PREFACE

LANDnet Uganda, with support from Rosa Luxemburg Stiftung, and Trocaire Uganda, is implementing a project titled “Laying the Foundations for the Customary Land Registry for Uganda” which seeks to set in motion initial steps for the establishment of this important land administration infrastructure for the management of customary land.

This project was birthed to pave the way for the design of a well-structured, contextualised, computerised and modernised land registry system and structures across the country that aspire to integrate culture, physical planning, surveying, valuation, land registration and administration.

The project is premised on the current practices that raise many questions about customary land tenure governance in Uganda. The questions revolve around the legal inequities in registration and administration of the four land tenures as opposed to the national and global adoption of a modern registry system.

The goal is to study and structure pathways for the administration of customary tenure, review the current registry system, and propose how to integrate both without dismantling either of the structures. This may entail the revision of processes, procedures and status of either structure.

Land is viewed as an enabler for broader development objectives such as increased productivity, food security, climate resilience, natural resource management, conflict resolution and social integration. With proper land registration, inclusive land-use planning and management will become attainable, security of tenure will be improved and investments in land can be sustained in the long term.
ACKNOWLEDGEMENTS

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A special mention must be made of LANDnet staff: Rebecca Atayo, the Lead Researcher who oversaw the development of the initial drafts that were presented to the Technical Committee; Judith Atukunda who contributed to the spatial and survey components as well as coordinated logistical support to this process; Lillian Achola, the Secretary to the Technical Committee and co-project manager with Stellamaris Nakacwa who enormously provided input on the spatial and survey aspects this book.

This publication was peer reviewed by Dr. J.F.K. Byamugisha and Dr. Mary Ssonko whose intellectual input enhanced its depth as well as simplicity. We thank Desire Ruth for the editorial support and Tim Katuramu for the layout and design.

Lastly, we are grateful to our development partners: Rosa Luxemburg Stiftung and Trocaire, for the generous financial support which made the development of this resource book a reality.

While LANDnet acknowledges the input of others in the development of this work, we take the entire responsibility for any mistakes which may be contained herein.
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EXECUTIVE SUMMARY

The Uganda National Land Policy advocates for the elevation of customary land tenure to a level similar to the other three tenures, namely; freehold, Mailo and leasehold tenure. One of the proposed strategies is the establishment of a land registration system to support the registration of rights under customary tenure. Secure land tenure requires that legal rights to land are adequately defined and documented.

Discussions on policies for customary land tenure in Uganda are often characterised by preconceived notions and varied ideological viewpoints rather than careful analysis of the potential contribution of these policies to broader development, the scope for interventions in the area, and the mechanisms that can be used to achieve broader social and economic goals. Given this inadequate analysis, the potential for using land policies as a catalyst for social and economic change is often not fully realised. This resource book analyses the context of customary land tenure in Uganda and examines the prospects that a customary land registry for strengthening customary land administration in Uganda.

Chapter One provides a chronological insight into the history of customary land tenure in Uganda right from the pre-colonial times to date. It also analyses the impacts of the various legislation enacted over the years on customary tenure.

Chapter Two focuses on customary land administration and the institutions therein. It reviews the land administration structures that manage customary land. It also analyses the effectiveness of the current structures in executing customary land registration and the maintenance of records as well as the effectiveness of the decentralization approach currently in place.

Chapter Three examines the various modes of land registration used world over with particular attention paid to registration of titles vis a vis the registration of deeds. The chapter then narrows down to the land registration system in Uganda with particular focus on registration of customary land. It delves into the controversy posed by the mismatch between the National Land Policy and the Land Act on the registration of customary land. It further looks at the use of Fit for Purpose tools and the introduction of the National Land Information System as a means to modernize registry operations.

Chapter Four makes a case for a customary land registry. The chapter lays out the advantages and potential risks posed by the proposed registry and also explains conditions precedent to the establishment of this proposed registry.

Chapter Five makes proposals for what a proposed Customary Land Registry for Uganda should look like and highlights key areas of focus.

Finally, chapter six highlights the recommendations and proposes a way forward.
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ABOUT LANDNET UGANDA

LANDnet Uganda is a land technical organisation engaged in research, capacity development and policy advocacy on land, gender, and natural resources management. LANDnet offers technical support to the public, private sector and to Civil Society Organizations and further seeks to build capacity of young professionals in land governance. Our interventions fuse the emerging body of knowledge on land and natural resources management practices building with the fundamentals of gender equality and other social and cultural rights.

Since 2016, LANDnet has implemented tens of projects across the country reaching millions of Ugandans through community outreaches, radio talk shows, legal aid clinics, research and capacity building initiatives. We have influenced revision of over 16 laws in Uganda and continue to pioneer cutting-edge interventions in the land sector.

Currently, LANDnet has three main Departments: Land Management, Access to Land Justice and Operations. It is a highly qualified, experienced and skilled team of 20 professionals from diverse fields including law, surveying, business, communications and social work. LANDnet is headquartered in Kampala with two field offices in Moroto and Kitgum Districts covering the Karamoja and Acholi sub-regions respectively. The Headquarters handles strategic and national-level advocacy while field offices give our programming practical perspectives and connect us to our core constituency — vulnerable and marginalised groups in the country. All offices are fully equipped and linked through audio conferencing technology for staff meetings, consultations and capacity building.

Core to LANDnet’s work is action research which seeks to bring together action and reflection, theory and practice using participatory approaches. The process and results are aimed at finding practical solutions to identified land issues of pressing concern to people, and more generally the social-economic advancement of individual persons and their communities.
The Evolution of Customary Tenure
1.1 Customary land tenure defined

Customary land connotes land which is held in accordance with the “generally acceptable norms and practices of a particular community”.\(^1\) While it has existed since time immemorial, in Uganda’s case, customary land obtained formal recognition in 1995 upon the promulgation of the Constitution which recognised it as one of the four tenures through which citizens\(^2\) are vested with land. To further expound on this tenure, the Land Act\(^3\) lays down the characteristics of this system to include:

- **a)** Applicability to a specific area of land and description or class of persons;
- **b)** Being subject to Section 27 on non-discrimination and governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;
- **c)** Applicability to any persons acquiring land in that area in accordance with those rules either through sale, gift or inheritance;
- **d)** Application of local customary regulation subject to Section 27;
- **e)** Application of local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;
- **f)** Provision for communal ownership and use of land;
- **g)** Parcels of land which may be recognised as subdivisions belonging to a person, a family or a traditional institution; and
- **h)** Perpetual ownership.

As culture evolves, in many places in Uganda today, customary land is increasingly getting individualised and although initially frowned upon, incidents of sale are increasing\(^4\) albeit with certain restrictions like consultations of family.

Under the customary land system, the household is the primary owner of the land and this may include extended members of the family. It comprises communal land which includes gardens, grazing areas, burial and hunting grounds. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial sites, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users because these are exercised through the family, clan or community\(^5\).

Overall, it has been postulated that customary land tenure is a complex system of land holding which is incapable of precise definition. The characteristics highlighted in the Land Act often vary from one community to another. However, the underlying feature in all customary law systems is that rights are derived by reason of membership to a community and are retained as a result of performance of certain obligations in that community\(^6\).
1.2 Customary land tenure through the years

Uganda has gone through various land tenure reforms since the colonial era to date, with varying implications on the rules, regulations, customs and the laws on customary land. In Uganda, these reforms have always been government led. Primarily, land tenure reforms alter the tenure relations between land owners and users without necessarily changing the land distribution.

1.2.1 Pre-colonial traditional land tenure systems.

Available literature suggests that prior to 1900, customary land tenure was predominant in all the regions of the country. There were three broad customary land tenure systems namely; (a) communal or tribal, (b) clan tenure and (c) the nomadic tenure. These customary rules governed access and usage of land and differed among different communities due to variations in customs and norms.

The system of land ownership within any given community was influenced by the form of agrarian activity on the land. The agriculturists depended on a kinship organised system, useful for coordinating work projects, settling internal disputes, and carrying out religious ceremonies. Conversely, the pastoralists had a loose governance structure since they moved from place to place in small groups of people, with decisions made by their elders.

In the 18th Century, these communities progressed into more fledging states, with the various clan chiefs coming together into a more centralised governance system. These were mainly in Buganda, Bunyoro, Tooro and Ankole kingdoms. A king became the effective ruler, even if there were varying levels of participation for the clans in the various kingdoms. Here, the ownership of land was vested in the ruler as the trustee of the land for members of the community.

However, within clan communities, chieftaincies remained relatively small in size, and within themselves, the power of the clans remained strong enough to challenge that of the paramount chief. The same system of governance applied to the management of resources like land which was available for communal use, held for small scale subsistence agriculture and grazing purposes. Under this system, common in Acholi, Teso and Kigezi, specific individuals or family rights were recognised to fields, agriculture products and homesteads.

Under nomadic tenure, grazing rights were conferred in the members of the tribe with no specific rights vested with individuals. This was mainly found in the present-day Karamoja Sub-region. Access to land was based on negotiations and agreements between the different parties involved.

Whatever the case in which the different societies were organised and operated, the common thread that cut across regarding tenure was the absence of individual ownership of land. However, use rights existed for different individuals in the communities,
with ownership rights vested with the clan and communities consequently there existed full user rights but alienation was restricted to inheritance.

*Figure 1: 1 A map of Uganda showing the different region in the country*
1.2.2 Land tenure systems between 1900 and 1962

The advent of colonialism at the end of the 18th Century altered the then prevailing land structures. There was an introduction of mechanisms in which records to land were managed in the fully formed protectorate of Uganda. There was infiltration of individual and freehold ownership introduced by Great Britain. Freehold tenure is faulted for distinguishing the ‘haves’ and ‘have nots’ in land ownership, especially within the agrarian and semi-pastoralists societies. This was mainly because of the different arrangements born out of violence and agreements entered into by the colonial government and the powerful or political elite over the common people of the societies. In Buganda, Tooro and Ankole kingdoms for example, this gave way to a pronounced change in the tenure management, and also changed the focus of land use from communal farming and grazing to individualised ownership to be able to support the activities of the colonial masters.

a) Buganda and Bunyoro kingdoms

Part of Sir Harry Johnston’s instructions from the Queen of England upon arrival to Uganda were to grant freehold estates, which were the largest estates in Britain, to the Kabaka, regents and principal chiefs. He was further instructed to gain rights over idle land for the Crown as well as establish structures that would administer and protect peasants in rent-free rights to the land, they occupied. While he negotiated with the regents and principal chiefs of Buganda, at no point were the predominant customary land arrangements given any consideration. Several misconceptions were not clarified because their very existence was unrecognised. The individualised concept of rights over land as understood in Europe and expressed in the word ‘ownership’ was strange to the Buganda regents and chiefs. Little wonder, Sir Apollo Kaggwa was horrified years later when he learnt that according to Europeans, ownership of land did not grant the owner authority over those living on their land.

The 1900 Buganda Agreement formally transformed customary land into individual ownership, hence altering relations on land. Buganda’s land was designated as being 19,600 square miles. While chiefs and the royal line acquired full ownership rights as land could privately be owned, peasants attained occupancy rights on the land. The agreement created two systems: Crown and Mailo land.

The Government administered Crown land on the British’s behalf and the government could alienate this type of land under freehold or leasehold grants. Mailo land technically became formal customary tenure – albeit a Western version of landlord-tenant system with absolute individual ownership. It was held in both private and official estates. Private mailo estates were individuals in nature while official mailo estates were held by virtue of an official role one held in the kingdom. The obutongole and obwesengeze were turned into official and private mailo estates respectively, of which they were held by the beneficiaries in absolute ownership as landlords.
The peasants, who had previously settled on those estates/land as tenants or customary usufructuary (temporary rights) holders, became tenants on private property\textsuperscript{24} and had to pay consideration in the form of ground rent (busuulu) and tribute on produce (envujjo) for crops such as cotton or coffee, which they grew.\textsuperscript{25}

As a result of the agreement, customary landowners who lived on land that was converted to crown land became tenants at sufferance or illegal tenants. They had user rights but were prone to evictions because freeholds and leaseholds could be granted on land having occupiers without their permission. They also paid tax in the form of produce to the estate holders of the colonial masters.

The agreement also marked the introduction of survey systems on land in Buganda. It became the basis of relations between the British and Buganda governments at the time, but was also marking the birth of change in the way customary land was managed and administered. A land settlement survey became a primary concern and an integral part in fulfilling the agreement. The framers of the agreement found it prudent that the implementation of the agreement and avoidance of a very complicated system of administration be realised through an elaborate settlement survey. Here, it was inevitable that parcelling of land in Buganda would be executed, committing cadastral surveys onto the land even when the community chiefs and oligarchy could not afford it\textsuperscript{26}.

Initial steps were then taken towards the establishment of a Land and Survey Department with the appointment of R.C. Allen as Chief Surveyor. It was estimated that the proposed settlement survey in Buganda would take 10 years to complete and in 1902, Allen, initially occupied with the establishment of a topographical survey, gave his estimate as 14 years at a cost of €76,000.

Foreign survey methods were subjected to revision to identify which one would perfectly serve the purpose of administering the land settlement in an area such as Buganda. The reviews were done by the Topographical Section of the War office and the Geographical Section of the General Staff, and they both reached a conclusion that the methods of survey (trigonometric and topographic) were the most satisfactory solution to the problem involved. At first, a scale of four inches to one mile was employed but after the completion of some 235 square miles, there was a change to a scale of 1/10,000.

