emerging as results from the regional violent history which resulted in displacements, unutilized land and loss of boundary marks. Many people in Teso lost their homesteads. Once the household members returned to their villages, land wrangles erupted due to unclear boundaries or land being occupied by others.

To solve these conflicts in the long term trained conflict mediation experts are needed, financial funds as well as patience, all of which are often lacking in government land institutions.

In general, there is a lack of awareness of the national land legislation. In particular, it is difficult to differentiate traditional customary rules and official land law from one another and many people feel customary land rights inferior compared to freehold. In the absence of clarity, many would fear the existence of a hidden agenda behind land registration projects and have very specific fears about land grabbing etc. In addition to that, clan leaders are hesitant in pretext that their roles on customary land administration will be removed from them after official land registration took place.

All this requires a very careful sensitization of the population about the options of land registration and the objectives of the project. In this context it is paramount to establish bottom-up participation and consultation of the population prior to the beginning of land mapping and documentation (Free Prior Informed Consent (FPIC) by the land owners) to avoid any possible allegations of forced land mapping.

The local political leadership must stand behind the activities and take the lead in building widespread support for land registration. Through exposure visits by opinion leaders from political, religious, traditional and administrative backgrounds confidence building takes place. Stakeholder workshops and outreach activities within the community like radio talks, radio spot messages, drama and community dialogue meetings, land clinics in villages, at parish and sub-county level can disseminate information about the urgent need for land conflict resolution and opportunities for increased tenure security through registration of customary land. (Betge, 2019).

6.2 Legal Framework

Both the Land Act, 1998 and Land Regulations, 2004 have been in place for quite a while. A number of stipulations are not very clear and subject to individual interpretation, some provisions are inconsistent with others. In addition, there are various specifications of the Ministry, yet also local work instructions. This makes it difficult to understand the legal framework and deal with the regulations.

A comprehensive revision of the legal framework for land administration should be carried out. In particular, an amendment must not only allow for sporadic adjudication⁴ but also for land titling and flexible land adjudication, demarcation and mapping procedures of customary land rights in a systematic manner, village per village upon acceptance by the communities. The Land Regulations should allow for creation of computerised documents instead of requiring hand-drawn sketchmaps.

6.3 Lack of Financial Resources

Uganda has set out an ambitious agenda for its future. The Vision 2040 foresees a middle-income country with the majority of its citizens living in urban areas, having smaller families, and earning income in non-agricultural sectors. For the time being, however, the majority of the rural population lives on the edge of the subsistence level. According to the Uganda Poverty Assessment (World Bank, 2016), in 2013 more than a third of the population lived below the extreme poverty line of \$1.90 per day. At 3%, Uganda's annual population growth rate is among the highest in the world.

Most of the poor in Uganda live in rural areas. There are large and increasing regional variations with most of the poor concentrated in the north and the east. Even with the current low-cost approaches, cost of land registration is still an issue with regard to the prevailing poverty. The rural population simply use their little income to secure their basic necessities and cannot invest in other things. Given that land is a productive asset, finding ways to secure customary land ownership by means of formal titles would be beneficial and reduce poverty among households in Uganda.

On the other hand, the Government does not provide sufficient funds to land management and administration institutions although they generate notable revenue. At the central level, there is limited support from the Ministry of Lands, Housing and Urban Development which is also suffering from inadequate budgets.

The lack of budgetary resources also affects staffing of the district land offices. At the local government level, most of the land institutions are partially or completely not funded. District land offices, which are mandated to provide land administration services in the districts are understaffed. Apart from the capital Kampala and the neighboring Wakiso district, there is no land office that is fully staffed; it is common to find district land offices with only one officer (like Katakwi district) either a land management officer or a land surveyor or a physical planner attempting to perform the functions of more than 5 officers that are supposed to constitute a land office. Most district land offices lack basic materials such as stationery, printers and furniture to help in day to day running of the offices (MLHUD, 2018).

⁴ Sporadic adjudication is a system of ascertaining rights in land here and there, now and then without following a systematic way. It is individually initiated on a case-by-case basis. Systematic adjudication is the uniform adjudication or ascertaining rights in land, surveying that land area by area or village by village in an orderly sequence. It is followed by a systematic registration of the same land (MLHUD, 2018).

Due to immanent lack of funds, District Land Boards or Physical Planning Committees are unable to hold their meetings at the necessary frequency. The remuneration of the members of the Area Land Committees must even be borne by the applicants themselves instead of being charged to the district administration funds as stipulated by section 66 Land Act⁵.

