



Establishment of a Customary Land Registry in Uganda

ISSUES AND POSITION PAPER



LANDnet Uganda
Plot 213 Semwogerere Zone Mukalazi II Bukoto
P.O Box 14170 Kampala Uganda
Email: info@landnetuganda.org
Tel No: +256-414-666703;
Website: www.landnetuganda.org

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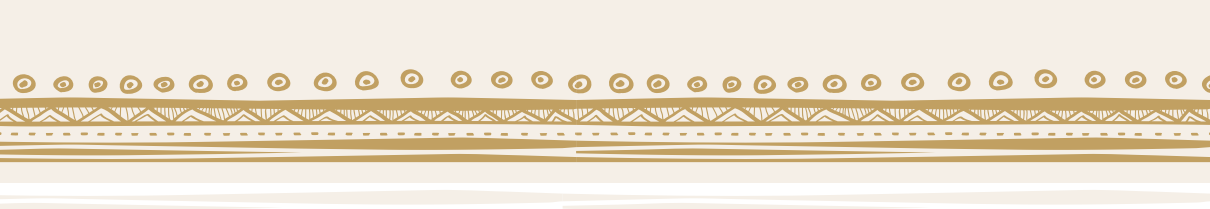
INTRODUCTION

Currently and for the largest part, non-documentary evidence is still being used to help establish rights under customary tenure. Boundaries are demarcated using natural markers and features such as ant hills, streams, hill tops, trees, shrubs or stones. Ascertainment of ownership is often witnessed by the clan or council of elders or the family head. However, where registration is happening, it is governed by Section 4(1) of the Land Act Cap 227 that grants any person, family or community holding land under customary tenure the liberty to apply for a certificate of customary ownership (CCO) through the processes provided therein. Upon successful completion of the process, one is issued the certificate of customary ownership that shall be taken as conclusive evidence of the customary rights and interests specified in it.¹

Under the Land Act, registration of customary land is a decentralised process handled at subcounty by the Area Land Committee (ALC) and the Recorder (popularly known as Sub-County Chief) and at District level by the District Land Board (DLB). Owing to its decentralised nature, it is difficult to tell the extent of registration.

On the other hand, Chapter 4, specifically section 4.3 of the National Land Policy(NLP) make progressive policy statements and strategies that affirm the status of customary tenure as that of equal stature with freehold tenure and expressly states in paragraph 40, “(t)o facilitate the evolution and development of customary tenure in relation to social, economic, political and other factors, government shall take measure to: (i) design a land registry system to support the registration of land rights under the customary tenure system and (ii) **issue certificates of title of customary ownership based on a customary land registry that confers rights equivalent to freehold tenure.**”

It is important to note that the National Land Policy and the Land Act are in contradiction with each other in regard to the type of registry intended and the nature of documentation issued. Unlike the Act, the NLP makes more concrete proposals to elevate customary tenure to the same level as other tenure regimes through grant of a title backed by state guarantee and modelled on a functional and efficient registry.



Through this issues and position paper, LANDnet will highlight some of the challenges currently plaguing customary registration efforts, draw attention to pertinent issues that hang in balance as well as make a number of recommendations that could guide the shift and reform in customary registration practices and laws.

OBJECTIVES OF THE PAPER

The overall objective of this paper is to draw attention to challenges that are currently afflicting registration of customary land efforts within Uganda both in practice and as a result of the contradictions within the legal and regulatory framework. The paper brings to light contentious and controversial issues not previously addressed in any law, policy or reports. Lastly, this paper is intended as a thought provoking document to stimulate debate on customary land registration challenges in the public arena and propel stakeholders to formulate solutions to the identified shortfalls.

Specific Objectives

The specific objectives of the paper are to:

- (a) Examine the history of customary land tenure in Uganda;
- (b) Assess the current land recordation and registration efforts both **de jure** and **de facto**.
- (c) Identify current challenges involved in the implementation of customary land registration provisions within the Land Act Cap 227.
- (d) Suggest recommendations to address the challenges identified in the paper.