In 1904, a review in the 1900 agreement was inevitable due to the need to define the form of land ownership for granting rights to individual Africans. It was at this point that a Provisional Certificate was introduced to the first allottees that the claimants had obtained an estate in fee simple through what was known as the Land Titles Ordinance 1908. Section 4 of the Ordinance provided for compulsory registration of all documents conferring rights, title or interest in immovable property except those of a testamentary nature. Section 11 also required that every document presented for registration under Section 4 would be registered at the registry of the district in which the property was situated. Additionally, the total area of land held by any one individual was limited to 30 square miles. This provided for an adequate land registry by a system of registration of title but also introduced a new process of land administration in Uganda and set out incidents of new tenure forms such as mailo, freehold and leasehold.
b) **Tooro and Ankole kingdoms, and parts of Busoga and Bugisu.**

Similar agreements were signed in Tooro and Ankole kingdoms in 1900 and 1901 respectively which resulted in the creation of Crown land similar to that in Buganda and freehold estates. The freehold estates were called native and adjudicated freehold – stressing the fact that the estates were specifically granted to local chiefs and adjudicated because the land was demarcated, surveyed and titled. Leases could be granted on freehold and *mailo* land. In essence, customary land was formalised into freehold tenure without the input of the indigenous leadership\(^\text{27}\).

c) **Other parts of Uganda**

In other parts of the country where the tribal forms of government were less stronger, customary land was converted to freehold tenure without consulting the indigenous leadership\(^\text{28}\). In 1922, the Crown Lands Declaration Ordinance came into place, and this resulted in the conversion of all customary land outside Buganda into Crown land.

Freehold and leasehold titles were granted out of customary land of which the occupiers had to move off the land or remain as tenants at will. The extension of the British rule to other kingdoms and present day districts, which later comprised Uganda protectorate, started with Buganda Kingdom as the nucleus in 1894, and ended with Karamoja district in the north-eastern part of Uganda in 1926 (Wikipedia).\(^\text{29}\)

The Crown Land Ordinance of 1903 clarified that persons occupying land under customary tenure were never regarded as owners of that land\(^\text{30}\). This was the same for the rest of the country where customary land was in existence. As a result of these changes in this period, land could be transferred by way of sale by individuals who had no legal obligation to the king or people settled on their land. Secondly, land had become an investment\(^\text{31}\). These observations are further confirmed by Batungi\(^\text{32}\) who points out that the advantages of the *mailo* tenure system were realised much later when peasants, who had acquired enough money, would also become landlords after buying out the rights of the landlords from their own bibanja at open market value. He further asserts that the landlords would then process formal land titles for the peasants ‘converted to landlords’ and, therefore, it is quite logical to say that in Buganda Kingdom, land acquired economic value with effect from 1900 when the Buganda Agreement was signed.
1.2.3 Post-colonial period

When Uganda gained independence in 1962, the land tenure systems that existed before continued to operate. However, customary land was recognised as a new tenure system. Two reforms took place during this period: 1962-1995 and 1995-to date.

a) 1962- 1995

When Uganda gained independence in 1962, Crown land was renamed public land under the Public Land Act of 1962. The Act maintained the right of occupancy of indigenous Ugandans over public land. However, leaseholds and freeholds could be granted by the government on any public land, even that in occupancy by the indigenous Ugandans. This meant even where the customary rights existed, they could be overridden by the government to grant public land as leasehold and freehold. Permission from the customary owners was not a requirement. Owing to the massive conversions of public land to leasehold, which left customary occupiers landless as they were evicted, the Public Land Act of 1969 was enacted. The Act stopped issuance of freehold and leasehold on any public land occupied by the customary tenants without any proof of consent from the customary occupiers.

In 1975, the Land Reform Decree (Decree No. 3 of 1975) was passed by President Idi Amin Dad which declared all land in Uganda be held by the State in trust for the people to facilitate its use for economic and social development. The Decree further stated that it was unlawful for one to acquire or transfer customary land without permission and giving notice to the ‘prescribed authority’ respectively; customary land owners became tenants at sufferance.

These changes meant that no individual would hold land in any interest apart from or even greater than leasehold, and that consent needed to be sought from the Commission before transfer of a lease. The decree created a more complex situation regarding overlapping interests on land that existed since the 1900 agreement. All land tenures were converted to leasehold without making any attempt to solve the existing overlapping rights problem. That also meant practically, two land tenures existed at that time: leasehold and public land. Theoretically, the decree existed until 1995 when the Constitution of Uganda was promulgated.

b) 1995 - to date

This period saw the emergence of a new legal and policy regime for land comprising the Constitution, the Land Act and later, the National Land Policy.
1995: The Constitution

The promulgation of the Constitution introduced some changes on land ownership and governance in the country. It abolished the Land Reform Decree of 1975, and restored mailo and freehold land tenure systems, in addition to the leasehold tenure. Customary tenure system was also formalised and the Uganda Land Commission was re-established to manage public land. The Constitution declared that land belonged to the citizens of Uganda, and that they could hold it in any of the four land tenure systems.

The Constitution introduced the last major land tenure reform Uganda has ever had. It, in many respects, became a revolutionary law, overturning a century of land relations and laying the groundwork for the possible evolution of a market in land mainly based on individual ownership.

1998: The Land Act

The Land Act actualised most of the reforms provided for in the Constitution. It officially recognised customary tenure as a legitimate system of land holding as per the Constitution and defined the various ways in which it manifests. The Land Act also recognises that subdivisions of customary land may be identified as belonging to a person, family, or traditional institution. In addition, it granted customary land owners the option of formally registering their land by converting it to freehold or applying for issuance of a Certificate of Customary Ownership (CCO) upon completion. This law, however, reinforces the preconceived Western notions about customary land tenure as being complex, as laid out throughout its tenor. The need for an elaborate framework to, among others, address the challenges arising out of the application of the Constitution and the Land Act, led to the passing of the National Land Policy (NLP).

2013: National Land Policy

In the ideal sense, a policy informs the law, implying that the NLP should have been passed before the Land Act. Unfortunately, in Uganda, the reverse happened, with the NLP being passed in 2013, 15 years after the enactment of the Land Act. The goal of the policy is to ensure an efficient, equitable and optimal utilisation and management of Uganda’s land resources for poverty reduction, wealth creation and overall socio-economic development. It recognises that majority of the Ugandans hold their land customarily, and highlights three major problems that were associated with it;

1. It does not provide security of tenure for land owners.
2. It impedes the advancement of land markets.
3. It discriminates against women.
In light of these three issues, the policy proposes two statements, including: to recognise customary tenure in its form to be at par (same level) with other tenure systems, and to establish a land registry system for the registration of land rights under customary tenure. The policy seeks revitalisation of the customary land tenure with the modern state of the land management and administration mechanisms. This calls for an overall determination of the locus of the different customary communities that can strongly be built into the legal system to eventually support the actualisation of the Certificate of Customary Title (CCT).

2010: National Physical Planning Act

The introduction of the National Physical Planning Act, 2010, also impacted on the management of customary land. The Act establishes various physical planning structures, starting at national level to sub-county level. Through these structures, there is close supervision of the implementation of physical development plans across the board. This clearly checks the authority of traditional structures on utilisation of customary land within a particular area. It creates a lot of conflict on customary tenure, for which most of the land has not been registered.

1.3 | Customary tenure in the different societies of Uganda

By the end of 2000, approximately 5% of the total landmass of Uganda was under freehold and leasehold, 10% was under mailo tenure, and 85% was still under customary tenure. This section highlights the customary ownership of land in Greater northern Uganda i.e. the area north of Mt Elgon and lakes Albert and Kyoga. The region comprises a rich assortment of different societies from the pastoralists in Karamoja through Teso, Lango, and Acholi to the Madi and Kakwa in West Nile. Each of these groups have their own customary laws regulating ownership, access and management of land, with significant variations.

a) Acholi Chiefdom

The Acholi are found in northern Uganda, in the districts of Gulu, Kitgum, Pader Amuru, Nwoya Lamwo and Agago, which formerly constituted Acholi district. Acholi sub-region and neighbouring districts have been ravaged by insurgency led by the Lord’s Resistance Army (LRA) since 1987 to about 2007.

This society is a renowned agrarian community organised in chiefdoms, varying greatly in size but consisting of a cluster of villages, including the surrounding territory used for agriculture and hunting over which Rwot (paramount chief) exercised his authority through chiefs, who oversee 54 small chiefdoms locally known as ‘Ker’. The villages formed a protected ring around the royal village “gang kal.” Though the fences surrounding these clan-based villages have gradually come down and the households that made up villages are more dispersed, villages and the clans that were at each village core continue to be important.
These communal land rights were organised and managed not only for the benefit of the living, but also for future generations through the hereditary head of that clan, assisted by clan elders. And while male heads of households, who were members of the core clan, had the most obvious rights to use but importantly not individually to “own” that land – such user rights also existed for widows and orphans of clan members who remained on the land. The wife in each household had designated individual plots on which staple food crops were grown.

At the same time, however, especially for labour intensive tasks such as clearing and harvesting, farming frequently involved cooperative, communal village-clan labour (tic aleya), rotating among household plots; hunting and herding also included cooperative labour, as did labour service for the Rwot, as part of tribute (tyer) that he was due from all those in his ker kal. Such villages were rarely, if ever, occupied solely by members of the core clan and the women married into it. There were typically fluctuating numbers of others, some temporary and some who remained for generations. Many of these “outsiders” were linked to the core lineage through marriage ties, others were friends or clients of a clan member, refugees, or war captives – or descendants of any of the above. Once accepted by the clan head and elders, however, such outsiders were allocated a portion of the host clan’s land that they, and their descendants, had the right to live on and use as long as they remained compliant to the host clan’s norms and values – but not increase without the clan’s permission.

Customary land was traditionally managed by rwodi kweri (‘chiefs of the hoe’), whose responsibility was to allocate land according to community needs and serve as a judicial body when disputes occurred. Other elders and community leaders also participated in land management, and decisions regarding customary land were made by consensus between all male elders.

Although customary land was owned in common, its use was not permanently assigned. Land rights were reported to be based primarily on communal or collective customary tenure, with land rights organised at the clan (kaka), sub-clan (doggola-kaka), or extended family (dog gang).

In the patrilineal society of Acholi, once a young man gets married, the family allocates him a piece of land on which he may build a house and farm, and settle with his new family. Land is allocated to each individual family and a portion is reserved for communal and general use. Family land is used for building homes, cultivating food crops and grazing domestic herds. If a man decides to settle in a place other than his own village, he can ask for permission to settle in the new community. Permission
is granted upon recommendation and confirmation that the applicant is of good character. If the applicant later decides to return to his own people, the land reverts to the clan and it is reallocated.

Under the customary land tenure system, women relate to land not as farmers or workers but only as wives, daughters and mothers. In cases where a woman is married, if the husband dies, land can be reclaimed by the brothers of the man’s family, generating many land conflicts. Children may have stronger potential or future rights to land than wives or mothers under customary law because children are seen as part of the lineage, while women marrying into the family are not regarded so.

Customary law of the Acholi rarely accords women autonomous rights to immovable property such as land and houses, contrary to the Constitution. While user rights are defended by customary adjudicatory mechanisms, they are not as strong as the land claims of children who are part of the lineage by blood. Children, however, have a direct claim to lineage resources, and, therefore, their rights are stronger, especially male children.

b) Lango

In Lango chiefdom, the traditional administrative bodies of communal land consist of a nine-member Adwong Bar Committee, which is elected by the community members. In family land conflicts, the clans are the best placed to attempt to resolve these conflicts. With communities, however, the dynamics are different; there are several clans involved. Therefore, in place of the clan(s) heads convening to resolve community land conflicts, the Adwong Bar committee takes up that role.

For communities that do not have an elected Adwong Bar, the leaders of clans that use that land would be in charge. Communal land in Lango diminished in the early 1980s following the widespread theft of cattle by Karamojong rustlers. The majority of communal land until that point was utilised for grazing. According to the local community, the primary rationale for communal land disappeared with the cattle. People then moved in and settled in these areas.

c) Teso

In Teso customary law, rights and responsibilities are not organised the same way. The clan elders have the responsibility of administering land, but this includes the right to say who can sell land and to whom. That is because they have the responsibility to protect the land for the entire clan, and to make sure everyone is given rights to land. The family head manages the land on behalf of the family. Predominantly males, the family head’s rights to manage the land entails the responsibility to look after the rights of others to use the land, and to ensure the next generation will also be able to enjoy the land. Other people in the family also have rights over the land. Security of tenure over land always includes land allocation, on condition that only a household is able to use the land. The family head is responsible for ensuring security of tenure, with clan authorities as the overall guarantors.
The clan has the responsibility of overseeing the administration of all the land. This means ensuring there are heirs appointed at household levels to manage the land and oversee and authorise any land sales. The clan also owns land which is communally used, such as for hunting and grazing. It is responsible for ensuring proper use of the land, and that there are no trespassers.

There is a principle that everyone must be given the right to use land. Previously, this was not a problem. Families owned large areas, and if there was shortage of land, a household could claim virgin land or could be granted clan grazing land. Nowadays, there are issues with meeting these rights, and inevitably, there is a ‘pecking order’ in rights’ claims. The hierarchical status is not based on official customary law, and so can depend on individual family practice.

Broadly speaking, though, the more powerful come before the less powerful – as elsewhere in the world. Elder sons come before younger sons, if only because temporally, they usually marry first, and so are given their share of land first. Sons who are physically strong and show responsibility and aptitude for farming may be given more or have stronger claims. The disabled may have weak claims, if a stronger brother claims they would be physically unable to use the land productively. Sons come before daughters. The children of an unmarried girl (“children born at home”) may come last.

Although it is often said that under customary law, land could not be sold, land sales date back many years in Teso. In principle, these sales were regulated by the clan. Sales to other clan members, who had little land for themselves, would tend to be allowed, if the rights of all the members of the family selling the land were being taken care of. Land renting, akin to leases, is also very common in Teso. Since this is a temporary contract, questions relating to ‘protecting land for future generations’ do not apply. Rental agreements, therefore, do not need clan consent.

d) Karamoja

They are largely pastoralists living mainly in the north-east of Uganda. The main livelihood activity of the Karimojong is herding livestock, which has social and cultural importance. Crop cultivation is a secondary activity undertaken only in areas where it is applicable. The largest Karimojong group live in southern Karamoja and are traditionally subdivided into Bokora (Ngibokora, mostly in the present-day Napak district), Matheniko (Ngimaseniko, in Moroto district), and
Pian (Ngipian in Nakapiripirit district). Their land is bordered to the north by Kotido inhabited by the Jie clan and Dodoth in the current Kaabong district.

Presently, customary tenure in Karamoja has evolved into individualised and communal sub-tenures, each with distinct characters and resource rights embedded therein for the individuals, households and the community at large. Within communal customary, two sub-tenure types are distinguished; the grazing lands and the shrine areas, while within individualised customary sub-tenure is the arable land and land used for homesteads, where manyattas (homesteads) are constructed.