6.4 Inadequate Trained Personnel and Limited Knowledge of Legislation

There are not enough proficient people/knowhow either at district and/or sub-county level to advise families and clans on how to acquire a CCO and to manage the application process. Even if relevant office holders were trained, the people, e.g. clan leaders, political leaders or head of households would need to be sensitized about their rights, roles and responsibilities regarding customary land. This is especially important for marginalized groups and constitutes an even greater challenge for districts like Katakwi or Soroti which have an average illiteracy rate of 30% - one of the highest rates in the whole country.

6.5 Area Land Committees

Under Uganda's land legislation, Area Land Committees constitute an indispensable basis for all land registration activities and serve as rapporteur to the District Land Boards. This is of particular importance for customary land applications because the ALCs not only have to establish the necessary documents but have to survey the customary land concerned as well (freehold and leasehold requires deed plans based on surveys by professional surveyors).

Usually, the ALC members are laypeople and most of them do not have the necessary experience in land management, physical planning or management and protection of natural resources. Quite often, members of the Area Land Committees are selected for political rather than professional reasons. African cultures commonly rever their elders and show high respect for them. Therefore, the average age of the committee members is often 60 years or more. Some members only speak the local language but not Uganda's official language (English) and can't read or understand the appropriate laws and regulations. On the other hand, it might prove difficult in rural settings to identify more qualified members.

Many members of lower level land institutions do not have any idea about what they are required to do, how they are expected to do it and the laws and regulations they are supposed to apply (MLHUD, 2018). A recent assessment of the Area Land Committees in Soroti and Katakwi districts confirms this unfavourable judgement and found that most of them do not even had the necessary legal text books or measuring tapes for mapping and collecting land related data. No one is experienced in the use of electronic devices (smartphones/tablets/computers). In addition, they had not received sufficient training when commencing or had no training at all. As a consequence, many files produced by the ALCs do not meet the formal requirements of the land legislation to a large extent.

⁵ Section 66 (2) of the Land Act states: *All expenses incurred by or on behalf of the committee shall be charged on the district administration funds.*

The establishment of a decentralized land administration system in Uganda has been constrained by a serious lack of capacity (personnel, transport, buildings, furniture and equipment). Local authorities do not have sufficient resources to recruit, train and deploy qualified staff (Ahene, 2008). Currently, no one feels responsible for capacity building of the committees. Far too many district land offices are understaffed and do not have the facilities to train or supervise the Area Land Committees.

Uganda must work strategically to overcome inconsistent supply of land services and the obstacles limiting the work of Area Land Committees as well of District Land Boards and Recorders by implementing a comprehensive capacitation offensive. The capacity of the land sector, especially of the institutions District Land Board and Area Land Committees but also of the Recorders, should be strengthened by a yet to be established "School of Land Management" under the responsible ministry MLHUD. Capacity building activities should include:

- Development and implementation of a demand driven⁶ education programme for the two land management institutions with compulsory induction and refresher training. These courses should be held directly at local level (district/sub-county) to avoid high expenditure on travel allowances/per diem (trainer goes to the students and not vice versa).
- Development and publishing ECT products and guidelines for the land management institutions, supply to the ALC, DLB and Recorders.
- Introduction of quality assurance measurements.
- Establishment and supervision of regional working groups of the chairpersons of the District Land Boards and the district land officers.
- Regional workshops and other training measures to eliminate capacity gaps in the land sector.