METHODOLOGY

The paper utilized qualitative approaches and sought responses from various government institutions, the legal fraternity, private sector, academia, civil society organisations, beneficiaries of current registration efforts and development agencies considered to be key actors in customary land registration.

1

Sampling

A month long opinion survey was conducted in September 2020 to obtain perceptions of customary land owners on the establishment of a customary registry. A purposive sampling technique was adopted wherein respondents were chosen basing on their experience, interaction, knowledge and deep understanding of the subject of study. This provided balanced data for legislation, advocacy, implementation, awareness creation and monitoring.

2

Discussion and consultations with stakeholders

Webinars and radio talk shows were organized on 14th August, 18th November and 7th December, 2020 to get the consensus on the issues that need to be raised and addressed in the customary land registration discourse. Through the questionnaire, participants were requested to answer in the form in order to collect their views on the current state of land registration for under the customary system. Results from these consultations partly informed the drafting of this paper.

3

Review of existing Literature

The Paper reviews various domestic and international laws, cases and policies related to land registration, survey, and mapping as well as best practices from countries with similar contexts. Secondary data is sourced from academic books and journals, websites on top of government and civil society reports, and publications. Primary legal texts lend the Paper a strong normative grounding

while scholarly materials give it a concrete conceptual and intellectual foundation by providing the theoretical underpinnings of the key ideas in the Paper. Using government and Non-Governmental Organisations' (NGOs) reports as well as decided cases lends the Paper a practical grounding. Online platforms like websites provide contemporary perspectives which enriches the study with fresh and trending information.

CUSTOMARY TENURE

Definition

Customary tenure generally connotes rules and norms that regulate the 'community allocation, use, access, and transfer of land and other natural resources'² that have been practiced over the years. The tenure is often linked to indigenous communities and is based on their customs unlike statutory law.³

In Uganda, customary land obtained formal legal recognition in 1995 upon the promulgation of the Constitution which acknowledged it as one of the four tenures through which land vests to citizens.⁴ To further expound on its nature, the Land Act⁵ lays down the various attributes of customary land including, specific geographical applicability; binding nature on those it applies to; applicability those acquiring land in an areas where land is held customarily; communal ownership; and perpetual ownership, among others.

It can be deduced from legislation that customary land can be owned individually, jointly as a family, clan or community and such ownership is not subject to time limitations.⁶ While initially is it largely owned in groups such as clans and families, today, customary land is increasingly getting individualized with high incidents of sale.⁷ That notwithstanding, for many ethnic groups, before such a land sale is made, clan members and family have to be consulted.

Under the communal land system, largely found in northern Uganda, the household is the

primary owner of the land and this may include extended members of the family. Use rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan or community.⁸ It should be highlighted that customary land tenure is a complex system of land relations, the incidents of which are not always capable of precise definition. These incidents often vary from community to community. The underlying commonality in all customary law systems is that land rights are derived by reason of membership in a community and are retained as a result of performance of reciprocal obligations in that community.⁹

TRACING THE HISTORY

Uganda has gone through various land tenure reforms since the colonial era to date with varying implications on customary land tenure as each of these reforms have always led to a new relationship between owners and users of the land. Batty¹⁰ opines that land reforms have succinctly been made bringing about change of rules, regulations, customs and the laws regarding land ownership and all rights, restrictions and responsibilities attached. In Uganda, this has always been government initiated with the aim of improving the use and possession of land¹¹.