**Communal Customary**

i. **Grazing land**

These are open access areas that are communally held and constitute the stock of land that is continuously being alienated into gardens and settlements. Individuals and communities are users and not owners of this kind of land. On grazing, land authority rests with elders and kraal commanders regarding resource use and regulation. Whereas elders derive authority from initiation into age-sets or groups, the kraal commanders’ authority is premised on the ability to predict adversity likely to befall kraals in terms of diseases and raids, and the courage or advice in confronting such adversity whenever and wherever it occurs. As a result, the elders’ major responsibility is to determine pasture use patterns, including pasture banks for dry and wet season grazing, while kraal commanders decide herd numbers and day-to-day grazing locations.

In Karamoja, the clan leaders have knowledge on which land is suitable for either settlement or grazing because they know boundaries and demarcation of land. The head is helped by elders who are very knowledgeable in land issues. Elders know which land belongs to which family, and go ahead to distribute this family land into parts for cultivation, settlement, shrines areas, among others. Land is managed by elders, who define it or apportion it according to functions. Grazing land does not hold definitive borders because there are no fixed boundaries between the gardens and grazing land. There are instances when what was formally grazing land is converted into land for gardens.

It is affirmed that agro-pastoralist societies of Karamoja have one shared principle that structures people’s behaviour in grazing matters: the principle of opportunistic management. This implies that every cattle owner is entitled to access resources where and when available, in order to sustain his herd. The access rights to pasture and water resources are mainly based on group membership, history and opportunistic behaviour. The concept of access security concerns the validity with which one is able to move herds freely within the tribal boundaries and occasionally beyond; based on customary right of history of usage, and the accepted strategy of opportunistic tracking, which guarantees secure access for the herd-owners.
ii. Shrines

These are locations of sanctity, where traditional religious worship takes place with strict rules of access, the breach of which attracts severe sanctions from the elders and the community at large. The shrines are in numerous locations, with each shrine having definitive boundaries often marked by particular trees or shrubs that community members can easily identify, but are prohibited from cutting or even picking for firewood. Although these are communal locations, they are not open access areas because of the rules in place.

Individualised Customary

i) Homesteads

These arise when open access areas are alienated into gardens or homesteads (manyattas). This conversion is not standardised; however, two forms of practices were common. The less prevalent practice is identification of a location, occupation and use without approval or sanctioning from any authority whether customary or statutory. The most common practice is where individuals seek permission from the elders of neighbouring manyattas to locate their own settlements within the vicinity of existing ones due to security. Homesteads are not communal land, but they are highly individualised settlements that are either nucleated or scattered. However, the practice of scattered manyattas that was once common is slowly being altered in part because of the collective kraal policy as a result of heightened insecurity. Access to water is also a contributory factor to this change.

ii) Gardens

Similarly, opening up areas of cultivation is adjacent to settlement (manyatta) areas. Garden plots have definitive boundaries marked by a variety of features, including trees, anthills, and rocks. However, the most common boundary markers are strips or bands (ekukoru) of uncultivated land between garden plots. This land is inherited from the ancestors or acquired through grazing land.

This type of land is in the realm of family authority, and family heads hold conclusive rights over these plots, including the right to even engage in various land transactions. It is thus no surprise that this is the type of land for which registration into title is taking place across Karamoja region. It is not uncommon for such land to be sold or share cropped or lent. The role of the elders is to protect the land because they know the boundaries. When a person attempts to grab land from children and the elders are on the side of the children, the innocent parties are permitted to perform a ritual where they pick soil from the disputed land and throw it on the person who is trying to cheat them, and ‘they will die’.
These land holdings are often of small sizes and are considered to be individual property. It can be transmitted to kin either by inheritance or sub-division within families. The parents show the children which land belongs to them when the time is ripe. Both girls and boys inherit land. When a man gets married, his parents give him land, often (part of) the land – that his mother used to cultivate.

At death, the general rule is that ownership rights to land are ideally passed on to sons. Secondary rights are attributed to grandsons and third rights are reckoned to the brothers of the initial male land owner. Families thus always make sure land is not alienated from the patrilineal descent group. User rights, and occasionally management rights as well, can be attributed to a female spouse of the male owner, provided that she will transfer the land to sons born in marriage, whereas temporal user and management rights are allocated to females. So, when a woman dies, her sons are the first to inherit the land their mother used to cultivate.

Most of the land is owned communally in clans. This means land belonged to the ancestors and people inherited it from them. The inheritance system follows generations; a mother will show the children the land her husband or father in-law gave her when she got married, and when the father or mother or both are deceased; the children know which land belongs to them. In the event of marriage, the wives assume controlling authority over such land, and if a husband wishes to take another wife, he has to negotiate with the senior wife for a garden and settlement area to be allotted to the new wife, or if a son takes a wife while still subsisting in the same household, the mother curves out a plot for use by the daughter in-law. If one has only daughters, the male children of the daughters are entitled to inherit, or a male child is brought in from the paternal side to inherit.

Full or partial payment of bride price has implications on the land rights of a married woman. If the bride price was fully paid and the marriage fails and children are involved, then the land rights of the woman in question remain secure. However, these rights are lost if the woman in question is childless and the bride price was not fully paid.
Table 1: Summary of the sub-tenures on customary land in Karamoja.

<table>
<thead>
<tr>
<th>TENURE</th>
<th>TYPE OF LAND</th>
<th>CONTROL</th>
<th>RIGHTS THEREON</th>
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<tr>
<td>Communal customary</td>
<td>Grazing lands (rural)</td>
<td>Kraal leaders and</td>
<td>Only user rights permitted and restrictions exist on access to areas</td>
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<td>Commanders Elders</td>
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<td></td>
<td>Shrine locations</td>
<td>Elders</td>
<td>Only user rights (grazing) permitted; Highly restricted on resource access rights.</td>
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<td>‘akiriket’ (both rural</td>
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<tr>
<td></td>
<td>and urban</td>
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<tr>
<td>Individualised</td>
<td>Gardens or cultivation</td>
<td>Wives</td>
<td>User rights (both grazing and cultivation).</td>
</tr>
<tr>
<td>customary</td>
<td>areas</td>
<td></td>
<td>Usually allocated by elders to married women but the women have ‘caveat rights’ on use/ reallocation thereafter.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Is inherited by children (both girls and boys) of the woman allocated, including daughters in-law to whom she may have given user rights while alive.</td>
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<tr>
<td></td>
<td>Manyattas or</td>
<td>Men</td>
<td>Construction rights are mostly for the male, here women have access rights.</td>
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<tr>
<td></td>
<td>Homesteads</td>
<td></td>
<td>These locations are inherited by male members of the families.</td>
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The elders plan grazing but also decide matters of inheritance and arbitrate any other issues, especially in relation to divorce or return of daughters married elsewhere. The authority of elders is recognised on all types of land, although in varying degrees. On shrine locations, they have conclusive authority of oversight and enforcing sanctions if the rules that govern these areas are not adhered to. On grazing lands, elders’ authority focuses on pastoral resource access issues such as deciding pasture banks by delineating dry and wet season grazing areas. However, the kraal commanders decide herd numbers and day-to-day
grazing locations. It is important to note that matters concerning gardens and manyatta locations are generally decided at family/ clan level by patriarchs.

1.4 | The effects on Customary Land Tenure

When the idea of individual ownership and documentation of rights, restrictions and responsibilities came into force, customarily held land rights were subsumed by the crown lands regulations and customary users became tenants of the crown. By its existence today, the customary system was partly transformed but not replaced. This is consistent with the view that despite centuries of purposeful dismantling of the customary tenure ideology, the tenure has endured and remains dominant in the country.

1.5 | Conclusion

This chapter has demonstrated that land is deeply entrenched in the values, norms and practices of the various ethnic groups in Uganda, including Teso, Karamoja, Acholi, Lango and Kakwa. The advent of colonialism and the subsequent introduction of Eurocentric laws altered relations on land in several parts of the country as individualisation of land started gaining roots in the country. In a bid to manage this complex tenure in a way suitable to their agenda, the colonial government introduced notions of titling and surveying, all of which necessitated the establishment of a central registry for record keeping.

The tenure has been characterised by several transformations including overall formalisation majorly through negotiated and the enforced non-negotiated approaches. Post-colonial Uganda witnessed several legal reforms with a bearing on customary land, especially the 1975 Decree, which essentially abolished all tenures until 1995, when the new Constitution expressly recognised customary tenure as a distinct tenure. This was buttressed by the Land Act, which attempted to introduce ideas for registering customary land, including the conversion to freehold tenure and, or the issuance of CCOs. Noting some gaps in the treatment of customary land, the National Land Policy seeks to address some of these issues by asserting the equality of customary tenure to other systems of land holding through, among other things, the establishment of customary land registry.
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<td>Lastarria-Cornhiel (n 21).</td>
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<td>N and H (n 16).</td>
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Institutional Setup and Administration of Customary Land in Uganda
2.1 | Introduction

Land administration concerns the determination, registration and availing of information regarding the ownership, value and use of land and its associated resources. For customary land, the traditional structures governed by customs and norms of given communities dictate these arrangements\(^47\). The 1900 Buganda Agreement created a new administrative structure of the British protectorate alongside that of the pre-existing traditional land administrative structures. The new arrangement related to the instruments that withdrew traditional land rights through this land settlement.\(^48\) The Crown Land Ordinance of 1903 stated that persons occupying land under customary tenure were never regarded as owning the land.\(^49\) This fundamentally altered the traditional land administration system.\(^50\)

Post-colonial rule in 1962 through the Independence Constitution\(^51\) created the Land Commission and for each federal state and district, a Land Board\(^52\). The Land Commission was responsible for the management of any land vested in it by law or acquired by the government of Uganda\(^53\) while the Land Boards managed for any land vested with districts by any law or acquired by the government of the state or administration of the district. Although these institutions were directly responsible for the management of public land, the functions of the Land Board were exercised on behalf of the ruler of any such area, who also happened to be the traditional leader of the state\(^54\). It is, therefore, safe to say the functions of the land boards at the time were heavily guided by the cultures and norms within their areas of operation and the direction of the traditional leader.

The Public Land Act of 1969 provided for the protection of customary land rights and tried to bridge the gap that was created by the colonialists by reinstating customary land ownership. Under this law, the government was barred from granting in freehold or leasehold any public land that was lawfully occupied under customary tenure without the consent of the customary occupants.\(^55\) However, the 1975 Land Reform Decree declared all land in Uganda public land and title to it was vested in the Uganda Land Commission (ULC)\(^56\).

The 1995 Constitution formally recognised customary land and put in place statutory institutions for its management and administration.\(^57\) These included both formal and traditional institutions. Specifically, Article 246(3)(a) grants the institution of a traditional or cultural leader capacity to hold assets or properties in trust for itself and the people concerned thereby acknowledging their role in management of customary land.

The Land Act Cap 227 guided by the principle of decentralisation and devolution of governmental functions and powers to the people at appropriate levels operationalised the institutions created by the Constitution, and created even more structures. These are analysed in great detail later on within this chapter.
Institutional and management structures under the Land Act Cap 227

2.2.1 Uganda Land Commission (ULC)

The ULC is composed of the chairperson and four or more members appointed by the President and approved by Parliament. Within the general framework of the Constitution, the ULC is meant to manage land already vested with the government, or that which the government may subsequently acquire. The Constitution leaves prescriptions to do with its functions and wider framework of operation to Parliament. The Land Act Cap 227 spells out the details, especially on who qualifies to hold the office of members of the commission, as well as stipulating the functions and powers of the ULC.

The functions of the ULC in general include management of government land as per the Constitution, holding and managing government land abroad, securing the Certificates of Title for government land, and performing any other function as may be set out under the Land Act. Among the critical powers vested with the ULC are the powers to “sell, lease or otherwise deal with the land held by it”, demolish buildings on land they hold, survey and cause drawing maps and plans, and also exercise other powers that are incidental to those specifically mentioned.

The ULC’s key role in managing public land requires a clear definition as to what constitutes public land, and the extent of its prevalence within customary areas. The conflict between the two systems was birthed through the changes and transition
in the legal reforms reflected in the 1995 Constitution from the 1975 Decree. Currently, customary tenure also applies to former public land that has not been registered\textsuperscript{58}. However, this creates a precarious situation because a large proportion of government land is not registered but is only known through coordinates reflected in topographical maps and the cadastre. In other instances, the land is vested with the government by an Act of Parliament, for instance the National Forestry Act, and only identifiable through coordinates or worse still, the land may neither be titled nor registered but belongs to the government. The Land Act Cap 227, as amended, provides direction in this case. It states: “Pending the survey and registration of land used or set aside for use by the government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the government or any other public body together with the reasonable curtilage to that land shall remain vested with the Commission for the same estate or interest as immediately before the enactment of this Act”\textsuperscript{59}. The reality on ground, however, presents a volatile situation that may be described as a ticking time bomb. A large proportion of squatters on government land identify themselves as customary occupants of the land and the Commission will encounter an uphill task uprooting them from such areas.

### 2.2.2 District Land Boards (DLBs)

District Land Boards (DLBs) exist in every district, with a minimum membership of five people, including a chairperson and representation from the municipal councils, urban councils and each county in the district\textsuperscript{60}. DLBs were designed in a decentralised fashion in order to allow for the participation of people at lower local governments in their affairs in line with the principle of decentralisation and devolution of governmental functions. This is further evidenced by the provision of a District Land Office in every district, comprising a physical planner, land officer, valuer, surveyor and registrar of titles\textsuperscript{61}.

Owing to logistical challenges in achieving service delivery at the district level, Ministerial Zonal Offices (MZOs) that operate regionally have been created. These, however, majorly facilitate transactions on the other tenure systems but not customary land necessarily. The functions of the DLBs as set out in both the Constitution and the Land Act include holding and allocating land in the district which is not owned by any one; facilitating the registration and transfer of interests in land; compiling and maintaining compensation rates for crops and buildings or buildings that are not permanent; and reviewing such rates annually.