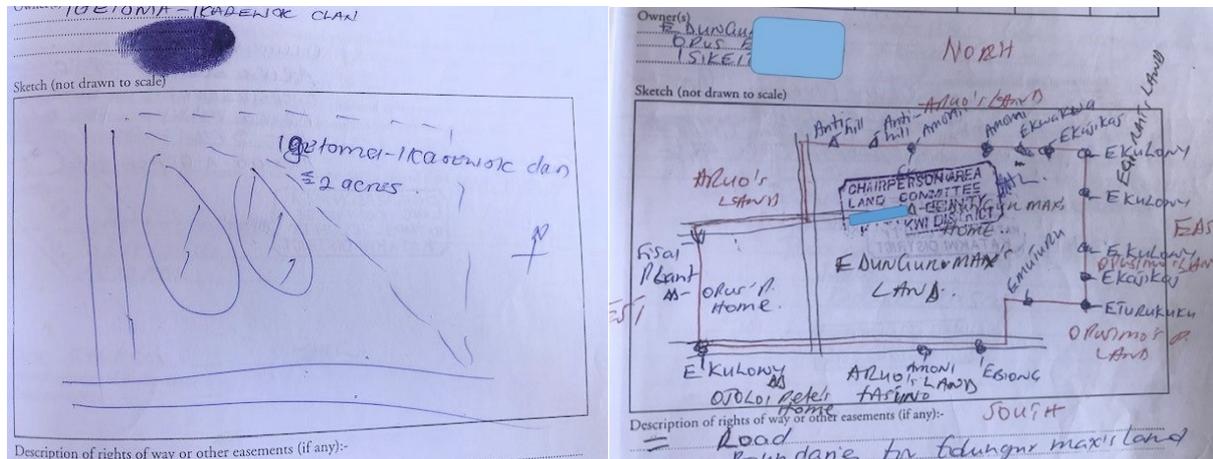
The curriculum of such School of Land Management can easily be developed from various existing training documents and must be expanded to address crucial land sector HR development shortfalls, particularly in land use and physical planning, natural resources management and protection as well as in record keeping and computer technologies.

6.6 Lack of Spatial Reference / Insufficient Description of the Land

In case of customary land, the sketch maps prepared by the Area Land Committees have the same function as a deed plan prepared for freehold or leasehold titling by a land surveyor. They shall describe the delimitation of the land concerned and have to be attached to the certificates of customary ownership.

⁶ There are appr. 130 District Land Boards (terms of office max. 2*5 years) and 2000 Area Land Committees (terms of office max. 2*3 years) and about 2000 Recorders (civil servants) in Uganda. Every year, at least 13 District Land Boards and more than 330 Area Land Committees have to receive their induction training (3-5 days) not to mention regular refresher trainings for all boards/committees. In Uganda, it is common that the Senior Assistant Secretaries/Assistant Town Clerks (= Recorders) are frequently transferred to other positions.

Many professionals in Uganda consider the sketch map prepared by the Area Land Committees as prescribed in the Land Regulations falling below minimum standards for a spatial framework. The sketch maps are not in scale and do not allow area computation. What makes matters worse is that some Area Land Committees do not even comply with the Land Regulations when creating the sketch map either because of ignorance of the regulations, lack of training, lack of equipment or all of this (Figures 13 and 14).



Figures 13 and 14. Insufficient sketch maps

In most cases the sketch map may not be used to retrace the boundary with any level of certainty should there be any land dispute or the need to open the boundaries in case of conversion to freehold. The quality of the sketch maps needs to be improved. Low cost handheld GPS or even smartphones with built in GPS could be used to provide WGS 84 coordinates at a position accuracy of several metres and to derive geo-referenced sketches. Only this approach would allow to overlay the customary portions together with other surveyed parcels in a Land Information System, a procedure that is important in avoiding issuance of titles on customary land and vice versa.



Figure 15. Member of Katine Area Land Committee drawing a sketch map after surveying the land with GNSS devices

6.7 Inclusion of Physical Planning in the Land Allocation Process

Physical planning plays a very important role in Uganda. It

- is the spatial expression of the desired form of social and economic development,
- shall create and maintain a framework for a more balanced spatial development countrywide,
- shall therefore secure a rational arrangement of land use, protection of the environment and alignment of the land uses, and
- shall adhere to long-term government objectives for sustainable economic and social development.

The entire country is declared a planning area and the Physical Planning Act shall apply to the entire country in all respects. On the other hand, planning instruments of physical planning like development plans have not yet been put into practice in large parts of the country, specifically not in rural areas. The local Physical Planning Committees are constituted by the sub-county councils but do not have members with technical knowledge or experience in physical planning.

A ministerial circular (MLHUD, 2016) shall ensure that land-related legislation is observed (wetlands, forest reserves, minerals etc.) and every piece of land has secured access to the public road. It is not intended to create another new elaborate process and it does not enforce the need of development planning, zoning, etc. However, all fresh land applications must be subjected to physical planning aspects.

The basic problem for the Area Land Committees being the first point of call for fresh land applications is that the respective standards and guidelines with regard to road reserves, buffer zones of wetlands etc. are partly vague. In particular, lakes and wetlands which cover large parts of Teso sub-region are problematic and the land inspection turns out to be very elaborate and time consuming for land close to such natural resources. The boundaries of most wetlands have not yet been determined/demarcated as required by law and the communities are not aware about the extensive buffer zones (50m for wetlands, 100m for lakes, 200m for major lakes) where land cannot be alienated. On the ground, one can find a lot of encroachments into wetlands and their buffer zones which makes land inspection and demarcation a contentious endeavor.