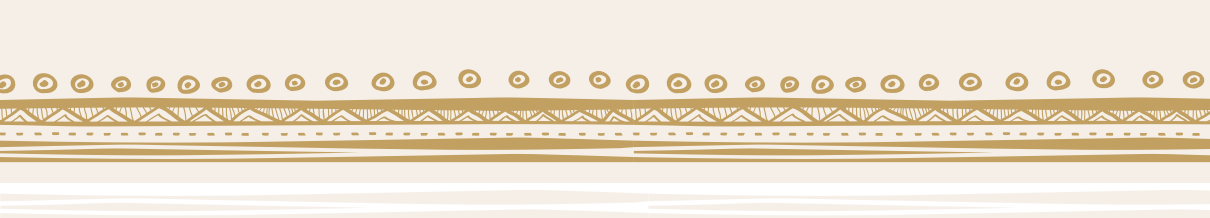
Pre-colonial traditional land tenure systems in place before 1900

Before 1900, the land tenure system available in the entire country was customary. Existing literature shows that customary land tenure was predominant in all the regions of the country¹². There were three broad customary land tenure systems¹³ 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 heavily influenced by the form of agrarian activity being conducted. The agriculturists depended on a kin-ship organised system, useful for coordinating work projects, settling internal disputes, and carrying out religious observance of clan deities¹⁴. On the other side, the pastoralists had rather an insignificant governance structure since they moved from place to place in small groups of people with decisions made by their kin-ship elders. Access to land was based on negotiations and agreements between the different parties (who could be clan heads, households, etc.) involved¹⁵. Whatever the case in which the different societies were organised and operated, there was one common aspect regarding tenure: no individual ownership of land. However, use rights existed for different individuals in the communities with ownership rights vested in the clan and communities thus there existed full use rights but alienation was restricted to inheritance. The impression given by existing literature is of a society in which the relation of the chiefs to the people, and through the people to the land, was basically political; and in which the usual rights associated with control over land were either hereditary or were granted directly by the King.¹⁶

The colonial period (1900 to 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. The predominant customary land tenure was infiltrated with single individual ownership and the concept of freehold ownership introduced by Great Britain¹⁷. This was mainly through the different arrangements (born out of civil



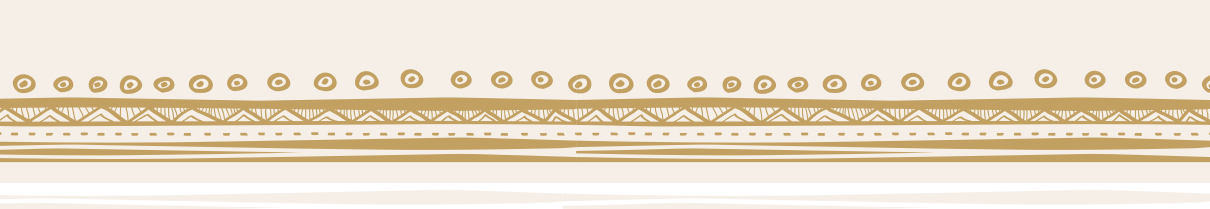
wards) and agreements entered into by the colonial government and powerful/political elite over the common people of the societies. In Buganda, Toro and Ankole kingdom, this gave way to a pronounced change in the tenure management, and also changed the focus of land use from communal farming and grazing to individualised ownership to be able to support the activities of the colonial masters.¹⁸

The inaugural agreement itself known as Buganda Agreement resulted into the redistribution and formalisation of customary land into individual ownership. Buganda's land was designated as being 19,600 square miles. The agreement no doubt transformed the relations of rights on land. Chief and royal line acquired full ownership rights as land could privately be owned while peasants attained occupancy rights on land.

The agreement resulted in the creation of Crown and **Mailo** land. Crown land was administered by the government on behalf of the British and the government had the mandate to alienate this type of land under freehold or leasehold grants¹⁹. Mailo land was a resultant formal customary tenure which ended up as a western form of landlord/tenant system with absolute individual ownership. It was held in both private and official estates. Private mailo estates were those given to individuals as private property while official mailo estates were land one held by virtue of holding an office 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 (Mukwaya, 1953)²⁰. The peasants who had previously settled on those estates/lands as tenants or customary usufructuary holders became tenants on private property²¹ and had to pay ground rent (**busuulu**) and tribute on produce (**envujjo**) for the crops like cotton or coffee they grew²².