The DLBs have to take into account district policy on land, national policy and customary systems on landholding within their jurisdiction. The advantage in this is that DLBs should perform their functions in a manner that is culturally appropriate, factoring the complexities in every district and applying national policy in a manner that takes into account the sub-national context\textsuperscript{62}. However, the question as to who monitors and supervises the work of DLBs may arise, given the constitutional position that they operate independent of the direction or control of the ULC, or any other person or authority\textsuperscript{63}.

In addition, the Land Act attempts to connect the DLBs to institutions of a traditional or cultural nature. The functions of the DLB can be performed for, and on behalf of a cultural or traditional leader in a given district. For example, the DLB could,
on behalf of a cultural leader, cause surveys or the drawing of maps of some land or area. This creates potential problems because the management of customary land is normally on the basis of traditional beliefs accepted as binding among members of a given community. Members of the DLB, who are from municipal councils, urban councils and counties, are not necessarily conversant with such customary ethos applicable to land, which may lead to unfortunate outcomes if DLBs act for the traditional authority on land. Unfortunately, giving supervisory powers to cultural leaders is not an option since the Land Act provides that cultural leaders do not have any power of control or direction over the DLB acting for it in that context.

2.2.3 | Area Land Committees

Land committees are a creature of the Land Act (Section 64) and are composed of members appointed by the District Council following the advice of the sub-county or the Division Council. The committees operate at the sub-county or division level. The details on qualification for membership, remuneration and how the committee operates are set out in Sections 65-67 of the Land Act. Knowledge of and experience in land law is not a prerequisite for all members of the committee, except for one of them.

Some of the functions of the committee laid out in the law include receiving applications for a Certificate of Customary Ownership. In order to come to its decision on any given application, this Committee applies customary law. However, it is obliged to safeguard the interests and rights of vulnerable groups such as women, absent persons, minors and persons with disability. Additionally, the land committee acts as adviser to the Land Board by doing preliminary checks or carrying out verifications of applications for the conversion of customary land into freehold, and applications for the grant of freehold.

In a case of application for conversion of customary land into freehold, the committees forward the file to the DLB for a decision, and in case of applications for conversion to freehold, the committee’s role includes ascertaining whether individual ownership of land is acceptable to the customary law context of the area where the land is located.

Area Land Committees are a major institution in the management of land under customary tenure since they are mainly composed of leaders elected from within the community, and are presumed to clearly understand the rights, responsibilities and restrictions of land within their jurisdiction from a cultural perspective.

The expenses of the committee are by law charged on the district administration funds, and yet all the districts are operating with limited resources. This funding gap is often times filled by persons seeking their services which may compromise their neutrality and fairness.

As the appointing and terminating authority, the District Council is assumed to be the body responsible for the supervision of the Land Committees. The law, however, does not prescribe a clear chain of supervision established between them and other bodies such as the Ministry of Lands, Housing and Urban Development that is technically competent to oversee them. This
leaves room for mistakes, which may not be detected by a body greater in hierarchy than the DLB, yet the DLB also simply sanctions what the Land Committees present without ascertaining the accuracy of information on file from the committees.

### 2.2.4 Recorders

This office is established under Section 68 of the Land Act. In rural areas, the sub-county chiefs are the recorders, while in urban areas, it is the town clerks and in the division of a city, the assistant town clerks.

The recorder participates in a number of activities concerning the update of records of interests in land and record-keeping. For example, a recorder will endorse as an encumbrance any third-party interests in land for which a Certificate of Customary Ownership (CCO) is issued. It is the recorder who issues a CCO and ensures any conditions or restrictions that are agreed upon are set on the certificate.

Even though the law creates the office of recorder for purposes of record-keeping, they are not given the requisite resources such as cabinets to keep the records safe. This is one of the reasons the practice is to keep records at the district where there are such facilities and their safety is guaranteed. In addition, they are often not adequately trained to take on the task and their offices lack key staff like clerks to perform clerical tasks.

One of the key concerns with recorders being stationed at sub-county level is whether this design is sustainable, given the amount of technical, infrastructural and financial input required on top their other administrative roles.

### 2.3 Customary institutions of land administration

The Constitution recognises cultural leaders that existed before its promulgation, and creates space within which new traditional or cultural institutions can be recognised, as long as the communities concerned agree. Cultural leaders are the custodians of customary law within their respective communities. They are not homogeneous across Uganda and are as diverse as the communities that populate the country. As custodians of culture, they are expected to be in the know of traditions relating to land management and control.

Besides recognising customary tenure and customs on land as part of the law applicable, the Land Act does not streamline the roles and responsibilities of traditional institutions in land management and administration beyond mediation. The processes and procedures they should adopt have not been the subject of legislation.

It has been argued that the choice by the government not to define the extent of the powers of these traditional institutions is due to the complexity involved considering the diversity of communities and customs in Uganda. Therefore, the highly
informal nature of traditional land management and the lack of clearly streamlined processes and institutional frameworks makes it a complex arena for land governance.

Conclusively, despite the existence of two parallel structures operating concurrently, the National Land Policy 2013, in Policy Statement 32, recognises that these two are not in harmony. This often leads to confusion as the institutional arrangements are not clearly spelt out, and the two systems are not at the same level of development.\textsuperscript{70}.
3 Customary Land Registration
3.1 | **Introduction**

Land registration is described as the process of recording legally recognised interests such as ownership and use in land. It is the official recording of information about land parcels, including details of their boundaries, tenure, use, and value. Two categories of land registration systems exist: registration of deeds and registration of title. Registration of title means registration of the right or interest on land. This involves recording of the right itself, together with the name of the rightful claimant, and the object of that right along with its restrictions and charges. Upon registration of an instrument, the title or right is then created.

Conversely, registration of deeds means the document describing an isolated transaction is recorded. This deed is evidence that a particular transaction took place, but it is not in itself proof of the legal rights of the involved parties and, consequently, it is not evidence of its legality. A deeds register is generally a public register in which everybody can go and inspect the registered deeds. It generally provides a certain level of security to owners since a registered deed takes priority over an unregistered one. Thus, before any dealing can be safely effectuated, the supposed owner must trace his ownership back to a good root of title.

3.2 | **Land records in Uganda.**

Land records in Uganda were among the first records to be created in East Africa. They originated from the 1900 Buganda Agreement, which provided for the allotment of land. Shortly after its signing, the first steps were taken to establish a Land and Survey Department and the first chief surveyor arrived in the country in 1901. The allotment lists were prepared and confirmed by the Buganda Kingdom Parliament (Mmengo Lukiiko). Once confirmed, a ‘certificate of claim’ was awarded, which was later found ineffective as it was subduing the Buganda land tenure to the English tenure system. A transformation was then made by asserting each claim to the issuance of a Provisional Certificate (PC) pending formal demarcation and survey. After survey and production of plans, an allocatee was issued with a Final Certificate (FC) supported by a dimensional plan. This in turn led to the issuance of Certificate of Title to a mailo owner upon its registration under the Ordinance of 1908.

The first titles were made in 1908, and were distributed by Sir Hesketh Bell, the Governor of Uganda on 2nd January 1909. The PCs and FCs are the first land records in Uganda.

In 1904, the Registration of Documents Ordinance came into force. The Chief Surveyor was also appointed the Principal Registrar of Documents with effect from 1905. This law provided for the compulsory registration of all interests in immovable property, except those of a testamentary nature. This was the first legislative attempt to provide for maintenance of adequate land records but was superseded by the Registration of Title law before it came into effective operation.
### 3.2.1 | Registration of Titles

This is the system of land registration that is used in Uganda, and is one onto which the *mailo*, freehold and leasehold tenure systems are based. In this system, one can immediately see who the owner of a certain property is. The register is usually ‘parcel-based’, and these parcels are well defined usually through ‘deed plans’. Each time a legal fact occurs that aims at changing a right holder to a parcel, it is not the documentary evidence of that fact as such that is registered. A form saying who is giving up rights and who is gaining them is presented to the registrar. The registrar will, after thorough checks, change the name of the right holder listed with the parcel, dispossessing the previous right holder through an instrument. Once this name has been listed as the new right holder, this person is the right holder by law and if these are ownership rights, they are issued a Certificate of Title. Any existing problems with his or her right to the parcel or in the transfer are ‘repaired’ once the registrar has accepted the new legal situation. If anyone who is of good faith loses his or her rights because of this, he or she is compensated for the loss. Therefore, the register is supposed to, at all times, reflect the correct legal situation (mirror-principle), and there is no need for further investigation beyond the register (curtain principle).

Whatever is registered is guaranteed to be the truth for a third party of good faith and a bona fide possessor who does not appear on the register will be compensated (guarantee principle).

Systems of title registration exist in many varieties, especially with regard to the guarantee principle. In some cases, title plans are just derived from existing large scale topographic maps for example the English and Welsh Ordinance Survey maps. Others use precise boundary surveys laid down in a numeric cadastre for example Austria. Uganda adopted the precise boundary surveys in order to guarantee title for freehold, *mailo* and leasehold certificates of title.

An inspection of the register should show at all times, the legal situation of the land. Consequently, any person dealing on the evidence of the register needs to have no fear of ejection. The registered proprietor, and he alone, can dispose of his rights. Therefore, registration of title acts as a assurance of title in the person registered as owner and bars adverse claims.

### 3.3 | Registration of customary land

Recognition of rights under customary tenure largely applies informal mechanisms and non-documentary evidence to help establish rights on land. Boundaries are demarcated using natural markers such as anthills, streams, hill tops, trees, shrubs or stones. These are respected and known. Ascertainment of ownership is often witnessed by the clan or council of elders or the family head.

However, if registration of these rights and interests is considered, it is governed by the Land Act Cap 227 as amended.

Section 6(1) of the Land Act provides that a person, family or community holding land under customary tenure on public
land may acquire a Certificate of Customary Ownership (CCO) in respect of that land. An individual, male or female or a family, may apply to the family or clan to transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered\(^91\). A customary tenure registry is currently based at sub-county level at the office of the recorder. However, the Land Act provides that non recordation of customary rights does not extinguish ownership under customary tenure.

A CCO can best be described as a form of deed under the Land Recordation System. The primary functions of a land recordation system are to provide a public record of land ownership, and to provide notice of the existence of certain continuing interests, encumbrances, and claims. The conventional recording system makes no averments to the public. Instead, it simply invites interested parties to inspect copies the register book at the recorder’s office and to draw their own conclusions as to the accuracy of the information therein. To assert or to protect an interest in land under the recording system, the applicant must fill and file an application describing that interest with the recorder’s office and await subsequent review processes. However, once the application is approved, it does not provide necessarily provide conclusive evidence concerning the status of rights to land.

Taking that into account, the Land Act read together with the Land Regulations places very low requirements on the capturing of spatial data, survey and mapping of customary land. The regulations provide for a simple hand drawing of a sketch map after the boundaries of a piece of land have been measured using a tape\(^92\). It is not necessary to draw the sketch to scale and the total area is only 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\(^93\). This has given rise to the use of fit-for-purpose (FFP) approaches to register customary land rights in Uganda in order to address these challenges.

3.4 | Fit-for-purpose approaches to customary land registration and administration

Having all rights on land, including those under customary tenure recognised and secured is one of the ways of facilitating faster acquisition of land for planned urbanisation, infrastructure development, and agricultural commercialisation, among other developments as stated in Uganda’s Vision 2040. At the time of this publication, four FFP tools had been piloted in Uganda as a framework under which the rights held under the customary tenure would be formally recognised through the issuance of a CCO, and the multiple layers of rights under Mailo mapped and disentangled. The four tools were piloted to facilitate the documentation of land rights of the 70% of the supposedly un-surveyed land (mostly customary tenure) so as to create a complete and coherent cadastre in a relatively short time. These tools include Systematic Land Adjudication and Certification (SLAAC), Solutions for Open Land Administration-Open Tenure (SOLA- Open Tenure), Social Tenure Domain Model (STDM), and Cadastre Register Inventory Saving Paper (CRISP). These tools are discussed in detail in an earlier publication dubbed “Synthesis Report on the Fit for Purpose Tools in Uganda”. The report highlights the advantages and
disadvantages of the approach and gives several case studies where the tools have been successfully implemented, but also highlighting their inadequacies.

Data collected through these tools is underscored by the aims and objectives of the specific projects with which a tool is piloted. This includes the spatial or/and register data such as; name of parties, gender, age, date of birth, marital status, among others; restrictions, responsibilities, and rights (household relations, ownership and use rights, servitudes, rights of way, easements), unit identifiers, dimensions, area, utility corridors, boundaries, land use, among other attributes. The tools have been built on the concept of transparency and inclusion, as well as innovation and, therefore, are inclined towards open-source technologies, bottom-top and participatory approaches. Most of them also depend on handheld single frequency GPS tablets for data collection backed by the flexibility of the Land Administration Domain Model (LADM)\textsuperscript{94}. These tools imply the concept of general boundaries backed by the interface of base maps (i.e., Google Maps, OpenStreetMap and 40cm Orthophotos provided by the Ministry of Lands, Housing and Urban Development as their base maps) embedded in the field software to facilitate visibility of boundaries and identification of general features. As this may be logical, it doesn't totally amount to the acceptable practice of general boundaries for Uganda, hence creating a necessary misfit for institutional and legal intervention. These tools largely conflict with data interoperability that would enable systematic inclusion of all collected data to the central system (regardless of existence of data processing centres) creating a challenge in data management and host reliability and security of data concerning people’s property. Some tools, for example STDM, issue 'legal' certificates declaring exclusive ownership of the land identified in the defined tenure regime yet still have an independent local/data host from that recognised by the state.

On a lighter note;

Sensitization: The tools have assisted in the delivery and sensitisation of local communities and land professionals regarding land rights, tenure security and women’s land rights. Other products include documents that are not conclusive evidence of ownership but rather indicating the rights people have on land (Land Inventory Protocol). These are then used as a stepping stone for acquiring the proper documents stipulated in the laws of Uganda.

Innovation: The tools have also supported the competitive development of the philosophy, more sustainable and resource optimising alternatives that were since rendered silent by the survey communities in the efforts of delivering secure tenure for communities and individuals of different communities.