It is beyond any doubt that the Area Land Committees but also the lower Physical Planning Committees need more training in physical planning and natural resource protection. District physical planners and natural resource officers can support the ALC to pave the way to lower local Physical Planning Committees (advise on illicit cases and wetland boundaries, remarks and recommendation to the LPPC).

6.8 Data Storage / IT Based Registration

A strong challenge is to find an efficient way to store and manage the collected data, which can be used as a standard on both the local as well as the national level. Currently, the registration of customary land rights is designed to be done manually at the sub-county level, with analogue

register books and typewritten certificates. Irrespective of the way data is stored, the protection of any ownership data plus spatial attributes against unauthorized or even malicious access is paramount. It is of utmost importance that the data originally stored at local level can easily be restored after a data loss event (lack of precaution, fire, ingress of water, destruction by insects). This cannot be guaranteed with the present analogue registration system.



Figure 16.
Registry of a district land office;
lack of space and shelves

Figure 17.
Dilapidated map sheets

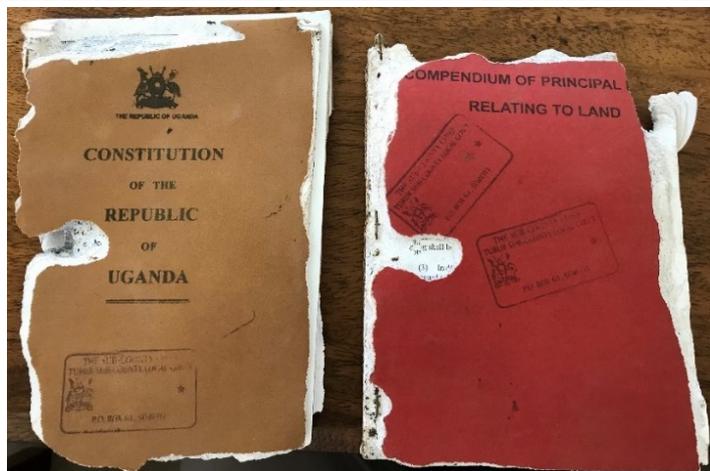


Figure 18.
Termite damage: Paper is quite nutritious for termites, which is why they target files or books very usually - sometimes as often as wood.

Although rural electrification is underway in large parts of the country, many sub-county administrations have no or only unreliable power supply. Currently, the national electrification rate is estimated at 14% with the rural population having an even lower rate of less than 7%. Under these conditions, the introduction of IT-based procedures is still futile.

The absolute/necessary precondition for the successful implementation of any IT based project is the development and strict execution of a data repository concept and a backup strategy. The files on the hard disks of computers may be worth many times the cost of the computer itself. There is a high risk of loss of data when using simple stand-alone computer systems (theft,

operational errors, climatic and storage conditions, hardware failure, viruses). At the local level, however, knowledge and awareness of IT administration, data security, back-up of data is very low or non-existent. Once again, lack of funds prevents procurement of IT equipment or replacements and repair.

It is for this reason that the current projects on registration of customary land feature an analogue registration form because there are no clear technical concepts and guidelines including data capture, storage standard and too many risks with isolated IT solutions.

The ministry in charge is advised to develop a strategy and software for the implementation of an IT based registration system for customary land rights throughout the country and the integration of data on customary land rights into the National Land Information System (NLIS), accompanied by technical guidelines for data capture and storage and provision of hard- and software.

6.9 Process of Registering Subsequent Transactions

The registration of customary land rights in Uganda is still in its infancy. The aim of the current projects is the first-time registration. In the future, the main focus of the work of Recorders will be land transactions. So far, there are no technical guidelines for the Recorders on the process of dealing with transactions of customary land. Transactions cannot be left out of the process and the training of Recorders must address this aspect.

In addition to that it must be avoided that the initial registration creates a “dead register” where people are happy with their initial certificate but reluctant to fully register transactions of their land to escape transaction costs and to avoid any bureaucratic hassle. The registration of subsequent transactions must be an easily accessible and low-cost process.