3.5 | **The challenges forward for registration of customary land**

None of the initiatives and the tools currently actually record overlapping land rights (i.e., formal and informal/landowners and claimants) and instead do so through parcel-by-parcel approaches and visualisation, and in many cases intend to seek adjustment to administrative workflows and requirements in order to produce officially legitimate and government recognised
land tenure documents. The tools exhibit schematic heterogeneity\textsuperscript{95}. This is noticed where, for some tools, classes may be indicated as properties and vice versa in other tools. This signifies failure of data interoperability, hence making its integration into the national system difficult.

Interoperability issues continue with the various unique parcel identifiers generated for parcels by various tools. Also, tools apply different image backgrounds (base maps) like Google Earth images, local ortho-photos or land use data like google maps/OpenStreetMap, which do not all amount to a country’s acceptable topographic map for reference.

The Land Act 1998 does not provide for the requirement of a surveyor in defining the approximate boundaries of any customary land. This has long overdue waived performance of surveyors in customary land mapping. However, FFP land mapping has not waived the adjudication expenses at the time of conversion from a CCO to a certificate of title as indicated by the provision of conversion in the Land Act hence a future cost for customary cadastral developments.

The Land Administration Domain Model (LADM) is the primary model under which the entire Fit-for-Purpose (FFP) approach is drawn. In its sense, the model is entirely focused on an integrated cadastre and legal register for all formal and informal systems. It is the model with which the architecture of the National Land Information System (NLIS) is based. The performance of the FFP approach in Uganda is accruing to a notion that certificates are viable as tools for securing tenure even when they are not originating from the mandated body for land administration accountability which in terms of security of tenure would render significant disputes and conflicts, exacerbating insecurity of tenure in the long run.

3.6 The National Land Information Registry today (NLIS)

To address the challenges associated with the manual system, MHLUD began the process of computerising the land registry in September 2003. The digitised land registry also aimed at restoring “the integrity of the land registry and ensure modernisation of its operations to meet the needs of a growing economy”\textsuperscript{96}.

The National Land Information System (NLIS) focuses on only three tenure systems, namely freehold, mailo and leasehold tenure that were originally defined and modelled to exist into the national registry by virtue of the Registration of Titles Act Cap 230. The application of the Fit for Purpose framework has been deployed with the intention of having all customary land surveyed and mapped and included in the NLIS. However, these efforts remain challenged due to the discussion in section 3.5 of this chapter. There is a need to link the NLIS and all the different approaches to achieve an integrated land registry.


73 Section 27(1) & (2) of the Registration of Titles Act, Cap 230.


75 West (n 25).

76 ibid.

77 ibid.

78 ibid.

79 Section 9(3) of the Registration of Titles Act, Cap 230.

80 Section 15 of the Registration of Titles Act, Cap 230

81 Section 38(1) of the Registration of Titles Act, Cap 230

82 Section 59 of the Registration of Titles Act, Cap 230

83 Section 184 & 185 of the Registration of Titles Act, Cap 230.


85 Henssen (n 82).

86 Systems of Land Registration. Aspects and Effects Jaap Zevenbergen. Published by: NCG, Nederlandse Commissie voor Geodesie, Netherlands Geodetic Commission, Delft, The Netherlands

87 Supra.


89 S Rowton Simpson, Land Law and Registration (Book 1), London (Surveyors Publications 1976).

90 LANDnet Uganda (n 9).

91 Land Act, Cap 227. Section 22(1)

92 Reg 27(1) & (2) of the Land Regulations, 2004.


94 https://www.iso.org/standard/51206.html

95 A difference in the data models and classes as maybe collected from different communities or different classification of the same object.

96 LANDnet Uganda (n 9).
A Case for the Establishment Of a Customary Land Registry
4.1 Introduction

The legal recognition of customary land tenure under the Constitution of Uganda did not necessarily translate into a pro-customary land tenure legislation. This is because under the Constitution and Land Act, customary landowners have the option to convert their title to freehold. In a bid to remedy this, policy statement Section 39(b) of the National Land Policy provides for establishment of a registry system for the registration of land rights under customary tenure with the aim of facilitating its evolution and development in relation to social, economic, political and other factors, and the elimination of conversion of non-individual customary land.

The current law remains that customary owners apply for a Certificate of Customary Ownership (CCO) and later, if they wish, apply to the relevant authorities to convert their customary land to freehold. However, it is not a prerequisite for applicants to obtain a CCO before converting their land to freehold.

The Land Act does not give the ALC and DLB discretion to decide whether to permit an applicant to convert their land to freehold, as long as due process has been followed. Upon conversion to freehold, the land is registered under the Registration of Titles Act and it ceases to be subject to customary land law.

The foregoing reforms were mainly based on the recommendations of the Uganda Constitutional Commission. According to its findings, customary land tenure was on the wane: ‘in practice, many individuals and families holding land under customary tenure have something akin to freehold tenure’.

Evidently, the underlying spirit of the legislation seems to be to facilitate the demise of customary land tenure. It is noteworthy that one cannot reconvert from freehold tenure to customary tenure, but can only relinquish their freehold title to the State, which holds the allodial title.

Notwithstanding the sentiments of the Uganda Constitutional Commission, history has proven that customary tenure has been evolving and yet preserving all the individual, family, clan and communal nature of management and governance of the land. This characteristic should be maintained even at the point of registration. This chapter, therefore, explains the value and the need to establish a customary land registry that supports its evolution.

4.2 Justification

The design of a land registry for customary tenure requires a comprehensive analysis of why this registration is necessary. It is important to understand the preconditions for a land registration system, the potential advantages and disadvantages of such a system. This section discusses the need for a formal land registration system in Uganda.
4.2.1 | **Circumstances making customary land registration desirable in Uganda**

**a)** The prevalent land tenure insecurity and uncertainty in areas holding customary land has been seen to restrain productivity of the land, as well as national development. A landholder has security of tenure if she or he perceives little or no likelihood of losing physical possession of the land within some future period\(^\text{102}\). In Uganda, customary land owners’ tenure security is increasingly under threat because of various factors, including a rapid increase in population, the influx of refugees, increased presence of extractive industries, pressure from infrastructural development and threat of eminent domain.

**b)** The increasing need for land by both local and foreign investors for large scale investments has exerted more pressure on landowners. As of 2019, a whopping 299,958 hectares of land were acquired for large-scale investments\(^\text{103}\). This land was acquired from different communities with a lot of ambiguity in the acquisition processes and procedure, exposing especially customary landowners, to exploitation and in some instances displacement. This is owed to the fact that some of them could not provide legal documentary evidence to prove their ownership of the land.

**c)** In Uganda, land fragmentation as a direct result of rapid population growth has had a negative effect on agricultural productivity and land values. The annual population growth rate for Uganda, according to World Bank statistics, is at 3.75%, and it is projected that by 2050, the total population would have clocked 100 million\(^\text{104}\). Thus, it is imperative to provide adequate and efficient machinery to safely register interests in order to curb land fragmentation.

**d)** Customary tenure in Uganda has recently been characterised by rampant land disputes and conflicts, with notable examples from northern Uganda. The uncertainties over the nature of land interests and over the position of ill-defined boundaries are a source of disputes. Litigating such disputes contributes to a significant expenditure of time, capital, and scarce administrative resources. Furthermore, findings show that the occurrence of land conflicts at household level is 34.9%; with rural households accounting for 36% of these conflicts compared to urban households at 33%. Overall, the most commonly cited types of land conflicts experienced by the households surveyed are ‘boundary discrepancies’ which account for 32.1%, land ownership wrangles that account 18.8%, inheritance and succession wrangles,15.5% and illegal land occupation 12.3%\(^\text{105}\). Land registration through demarcation and surveying effectively reduces this waste of resources.

**e)** While agriculture is the backbone of Uganda’s economy, its commercialisation is mainly dependent on the extension of agricultural credit. However, most lending institutions are reluctant to extend credit if land owners do not have well-defined and documented land rights to offer as collateral. Although the Land Act\(^\text{106}\), permits the holder of a CCO the right to mortgage or pledge land, in exchange for financial resources, most financial institutions are not willing to extend credit to them. This can be attributed to a number of reasons, including the nature of the document...
(CCO) issued, which; (i) does not indicate actual size, location and boundary of the land making it difficult for financial actors to assess its value, (ii) it is not guaranteed by the State.

f) The need to manage the increasing externalities such as urban development. Rural-urban transition necessitate infrastructural changes and service needs such as water, roads, sewers and electricity which, with clear property rights and land information, can be prepared and planned ahead of time\(^{107}\). With the creation of 15 new cities by the 11th Parliament\(^ {108}\), Uganda has been presented with an opportunity to proactively manage urbanisation within the secondary towns to ensure more organised and smart cities for its residents. This makes a customary land registry a prerequisite to provide knowledge of land information to authorities, to sustainably govern city development against environmentally or socially harmful outcomes.

### 4.3 Conditions essential for the successful establishment of a registry

While the above factors indicate a need for a land registration system, certain conditions must exist for the systems to be successful.

a) Landowners and others must generally understand and support the system’s introduction. The demand for land registration should be generated from within, and outsiders should not impose the system on a reluctant landholding community. To this extent, it is important to assess user needs before designing the land registration system. Public education about land registration facilitates and supports an understanding of the system.

b) Government must appreciate the expense and duration of the operation. Land registration is essentially a long-term investment; therefore, policy makers must understand that there are few immediate benefits.\(^ {109}\) A policy wavering between half-hearted support and neglect will prove costlier in the long run.

c) Property rights and boundaries must be clearly recognisable and definable. Property rights vested with claimants and the boundaries delimiting the extent of their holdings must be quickly recognisable and definable if the introduction of a land registration system is not to be frustrated by endless dispute. Land registration should not be employed to create interests, but to record and confirm existing interests and definable future interests. Physical demarcation of boundaries by hedges, fences and dikes can greatly assist the process and reduce the costs\(^ {110}\).

d) Qualified survey and registry staff must be available. Compilation and maintenance of a land registration system depends heavily on competent staff. Although education and training can fulfil a significant portion of this need, an existing core of qualified professionals is vital to begin the process and to assist in the training effort\(^ {111}\). These include lawyers, surveyors, physical planners, cartographers among others.
e) Before land registration can be successful, there must be a developed system of property rights. Land registration systems register legal rights in land. If such rights are ambiguous, non-existent, or poorly defined by law, registration of those rights is likely to be an expensive and wasteful exercise. Uganda should focus her initial efforts on defining the property rights and bundles of rights, perhaps in a comprehensive customary land law.

4.4 Advantages of the customary land registry.

a) Greater tenure security

Land registration provides a degree of certainty and security to the owner, as well as to others having rights on land. This link has become a key argument for the role of land security in promoting development. Several social, environmental and economic benefits accrue to a proprietor, stemming from secured property rights, cannot be overlooked, including a defined and known relationship between the State and the proprietor,112 easier access to credit if needed, and the ability to transfer any rights and the opportunity of investment. Customary land rights in developing countries such as Uganda are often very obscure and usually, two situations exist, in particular, where land rights are likely to lack specificity and certainty. First, with a significant degree of customary land rights, discrepancies exist between unwritten customary land rules and newer foreign concepts that cause uncertainty about land governance and administration113 such as acquiring a CCO viz-a-viz the customary ways of recognising land rights. It is not uncommon for those with knowledge of the new “legalised” property concepts to take advantage of indigenous persons holding customary rights on land. Within the recently created cities in Uganda, the elite have taken advantage of the ignorance of customary landholders to urge them to relinquish their full customary land rights and acquire leasehold titles as tenants to the district town councils in light of the Physical Planning Act 2010. Secure rights obtained through proper registration are particularly important for agricultural land. Economists and others have long argued that increasing security of individual property rights in land stimulates private investment and agricultural development because the individual is more willing to make long-term improvements114.

b) Improvement of land administration and public administration

Because land is an important resource for every country and community, land administration is a very important function. It is almost self-evident that to plan land development, one must know the basic facts concerning the land115. Better land use is encouraged through planning regulations. Such improved land use can occur through direct action like zoning, protection of ecologically sensitive areas, public urban development, land consolidation, and irrigation projects116. These are normally complex, expensive, and excessively bureaucratic, and because transaction costs are independent of the size of the transaction, per acre costs are greatest for small transfers of land. However, these can be simplified through an established proper land register that can be used as a knowledge base for proper planning through the various datasets it provides.

Other public land policy measures, in particular agrarian reform, are facilitated by land records of defined land parcels.
Agrarian reform laws are difficult or impossible to implement when precise information concerning land tenure is not available. For example, in the Uganda National Development Plan III, Karamoja sub-region, which is a pastoralist area, is earmarked as the next country’s food basket through large scale commercialised agriculture. This requires knowledge of the proper documentation of land holdings in the region.

_Virtually every agrarian reform will encounter strong opposition._ The absence of a land register would increase loopholes available to reform opponents and slow the implementation of effective reform. Other land policy measures such as control of excessive fragmentation, control of foreign ownership, and prohibitions on excessive land ownership, even in the absence of an agrarian reform programme, will be very difficult or impossible to implement without the type of organised information provided by a land registration system.

Public administration in other areas is also enhanced by a land registration system. Administrators need lists of land and the people occupying the land for many purposes, including statistics, censuses, and elections. Public planning of all types will be greatly facilitated by maps and various data in the land register. Dowson and Sheppard list nine major benefits to an operationally efficient land registration system. For Dowson and Sheppard, the ninth benefit addresses public administration: “The administration of every
public service and every branch of national activity connected with land is greatly assisted in the execution of its work by the existence of an up-to-date and unimpeachable map and record of landed property throughout the country.

c) **Greater access to credit**

The proper registration of rights to land establishes those rights in the eyes of the law and provides documentary evidence necessary to prove land rights. The holder of the land rights thereby becomes “creditworthy” and can pledge his land rights as security for a loan. This is because a degree of certainty has been created with all third party rights, responsibilities and restrictions thereof defined. Proper registration also supports the definition of the nature of the land in terms of area, shape and location. Mortgagees, especially banks may, therefore, rely on such information in the register to extend credit and at a reduced risk, thus lowering the interest rate they charge. Unsecured credit is often available from private moneylenders, but usually is offered at extremely high rates of interest. It is also likely to be short-term and thus not conducive to making substantial capital improvements that have a multiyear payback period. More importantly, the titled issued under this registry will ensure protection of customary attributes even amidst transactions as these.

d) **Dealings in land made more expeditious, reliable, and inexpensive**

With reliable land registers, land transactions become inexpensive, time saving, and effective. The establishment of a land register reposes an owner that actually has the legal right to alienate the property. This process may be complicated or confusing for the layperson. In many countries that lack a land register, property owners use legal experts to conduct title searches and to establish ownership. The costs are often considerable. A land registry not only makes extended searches of land rights unnecessary, but also makes it possible to use simpler, standard forms of conveyance. It also aids small rural landholders, who often cannot bear the cost of professional conveyancing assistance.

e) **Supports land valuation**

Land valuation is one of the main components of a land administration system and plays a vital role in supporting these systems. It is the basis of negotiation between buyers and sellers, for land rent, land compensation, mortgages, secured borrowing, future investment, land use planning, and identifying the value in case of compulsory land acquisitions.

The fees and taxes relating to land services in Uganda are charged with regard to various pieces of legislation as follows;

a) Article 191 of the Constitution empowers the local governments to levy, charge, collect and appropriate fees and taxes in accordance with any law enacted by Parliament. The Local Government Act (1997) Cap 243 in line with the constitutional provision and mandate in Section 80 empowers local governments to levy, charge and collect fees and taxes, including rates, rents, registration and licensing fees, and taxes included in the Fifth Schedule of the Act.

b) Under Regulation 11 in the Fifth Schedule, a district and an urban council shall impose under the provisions of the Local
Government (Rating) Act, rates on property that is within its area of jurisdiction. A district or urban authority may enact laws imposing rates on persons owning, occupying or in possession of land or buildings in any area to which the Local Government (Rating) Act (2005) does not apply.

c) Under Regulation 13 (c) of the Fifth Schedule, local government revenue shall consist of rents from lease of property owned by the Local Government. The power to set land fees and other related charges under the Local Government Act is vested with the minister responsible for lands under the Section 93(2) (b) and (c), which provides that the minister may, by statutory instruments, make regulations to fix fees to be charged for the preparation of any documents for or in connection with any disposition or dealing in land and to fix charges to be made by a board or commission in respect of agreements or other documents for the occupation of land. The fees and charges under the Land Regulations (2004) should, therefore, be unanimous to all land, including that under the customary land registry (family, clan and communal land).

Overall, the realisation of customary land registration will support availability and accessibility of accurate data, the availability of qualified and knowledgeable valuers, hence enhancing the reliability of the registry in the valuation of customary land across the country. However, the existence of an efficient legal framework and the practice of it to regulate valuation practice, remains important.

4.6 | Disadvantages and costs of land registration

While the potential benefits of a land registration system are many, the introduction of land registration is costly and can even lead to negative effects. Any government considering the establishment of a land registration system must consider the following factors.

a) High cost of compiling and maintaining a register

The high costs associated with land registration system is perhaps the main cause for reluctance by developing countries such as Uganda. An efficient land registration system is expensive. Various studies on the actual costs of conducting surveys and establishing land title registration systems indicate costs can be as high as $240 per parcel. Establishment of a land registration system will likely take several years to complete and will use significant numbers of educated persons who could very likely be used for other development projects. Moreover, operation and maintenance of the land registration system, once established, will require significant additional costs. Although establishment and maintenance of a land registration system is expensive, refusal to establish such a system may be more expensive. One difficulty in comparing costs to benefits is that costs of registration are not readily ascertainable and are not available for all to review and criticise. But when there is no land registration system, costs incurred as a result of delayed or lost development opportunities are hidden and not available for scrutiny.
b) “Fixing” the status quo may be problematic

Implementing a land registration system often “fixes,” or solidifies the existing land holding pattern, which may be problematic. If land parcels are fragmented, it may be prudent to consider some form of consolidation before land registration\(^\text{132}\). On the other hand, consolidation by the market (through the voluntary purchase and sale of land parcels) may be easier after adoption of land registration. Fixing the status quo by implementing a land registration system in a setting of inequitable distribution of landholdings is another possibility. In establishing a land registration system, however, there are serious dangers of strengthening the land rights of large landholders, who might otherwise have uncertain claims to land. The existing gender disparities, especially against women and children, as well as unclear land rights dating back to the colonial times, solidify the problems already existing. Prior to land registration, conduct an assessment of existing rights focusing on women’s rights (registered and unregistered) and inheritance, marriage and divorce patterns to inform titling or certification programmes (whether systematic or sporadic). Critical analysis is also necessary to define how far backwards the registration of claims existent to land should be dated to avoid fixing of the status quo that may instead increase tenure insecurity in the landholdings.

c) Dispossession or greater tenure insecurity for smallholders

Providing registered land rights to smallholder farmers and promoting a land market potentially contributes to further dispossession instead of relieving landlessness\(^\text{133}\). In what has become an often-quoted phrase, Schickele states: “The surest way to deprive a peasant of his land is to give him a secure title and make it freely negotiable. Recent research shows that the effects of increasing the negotiability of title in stimulating the loss of land by smallholder farmers may be exaggerated\(^\text{134}\). The threat does exist, however, and it may be essential in a particular setting to protect the rights of small farmers from speculation and land grabbing, even if such protections run contrary to free market principles. Particular care must also be exercised to ensure that underrepresented right-holder groups, such as women and ethnic minorities, are not excluded from the land title registration process. The property position of women is an increasingly important issue.

In nearly all less-developed countries, a male’s land rights are prioritised over those of a female\(^\text{135}\). The prioritisation of a man’s property rights is often based on the assumption that women are supported by their husbands. However, women often perform the bulk of agricultural work. Throughout the developing world, greater numbers of men are leaving their villages in search of work in cities or as rural migrant workers, thus relegating all agricultural production and management tasks to women. Therefore, women with de facto control over cultivation greatly need property security. This problem is, especially acute where land rights are registered in the name of the male head of a household, but evidence of marriage is not similarly documented\(^\text{136}\). Beyond the costs and potential negative effects of a land registration system, there are other grounds for opposition. Some objections to establishing a land registration system are justified, whereas some objections are based on misconceptions or suspicions about government motives.”

In any case, policy makers and those responsible for designing and implementing a land registration system should be aware of the following grounds for opposition.
• **Fear of land tax or compulsory acquisition**

A rural population may understandably resist compilation of a land register for fear that the government will use it as a basis for the assessment or enforcement of a land tax\(^{137}\). Political agitators have also contended that compilation of a land register is merely a preliminary measure designed to enable the government to acquire private interests or to confiscate land at will\(^{138}\). While a land taxation scheme or the enhanced ability to ascertain land rights information for development purposes is beneficial to society as a whole, land taxes are disfavoured by individual landowners. It is difficult to explain to landowners that a land registration system actually protects landowners from confiscation by confirming their land rights and, hence, their right to compensation in case of compulsory land acquisition.

• **Opposition from professionals**

Professional land administration actors are reluctant to accept changes from achieving property security. Such reluctance is often based on self-interest, for example, Torrens’s efforts to introduce land title registration in South Australia were strongly opposed by the legal profession\(^ {139}\). Similarly, attempts to simplify England’s land title registration system have been blocked by the bar.’ If the current system of conveyancing requires significant legal assistance, and land title registration promises to simplify the process, the legal profession is likely to oppose its implementation. The legal profession is also considered the builders of the specific quality standards...

• **Suspicion aroused by incomprehensible legislation**

In developing countries, suspicion and antagonism have been aroused by the hasty enactment of legislation based directly on foreign statutes with little or no adaptation to local conditions\(^ {140}\). A clear example is the Registration of Titles Act Cap 230, which is literally incomprehensible of the existing customary land rights in Uganda. Such legislation frequently uses the untranslatable jargon of English real property law, which is further aggravated by the introduction of foreign legal concepts without adequate explanation. If foreign lawyers are to assist with legislative drafting, they should work closely with local lawyers who are capable of adapting foreign legal jargon and concepts to local understandings.

Land Act, Cap 227. Section 9

ibid. Section 9(4), (5)


Hanstad (n 81).

https://ugandalandobservatory.org/

Population Growth (annual %) data.worldbank.org/indicator/SP.POP.GROW?locations=UG

Rugadya (n 33).

Section 8(2)(c) of


McLaughlin and Nichols (n 80).


Cf PETER F DALE and JOHN D MCLAUGHLIN, Land Information Management. (1988).

Furmstrom and Logan (n 111).

Simpson (n 87).

Ernest Dowson and VLO Sheppard, ‘Land Registration’ (1957) 6 The International and Comparative Law 571.

Simpson (n 87).


ibid.


Constitution of the Republic of Uganda. See article 191


The Land Regulations 2004.

ibid.

ibid.

DALE and MCLAUGHLIN (n 117).

West (n 25).

ibid.


Lemel (n 135).

ibid.

ibid.

West (n 25).

ibid.

Hanstad (n 81).

ibid.
The Proposed Uganda Customary Land Registry Model
5.1 | Introduction

Establishing a land title register consists of four main stages: Adjudication, demarcation, survey and recordation. Adjudication deals with the initial determination of existing land rights. Demarcation entails the marking of the limits of each parcel on the ground, while survey involves measurement and mapping. Finally, recordation provides for description of the land parcel and tenure rights, responsibilities and restrictions. Adjudication occurs only once for a given land parcel, usually during the initial compilation of the land register. The other three operations are recurring and they occur during the establishment of the land registry, but continue as and when there are changes in land rights. All the four processes are interdependent.

Currently, the registration process for customary land begins with an application for a Certificate of Customary Ownership (CCO) obtained from the Recorder. The application is then forwarded to the Area Land Committee (ALC), which then issues and publishes a notice within a prominent place in the area within which the land is located, and on the land itself. Upon expiry of the notice period without any objections, the ALC then proceeds to determine, verify, mark the boundaries of all interests in the land which is the subject of application. The committee also demarcates rights of way and other easements over the land and servitudes, which is considered necessary for the beneficial occupation of such land. Where there are two or more persons with customary ownership rights over the same parcel, all those persons shall be entitled to be issued with a CCO clearly stating the shares of each of those persons and their nature of ownership. Finally, the committee prepares a report on the application recording all claims to interests and rights in the land, occupation and use of the land and whether those claims have been proved to exist, setting out its findings and recommendations on the application on whether it should be approved with or without conditions, restrictions or limitations endorsed on the certificate or unconditionally.

Three copies of this report are produced, one sent to the applicant, the other submitted to the District Land Board (DLB), and the other to anyone with claims on the land. The board, on receipt of the report, considers the application in light of recommendations made by the ALC and may confirm or reject them. Where the board approves the issuance of the CCO with or without conditions, restrictions or limitations, they communicate to the Recorder, who then issues the applicant with a CCO.

As prescribed for registration of customary land, this process is coherent with the general stages of land registration and most importantly, is the same procedure laid out for acquisition of a Certificate of Title. However, significant loopholes within these customary land registration stages undermine the quality of the outcome into a quasi-title (CCO). These loopholes include;

Spatial issues

a) The nature of survey and mapping done which: (1) codifies the tools (tape) to be used in the exercise, hence inhibiting evolution of the survey and mapping practice to the current technological advancements and application, (2) use of sketches not drawn to reference scale compromises the accuracy of the information presented as it does not reflect the actual area of the land (take an example of the logic of a 1-acre parcel bigger than a 10-acre parcel
drawn on title), (3) inhibits smooth subsequent transactions on the CCO due to the need to rigorously revisit all the stages of land registration, (4) Notably, all land in the cadastre is identifiable by a block system, however, a proprietary register requires a very easy to understand but at the same time unique identifier for a mapped and registered piece of land. While other tenure systems have significantly stabilised identifiers, Customary Land Identification Number-(CLIN) is based upon the administrative nature of the boundaries such as districts that keep changing, creating interdependence of the overall registry onto the administrative boundaries, hence very unstable. This is determined without a specific orientation across the customary landholding, introducing confusion and potential avenues for fraud such as registration of the same parcel/ chunk of land (a plot) to two different administrative areas. Even though any unique identifier must be simple and easy to remember, it is important to have one that is stable and closely relates to the national grid, which constitutes the cadastral component of the registry.

b) General Boundary Rule for customary land survey mapping: this is the most efficient application regarding optimization of resources; however, the concept of general boundaries desires elaborate interpretation or even establishment of a statutory boundary agreement within which this is applicable. In the cadastre, the concept of general boundary is based upon establishment of a legal boundary\textsuperscript{149} (usually manifested on a title deed/plan\textsuperscript{150}), which is a derivative of the physical boundary\textsuperscript{151} such as hedge, fence, river, building, etc. This physical boundary is prone to a degree of movement or destruction, making the legal boundary hard to distinguish on ground after time. Therefore, it is necessary that before the mapping and surveying of lands the general boundary rule is clear. Overall, these imply a standard tolerance as is usually easier with fixed boundaries and it must be noted that general boundaries should be based on topographic base maps. The Existing topographic map does not cover most of the areas with customary land and more to that is that most of the proceedings of the fit for purpose applications in the country haven’t provided for such. This would create a future puzzle and lots of conflict underscoring insecurity of tenure amongst those owning, accessing, and using land registered under Certificate of Customary Title.

Legal issues

c) The lack of State guarantee on CCO to third parties and bonafide purchasers in good faith, that the information presented on the certificate is truthful and in the event that it is not, they will be compensated for such anomalies.

d) The lack of the concept of indefeasibility of title for the CCO. Under the principle of indefeasibility, it is postulated “a title that is indefeasible cannot be defeated, revoked, or made void” and the title is “good against the world”\textsuperscript{152}. Essentially, this means the title cannot be destroyed or invalidated. This principle is not embedded in the current CCO acquisition procedures.

e) The option of conversion of the CCO to freehold intrinsically implying that the CCO offers less safeguards as compared to the Certificate of Title.
Optional Registration: The Constitution and Land Act gives customary landowners the discretion to either register or not. This means there is going to be sporadic initial demarcation of land parcels, leading to overlaps in the title plans when entered in the customary land registry.