7. FIT-FOR-PURPOSE?

Over the past years, international partners of the Ugandan government started a number of pilot projects to develop functioning land tenure registration systems (Betge, 2019). The GIZ is among the actors with an ongoing project aiming to improve tenure security within settings of predominantly customary ownership. The aim of the project in Teso is to demarcate and register land ownership rights of rural households in order to enable those to apply for Certificates of Customary Ownership (CCO)

The project employs low-cost approaches that utilize cost-efficient technological solutions to improve land administration, broadly based on the ideas and methods of the Social Tenure Domain Model (STDM) and Fit-for-Purpose Land Administration (FFP). Local administrators and members of the Area Land Committees are trained in using simple GPS devices and complementary digital tools to collect and store data on people-to-land relations (parcel coordinates, personal data of different rights holders and various types of rights). Despite all

challenges, the RELAPU project provides proof that technical upgrades to land administration are possible by integrating low-cost, Fit-for-Purpose solutions into the prescribed process for customary land registration.

The Fit-for-Purpose Land Administration concept is an approach in land administration that emphasizes on minimizing cost, bureaucracy and complexity while simultaneously achieving the ultimate purpose of land administration (Enemark, 2016). Fit-for-Purpose approaches discourage the use of overly high standards in spatial, legal and institutional frameworks unless the purpose justifies their use.

The FFP approach includes three fundamental characteristics:

1. Focus on the purpose before designing the means to be most “fit” for achieving it
2. Approach requires flexibility in designing the means to meet the current constraints
3. It emphasizes the perspective of gradual improvement to provide continuity.

A comparison with the principles of FFP shows that the RELAPU project is a FFP approach (Figure 19). The only exception is the method of spatial data capture. In view of the topographical conditions and the vegetation in Teso sub-region (also most other areas in Uganda) field survey is indispensable because most boundaries cannot be clearly identified by aerial imagery. In addition, the Land Act and Land Regulations have to be observed demanding adjudication and demarcation to be undertaken on the ground in the presence of owners, neighbors and witnesses. The law requires fixed boundaries. However, low cost GNSS devices used in the project allow for a fast survey but also a simple spatial reference. The employment and training of local staff makes the RELAPU approach sustainable and strengthens the local land institutions in order to provide transparent and accessible land related services at the local level.

Figure 19.
RELAPU approach
meets
FFP approach
(Enemark, 2016)

KEY PRINCIPLES		
Spatial framework	Legal framework	Institutional Framework
<ul style="list-style-type: none"> ▪ Visible (physical) boundaries rather than fixed boundaries. ▪ Aerial / satellite imagery rather than field surveys. ▪ Accuracy relates to the purpose rather than technical standards. ▪ Demands for updating and opportunities for upgrading and ongoing improvement. 	<ul style="list-style-type: none"> ▪ A flexible framework designed along administrative rather than judicial lines. ▪ A continuum of tenure rather than just individual ownership. ▪ Flexible recordation rather than only one register. ▪ Ensuring gender equity for land and property rights. 	<ul style="list-style-type: none"> ▪ Good land governance rather than bureaucratic barriers. ▪ Integrated institutional framework rather than sectorial silos. ▪ Flexible ICT approach rather than high-end technology solutions. ▪ Transparent land information with easy and affordable access for all.

The project's perception and progress leads to a demand to support other sub-counties and districts with regard to the registration of customary land. However, the RELAPU project is not

intended to support registration in the whole sub-region, but is supposed to stimulate and implement the registration of customary land in accordance with the Land Act.

The Uganda Vision 2040 acknowledges accessibility to land as a means to promote investment. It strives to improve security of tenure by systematically titling all the land by 2040. In this regard, it has to be noted that - with support of UN Habitat - MLHUD is developing a “Fit-for-Purpose Land Administration Country Implementation Strategy” (MLHUD, 2018). This concept considers the current needs of the community and devises means of resolving them. The Fit-for-Purpose implementation strategy provides procedures and actions for fast tracking registration of the unregistered land in Uganda within a period of not more than 10 years. The aim is to register 20 million parcels within the next 10 years for a cost of around 10 USD per parcel (Enemark, 2019). This base cost shall cover adjudication, mapping and recordation of portions using FFP approach but does not include further costs relate to institutional development, awareness raising and capacity development.

Through this strategy, the land administration institutions shall be able to document all the land in Uganda, eliminate land disputes and put land to optimal use. It is hoped that this approach will be used to ease the process of registration of customary land and to register customary land on a broad basis throughout Uganda. It remains to be seen whether the Ministry will be able to find sufficient funding for this project which can maximise the potential of land and natural resources for a sustainable development in Uganda. The experiences from the RELAPU project, however, are that an amount of 10 USD per portion is far from sufficient for the registration of customary land rights under the current legal framework in Uganda and given the technical and cultural circumstances.

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