Institutional Issues

There is overall lack of maintenance of the registry at sub-county level. For instance, although the Land Act Cap 227 and Land Regulations mandates the Recorder at the sub-county level to record all subsequent updates of the transactions on any CCO, this is not the case in practice. In any instance, this defeats the mirror principle of registration. This principle asserts that a land registry, like a mirror, reflects the truth concerning the land and the title attached to it. In other words, the register must be an accurate portrayal of the state of the land at all times so that the information therein may be depended on. In the current form, the records at the sub-county are unsearchable, going by the nature of the register for the Recorder.

Non clear declaration of the roles of traditional and cultural leaders in the management of customary land and their operation alongside the formal structures. These play a very crucial role in administering and managing customary land but have not been properly regulated to allow them to exercise their full powers in a more formal and recognised manner.

Overall, the four stages of land registration should be reflected and coherent across all forms of tenure as provided in the Constitution. These must be encapsulated within the legal, spatial and institutional in a context sensitive form but preserving the parameters and standards to the registration of title.

5.2 | Model outline

5.2.1 | Recordation/registration

Legal framework and aspects

A register of titles typically consists of both a record of the legal attributes associated with each parcel, as well as a description of the land. Legal attributes such as the name of the owners; the nature of the tenure; any encumbrances, including mortgages, charges, and servitudes; the price paid for land transfer; any exclusion of rights to minerals below the soil; and any caveats or cautions that may require informing a third party if any dealings in the land are proposed, may be recorded in the land register. Depending on the legal system, certain categories of overriding interests such as tax liens or general land use restrictions are assumed to apply, yet are not included in the entries on the registers. Such overriding interests usually concern matters that are not revealed in the title deeds of unregistered land. Overriding interests usually fall into two categories. The first category
includes rights ascertained by inspection of the land, or by inquiry of the occupier such as leases. The second consists of liabilities arising under statute such as land taxes, land use regulations, or the possibility of compulsory acquisition.

The customary land registry should be run on principles of a quasi-Torrens system, which would be known as the ‘title’ by registration for customary land. The basic principle of this system is the registration of the title of land, instead of registering, as the old system requires, the evidence of such title. In the one case, only the ultimate fact or conclusion that a certain named party has title to a particular tract of land is registered, and certificate thereof delivered to him/her. The government plays a much larger role in maintaining land records in land title registration systems than in land recordation systems. Under Uganda’s land title registration, a Certificate of Title provides conclusive evidence of the land rights pertaining to a particular land parcel. A legal interest in land is not created or transferred until the government itself, that is, officials at the land registry office, conclusively assesses the current state of title. The essence of the land registration system is the land register. The register also lists all encumbrances-easements, liens, mortgages, leases, and covenants to which that title is subject. With a few minor exceptions, the register’s statement as to the tenure rights is legally binding.

a) The nature of the document/Customary Certificate of Title.

The title document should ordinarily have all the characteristics of a Certificate of Title. However, special attention should be paid to the following features;

i) For communal and family customary land; we propose that the certificate issued should be in trust.

A Certificate of Title in trust is an instrument for acquiring, holding, managing and selling land. Title to land is held by the Trustee (for Communal Land under the Land Act Cap 227, the management committee of the Communal Land Association for clan/sub clan land or families for family owned land). However, the use and enjoyment of the property, or beneficial use, is retained by the beneficiary (family/clan) of the Title Holding Trust. Although the legal and equitable title to the land is conveyed to the Trustee, the Trustee can act only upon the written authorisation and direction of the beneficiary. The typical duties which the Trustee can perform upon the written authorisation and direction of the beneficiary include holding title to land, execution and delivery of promissory notes, deeds of trust, leases, assignments of rents, and grant deeds. In any event, the beneficiary retains complete control over, and use of, the real estate. The Title Holding Trust is a fully revocable grantor trust just like a regular family living trust and can be terminated, changed or updated at any time. It is a “pass-thru” entity so that all revenue, expenses and depreciation are passed through and reported on the beneficiary’s own income tax return. The beneficiary can add or withdraw land to the Title Holding Trust at any time. All of the rights and conveniences of real estate ownership are retained by the beneficiary without the disadvantages of non-trust ownership. This would favourably support the mirror principle in practice for title of customary land, but significantly offer protection of rights to the customary landholders. (How should bundles of rights/ servitudes be reflected on the title?)
This Certificate of Title should be indefeasible by the State to the proprietors/beneficiaries of the land. However, a lot more research is required on the Registration of Titles Act Cap 230, to provide for the title’s existence and revision of some sections that may potentially bring harm to the existence of the title thereof. (Section 34, 59, 64, 77, 136, 156, 170, 176)

ii) For individual customary holding; they should be offered a customary certificate of title akin to the freehold title.

iii) For family land; the shares and the nature of ownership as stated in Section 5(1)(d) of the Land Act Cap 227 of each person should be clearly stated within the title. Herein, a certificate of title in trust for family may also apply.

iv) For communal/clan land, there should be a restriction on sale of the land reflected on the title. There should be no registration of any instrument purporting to sell any part of the whole of such land, unless the consent of the beneficiaries is acquired.

Forms of application for Certificate of Title in trust must be drafted in standard English language and provided at the decentralised Ministerial Zonal Offices (MZOs). However, these are subject to translation for the different communities, at a fee met by the intended beneficiaries or proprietors of the land.

Legally, there is need to re-examine the provisions of the laws concerning public land and its alienation and the law concerning the rules and regulations on the communal and clan land. This will involve the establishment of guidelines, survey and registration of either public or the communal land and its surrounding natural reserves.

There is also need to define the unique identifier to the customary land register based on the cadastral districts as seen with the MZOs. This will be the central identification of a parcel followed by the county name, sub-county name and eventually the village name.

b) Succession and Inheritance

Unlike the position currently with Section 134 of the Registration of Titles Act Cap 230, an executor or administrator of a deceased person’s estate should not have the title transferred to them as absolute proprietor and, therefore, with powers of transfer or sale. Instead, they should also be granted a Certificate of Title in trust for all estate beneficiaries.

Succession and inheritance are the most common way of transfer of property rights under customary tenure. The rights to ownership and control of land of women, girls and other vulnerable groups should, by the customary tenure law, be protected.

Institutionally, the trustee body will be the custodian of the duplicate copy of the Certificate of Title in trust on behalf of the beneficiary. The mandated body for all the procedures and processes in obtaining this certificate will lie with the Ministry of Lands, Housing and Urban Development through the MZOs.
The extent of powers of traditional leaders need to be defined in the customary land registry law in regard to their position in the trust and their function. To minimise dispute on whether a traditional leader is recognised as such within that community, we propose that a living register of customary/traditional leaders should be developed by the Ministry of Gender, Labour and Social Development and copies availed at each MZO. It is important to note that the institutional arrangements vary in different areas where land is held customarily.

5.2.2 | Adjudication (initial determination of existing land rights)

Adjudication has been the most common stage of determining land rights for registration purposes and remains a necessary procedure for ensuring an agreeable existence of such rights by the community. It does not aim to alter existing rights or create new ones, but merely ascertain what rights exist, by whom they are exercised, and to what limitations they are subject. Adjudication attempts to clarify all land interests, thus resulting in an accurate land register.

Adjudication proceeds either sporadically or systematically. The sporadic approach is to adjudicate whenever or wherever there is a demand or other reason for determining the precise land rights concerning a particular parcel. For instance, a sporadic approach has been adopted for freehold for registration of land title for parcels. The sporadic approach allows the government to defer costs and also makes it easier to pass costs on to beneficiaries. Following the sporadic approach, however, typically means that the land register will not be complete for many years or decades, and will be less beneficial both to the government and to landowners as long as registered and unregistered titles remain intermixed in the same locality.

The systematic approach is more methodical and rapid, and is typically compulsory. Adjudication proceeds one area at a time, and all parcels within a given area are entered into the land register at the same time. In the long term, the systematic approach is preferable because it is less expensive due to economies of scale. It is safer because it gives maximum publicity to the determination of land rights within a given area. Finally, it is more certain because adjoining land parcels are investigated simultaneously. For instance, in Uganda, the colonial government attempted to pilot systematic adjudication; the districts of Kigezi and Ankole accepted the programme, and they were later joined by the then Bugisu (now Mbale) district157.

The adjudication of rights to family, clan and communal land should be done in a systematic manner through a specified countrywide programme. These may be put in place with critical assessment of the various economic activities of a region and hence clearly defined in form of guidelines for a specific period of time. This should seek to reduce conflict, the cost of demarcation and avoid complex shapes that impair the usefulness of land. At adjudication stage, traditional institutions should play a key role in authoritatively ascertaining the existing rights in a particular land parcel. They should clarify all land interests within an area subject to adjudication.

These efforts were already re-introduced in 2001 under the Land Sector Strategic Plan I (2001-11) and the rollout activities were further expanded under LSSP II (2013-23)158 through the actualisation of the fit for purpose land administration approach.
in the country. Application of a countrywide systematic adjudication programme for family, clan and communal land will significantly support the incorporation of the physical and land-use planning to contextualise and guide future development uses, such as roads, other social infrastructure such as schools, health centres/hospitals, fragile ecosystems such as wetlands and the general environment.159

**The customary institutions**

Legally, traditional institutions should play a key role in authoritatively ascertaining the existing rights in a particular land parcel for clan and communal land. They should clarify all land interest within an area subject to adjudication. Currently within the Land Regulations, their role in this process is not clearly stated.

Institutionally, for communal/clan land; the customary leaders within the trust (whose percentage may be defined) should manage access, use and decide what general rules govern such land. These institutions should also be in charge of the common lands held within the trust.

For family and individual customary land, the ALC, in the presence of defined quorum for the family members, will play the role of authoritatively ascertaining the rights, responsibilities and restrictions of the given chuck of land.

Spatially, the general boundaries that are identified by the adjudication team for a given area should be very clear and visible for easy capturing using either conventional or modern survey technologies. The application of general boundaries must be elaborated through establishment of a generally acceptable boundary agreements that; classify recognisable physical and man-made features for adjudicating, mapping, and surveying, the necessary boundary ownership and maintenance requirements for participation of adjoining owners, the nature of symbolisation for the general representation of these boundaries on the cadastre and later the title deed/plan, and the professional advisor accountable for the process of creating the agreement and what should be done at the time of dispute between adjoining partners.

5.2.3 | **Demarcation and surveying**

**Spatial framework and aspects.**

Spatial considerations and wealth of records provide stability inertia in any land registration system. Uganda has since the 1900 Buganda Agreement provided for a system that consists of a cadaster under the Department of Surveys and Mapping, and a separate land register under the Department of Land registration, where transactions are recorded against each parcel indicating ownership and any other rights, responsibilities and restrictions. The spatial framework is mainly established by the cadastral survey system of title registration system, decentralised and fixed boundary demarcation, where cadastre information is provided as parcels. The term “cadastral survey system” refers to the control and methods of carrying out cadastral surveys, and this is different from “cadastral survey”160. Although “cadastral survey” may mean different things in
different countries, for the case of Uganda, it is the survey of boundaries of all land parcels.

In Uganda, through the colonial period (1900-1962), the cadastral survey system was one based on the Torrens system of title registration but ‘isolated’ and based on a fixed boundary rule. This system was generally influenced by nature of emerging settlements (sparse population), the topography, geography and economic circumstances existing at the time of the introduction of the system (1900), the “state of the art” of the survey, and the professional background and experience of the individuals or surveyors at the time. However, the “isolated” system has since evolved into a “co-ordinated” survey cadastral system with fixed boundary approach in practice and not necessarily as specified by the legal framework. Overall, the approach of cadastral survey for Uganda remains sporadic in nature, with the applicant being the one expressing interest to survey their land\textsuperscript{161}.

As in adjudication, family, clan and communal land should be grounded to a systematic approach of cadastral survey system. This is due to the benefits relating to the economies of scale as opposed to sporadic approach, which is piecemeal and demand-driven. It has duplications and, therefore, not cost-effective\textsuperscript{162}. A systematic cadastral survey approach will support the production of a lot of data, whose quality control concerns can be easily monitored regarding the current coordinated cadastral survey system. Although, on the initial outlay for surveys, which is a prerequisite of the systematic approach, would most probably have to be paid for by the government, the costs could be recovered upon registration of individual titles.

It should be noted that taking on the systematic approach to achieve the customary land registry will greatly deviate the cadastral survey system of the country, especially in the legal framework. This section highlights changes and observations that must be made.

\textbf{a) The nature of boundaries}

For individual, family, clan and communal landholding, the adjudicated boundaries should be used for demarcation and definition of the cadastral plan. The use of a combined general and fixed boundary approach based on orthophoto maps may be adopted. This is because fixed boundaries may already appear within some of the areas inducing less concern from the customary landholders since in their eyes, their boundaries are defined by the artificial monuments, but for all practical purposes, physical features would be important. The combined approach is even more attractive since in the last couple of years, the Ministry of Lands, Housing and Urban Development has collected large scale orthophoto coverage over most of the country’s districts.

\textbf{b) Topographic mapping as a prerequisite}

Also considering that the survey control used for orthophoto map production has been intensified and commemorated in a permanent manner\textsuperscript{163}, the orthophoto maps can be produced from scratch by the private professionals under the supervision
of the ministry. However, guidelines such as the number of monuments that should at least fall within the coverage of each map should be determined to support the uniformity and scaling of the orthophoto maps. Out of the orthophoto maps then, a plan showing all lots, roads, reserves and/or servitudes, could be extracted out of the matching orthophoto map and for all intents and purposes would be identical to the present maps produced by ground survey methods, except there would be no bearings and distances on many of the boundaries. This would also enhance the establishment of topographic maps that eventually can be used for re-establishment of the general boundaries in case an applicant deems it necessary.

It must also be noted that this in the long run eliminates the codification of survey tools that exist within the current legal framework inhibiting evolution of the survey and mapping practice, since subsequent maps and plans would be re-established by use of either ground or aerial survey methods. The availability of control, if any "general" boundary was required to be "fixed" in the future, would be a simple matter to determine it by ground methods.

c) Survey misclosure

The use of orthophoto maps/topographic maps will eliminate the overarching requirement of a specific standard tolerance for the plans. However, these plans would generally differ in the current cadastral survey system, where ground methods have been defined to provide for minimum standard tolerance. This introduces the concept of ‘absolute’ versus ‘relative’ accuracy. Absolute accuracy is the closeness of an estimated, measured, or computed value to a standard, accepted, or true value of a particular quantity. In mapping, a statement of absolute accuracy is made with respect to a datum/coordinate system (WGS84). On the other hand, relative accuracy is an evaluation of the amount of error in determining the location of one point or feature with respect to another.

**Institutional framework and aspects.**

The value of a land register depends greatly on its day-to-day maintenance. Dowson and Sheppard (1956) indicated that the difficulties that have so frequently been encountered in the successful establishment of this registry, have been due to defects in or handicaps to the daily working of the service, rather than any extraneous disturbing conditions and fraud. Also, a related point is that the workings of the register should not be so complex that access is limited. If access is limited, the long-term integrity of the land registration system is threatened. One likely result of such a complex administrative structure is a progressive concentration of land in the hands of those with the advantages of wealth, influence, and education. This would prevent poor peasants from gaining access to land, while those who are wealthier or more sophisticated concentrate land in their ownership.

The registry should also include a system by which the registrar is automatically informed of all transfers or successions handled by courts both formal and traditional. This is especially important in the case of inheritance, where there is a significant risk that changes in ownership will not be reported. The location of the registry offices is important in contributing to the efficient
maintenance of a land title registration system. Applicants should not have to travel long distances to reach registry offices, because this would cause many land dealings to go unregistered or unconsummated by the poor or those unable to travel. On the other hand, too many registration districts may create problems in recruiting competent personnel and are likely to increase the costs of the system.

For business continuity and prompt service delivery, the Ministry of Lands, Housing and Urban Development, through its directorates, have set out MZOs responsible for;

- a) Establishment of surveys and geodetic controls, check quality of cadastral jobs, survey government land and international boundaries, produce and print topographical maps around the country, and produce a national atlas.

- b) Supervision of land administration institutions and valuation of land and other properties.

- c) Issuance of certificates of titles, general conveyance, keep custody of the national land register, coordination, inspection, monitoring and back-up technical support relating to land registration and acquisition processes to local governments, respectively. These services are established through district locations known as ‘cadastral districts’, where a District Physical Planner, a District Land Officer, a District Valuer, a District Surveyor and a District Registrar of Titles are situated.

For family, clan and communal customary land, the MZOs should be the central governing bodies in the issuance and safeguarding of the Certificate of Title for the customary land registry, and not the recorder at the sub-county. The DLBs and the ALC should maintain their functions in the process of registration of customary land for the issuance of certificates of title under the customary land registry.

For clan and communal landholding, the trustee bodies (i.e. Communal Land Associations) should become the immediate institutions extending access of information regarding title status for their given beneficiaries. These bodies must also create a working relation with the ALC and DLB, and ensure updates and changes of all encumbrances are made to the title thereof.

Clearly for the Ugandan context, institutions are of sincere indulgence both in the formal (statutory) and informal (of customs) and the suggested level of engagement of the trustee bodies will build a working link between the two that did not originally exist. This will provide a ladder for a smooth integration of the informal and formal and strengthen, and enrich the Uganda Land Information Systems spatial coverage but inherently providing security of tenure for all.
5.3 | Conclusion

In a nutshell, establishing a customary land title registration system will greatly support the achievement of a comprehensive land registration across the entire country. It may also not seem feasible to implement across the entire country at once, but this model is very achievable if the registration is made compulsory from one geographical area to another. Over time, this would culminate in the whole country registration of land. Also, a substantial discount may be provided for the landholders, who voluntarily come up to register their land.

The registry holds numerous benefits over the challenges both to the State and the landholders. The landholders will have absolute proof of ownership and a clear plan showing the extent of that ownership will be provided by the registry, giving an accurate reflection of the extent of the land from the ground. Once the land is registered, the land registry will hold evidence of the title electronically, which means if the old title becomes lost or destroyed, it is not critical. Registration creates a clear record of ownership which clearly sets out any matters that affect the property such as rights of way and restrictive covenants. The registration will provide greater protection against claims for ‘adverse possession’, more commonly known as squatting, and make them easier to defeat. It will also prevent fraud, which can occur from copying or withholding title or a person seeking to claim that they own another person’s land, thereby eliminating challenges of land grabbing that have crippled the country for a substantial amount of time.
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<tr>
<td>141</td>
<td>ibid.</td>
</tr>
<tr>
<td>142</td>
<td>Land Act, Cap 227. Section 4 (3)</td>
</tr>
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<td>143</td>
<td>ibid. Section 6(2)</td>
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<td>144</td>
<td>ibid. Section 5(1a)</td>
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<td>145</td>
<td>ibid. Section 5 (1b)</td>
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<td>146</td>
<td>ibid. Section 5 (1d)</td>
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<tr>
<td>147</td>
<td>ibid. Section 6 (6a)</td>
</tr>
<tr>
<td>148</td>
<td>ibid. Section 7 (4,5)</td>
</tr>
<tr>
<td>149</td>
<td>An invisible or imaginary line dividing the property of two adjoining partners. It has no width or thickness and is rarely identified with precision. If disputed, it can be determined by the tribunals or courts of law for the given jurisdiction.</td>
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<tr>
<td>150</td>
<td>A title plan/deed is a plan of the information contained in the register and must always be viewed in conjunction with the register.</td>
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<td>151</td>
<td>Also known as a living boundary. Usually, a physical feature that can be discerned by a human eye.</td>
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<td>152</td>
<td>Adrabo Stanley v Madira Jimmy (Civil Suit-2013/24) [2017] UGHCLD 102</td>
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<tr>
<td>153</td>
<td>Statutory Instrument No. 100/2004</td>
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<td>154</td>
<td>Registration of Titles Act, Cap 230. Section 59</td>
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<td>155</td>
<td>Land Act, Cap 227. Section 15-19</td>
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<td>159</td>
<td>ibid.</td>
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<td>160</td>
<td>Williamson (n 115).</td>
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<tr>
<td>161</td>
<td>Registration of Titles Act, Cap 230. Section 149</td>
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<tr>
<td>162</td>
<td>ibid.</td>
</tr>
<tr>
<td>164</td>
<td>ibid.</td>
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<td>166</td>
<td><a href="https://www.e-education.psu.edu/geog480/node/469">https://www.e-education.psu.edu/geog480/node/469</a></td>
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<td>167</td>
<td>Dowson and Sheppard (n 121).</td>
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<td>168</td>
<td><a href="https://mlhud.go.ug/">https://mlhud.go.ug/</a></td>
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<td>169</td>
<td>Land Act, Cap 227.</td>
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</table>
6 Recommendations and Conclusion
6.1 | **Introduction**

Land registration shaped by governance, institutions, and accountability. It is advantageous to both landowners and the public to be able to obtain all maps and necessary information concerning the register from one office. Importantly, all these activities rely on some form of land administration infrastructure, which permits the complex range of rights, restrictions and responsibilities on land to be identified, mapped and managed as a basis for policy formulation and implementation. This chapter focuses on what land sector actors under the direction and supervision of the Ministry of Lands, Housing and Urban Development, need to put in place to pave the way to achieving the aspirations of the Uganda National Land Policy (2013) on customary land administration.

6.2 | **Recommendations**

- Adoption of a hybrid system of land registration that is specific to the Ugandan customary context, but can borrow applicable concepts from the Torrens system of registration. In particular, the government should look into alienation and State guarantee of certificates of customary title and adoption of a registry model that reflects the mirror, curtain and indemnity principles as elaborated in Chapter Three.

- Legal reform of the applicable laws on customary land registration such as the Constitution, Land Act, Registration of Titles Act, among others. A customary land registry needs to be moulded on its own terms to ensure cultural attributes are not lost in the process.

- There is a need to properly document the various categories of bundles of rights that might be reflected on customary tenure. The list need not be exhaustive but could be a guide in defining these rights. Additionally, there is a need to document the rights, responsibilities and restrictions of each land interest accruing from the bundle of rights.

- The Government, through the Ministry of Lands, Housing and Urban Development, needs to define the principal goal of customary land registration in Uganda. It should clearly state whether the land registration system is to be used simply as a legal record of land rights, or if it will serve additional purposes such as enforcing planning regulations and should, therefore, define the minimum required accuracies in the processes and data quality.

- It is necessary to decide on the geographical scope of the registration system based on a systematic approach. We recommend that the selection of priority areas should depend on the problems the registration system is intended to solve. If the primary goal is to solve agricultural problems, rural areas with intensive, commercial farming might be considered first. If the primary goal is to reduce disputes, then areas with high degrees of litigation or unregulated squatting might be chosen first.
With the current National Land Information System, process standardisation is important to facilitate efficient digital data flows between the different steps involved in land record maintenance, boundary demarcation and cadastral mapping and land registration under customary tenure. In addition to standards to define key quality concerns, which where-ever possible, should be technology-independent so as to allow future technologies to be adopted without changes to the rules and regulations.

It is critical to define the format and structure of data that is transferred from one step of the process to the next. These standards should be specified in terms of proprietary formats so as to allow the land registration agency the maximum flexibility to make good decisions on the acquisition of new technology based on functionality and not historical formats the data may have been stored in in the past, as well as encouraging inter-linkages with data acquired on customary land. The customary land registry should not be independent of the national registry as is the case now.

A number of pilots have been conducted on the registration of customary land in Uganda. There is need for the government to carefully and constantly monitor these pilots since it is crucial to glean information necessary to improve the system of administration of customary land through a customary land registry. This will be greatly informed by the Fit for Purpose initiatives that have been carried out.

Prior to establishment of a customary land registry, the government should conduct an assessment of existing rights focusing on issues faced by marginalised groups like women. Women's rights (registered and unregistered) and inheritance, marriage and divorce patterns need to be established to inform titling or certification programmes.

The extent of powers of traditional leaders need to be defined in the customary land registry law in regard to their position and their functions in the process. To minimise dispute on whether a traditional leader is recognised as such within that community, we propose that a living register of customary/traditional leaders including at the clan level should be developed by the Ministry of Gender, Labour and Social Development and copies availed at each MZO. The linkages between formal and traditional land administration structures need to be clearly established to avoid scepticism. The government should conduct anthropological studies to understand the institutional set up of the various social groupings in Uganda.
6.3 | Conclusion

The proposal within the National Land Policy on the establishment of a customary land registry and the issuance of a certificate of a customary title in the place of CCO is daunting, but the rewards from its execution are enormous and by far exceed any negatives. We highly encourage the government and relevant stakeholders to implement these policy statements and realise the benefits from the same as have been highlighted in this Resourcebook.
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The Local Government Act, Cap 243 1997

The Physical Planning Act 2010
## APPENDIX

### DEFINITION OF KEY TERMS

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<th>TERM</th>
<th>DEFINITION</th>
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<tr>
<td>Land owner</td>
<td>Any Ugandan citizen who owns or holds land under any of the four (4) recognised systems of land holding. (Section 2 of the Land Act)</td>
</tr>
<tr>
<td>Customary tenure</td>
<td>Customary tenure means a system of land tenure regulated by customary rules, which are limited in their operation to a particular description or class of persons the incidents of which are described in Section 3 Of the Land Act (1998)</td>
</tr>
<tr>
<td>Lease</td>
<td>Permission to use someone's land with exclusive rights for a period of three (3) years and above for a specific purpose, with agreed terms between the lessor and the Lessee. (Section 101 of the RTA)</td>
</tr>
<tr>
<td>Lessor</td>
<td>A landowner who creates a lease and allows another person (lessee) to use the land for a specific purpose for a defined period with exclusive possession.</td>
</tr>
<tr>
<td>Lessee</td>
<td>A person who is given a lease by a lessor and is allowed to use the land for a specific purpose during a defined period of time, on specific terms with exclusive possession.</td>
</tr>
<tr>
<td>Legal interest in land</td>
<td>This refers to an interest held in land by a landowner, who has registered under the Registration of Titles Act so as to give the world notice of his or her ownership, for instance owners of land in the Mailo, freehold and leasehold tenures, who have been registered.</td>
</tr>
<tr>
<td>Interests and rights in land</td>
<td>An interest relates to ownership, which might be legal (registered owner and his or her successors) or equitable (for example tenants in occupancy or unregistered land owners). Interests are different from rights to land, which relate to use of the land for a specific purpose with the consent of the land owner.</td>
</tr>
<tr>
<td>Land transactions</td>
<td>These include selling, leasing, mortgaging or pledging, subdividing, creating rights and interests for other people in the land and creating trusts of the land. (Section 3 (2) of the Land Act)</td>
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<tr>
<th><strong>Land management</strong></th>
<th>This is the process of managing the use and development (in both urban and rural settings) of land resources. Land resources are used for a variety of purposes which may include organic agriculture, reforestation, water resource management and eco-tourism projects.</th>
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<tr>
<td><strong>Land Registration</strong></td>
<td>Land registration generally describes systems by which matters concerning ownership, possession, or other rights in land can be recorded (usually with a government agency or department) to provide evidence of title, facilitate transactions and, prevent unlawful disposal.</td>
</tr>
<tr>
<td><strong>Valuation</strong></td>
<td>This is the process of determining the value of land and structures on it. This is a key process during compulsory acquisition to determine the amount of compensation to be paid to the land owner.</td>
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A registry is a critical infrastructure for land administration. The **Customary Land Registry Resource Book** examines the prospects that a customary land registry offers for Uganda owing to the prevalence of customary land in the country. This book forms part of the initial steps for laying a foundation for the establishment of a reliable, context-sensitive and modern land registry for strengthening customary land administration. It traces the history of customary land and highlights some of the major legal reforms right from the pre-colonial times to this day which have significantly impacted on customary land. The book also discusses the legal and institutional arrangements in place to administer customary land as well as the various models of land registration across the world. The book further scrutinises the issues surrounding the current initiatives to document customary land and ultimately makes a case for the establishment of a customary land registry to strengthen these initiatives. It also highlights the various considerations and practical steps as well as recommendations to be followed to make this a reality.