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 use rights and were prone to evictions as freehold and leaseholds could be granted having occupiers on land and without asking for 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 government at the time



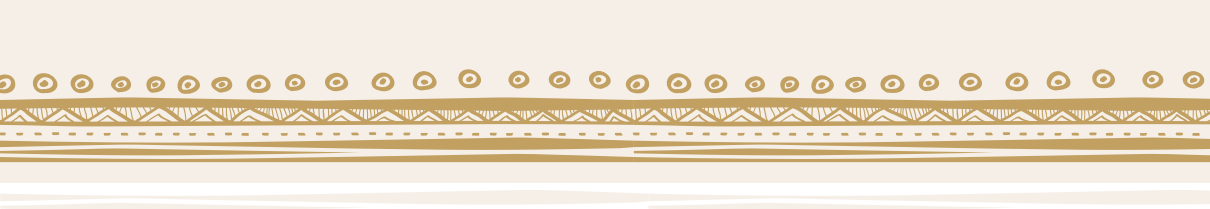
but was also marking the birth of change in the way customary land was managed and administered.

A land settlement survey became a primary concern and an integral part in fulfilling the agreement. The framers of the agreement found it a wiser decision that implementation of the wording of the agreement and avoidance of a very complicated system of administration be realised through an elaborate settlement survey. It was then inevitable that parcellation of land in Buganda would be executed, committing cadastral surveys onto the land even when the community chiefs and oligarchy could not afford it²³.

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

Four years into the establishment of the first survey (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. This therefore, officiated R.C Allen as the Principal Registrar of documents expounding the concept of a land registry on customary land holding²⁴.

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 four 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.

Toro and Ankole Kingdom and the parts of Busoga and Bugisu

Similar agreements were signed in Tooro and Ankole kingdoms in 1900 and 1901 respectively. These agreements resulted in the creation of Crown land which was a similar concept as that in Buganda and freehold estates. The freehold estates were called native and adjudicated freehold emphasizing the fact that the estates were specifically granted to native chiefs and adjudicated because the land was demarcated, surveyed and land titles were issued respectively. Customary land was therefore formalised into freehold tenure without consulting the indigenous leadership²⁵.

The Crown Land Ordinance of 1903 made it clear that persons occupying land under customary tenure were never regarded as owning the land²⁶. 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 investment²⁷.

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. It is against this that the post-colonial period is subdivided into two; periods 1962-1995 and 1995-date.

a) Period 1962- 1995

Upon independence in 1962, Crown land in Uganda was renamed as public land under the Public Land Act of 1962. In this act, indigenous Ugandans still had a right of occupancy 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 that 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 required.

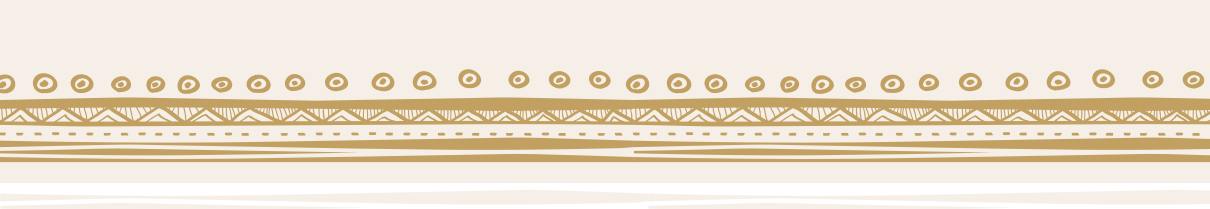
In 1975, the Land Reform Decree²⁸ (LRD) was passed by then the president of the Republic of Uganda Idi Amin. The decree came with changes that altered the land tenure systems and rights that were in existence. The changes were:

- All land in Uganda be held by the state in trust for the people to facilitate its use for economic and social development.
- All land in Uganda was declared public land to be administered by Uganda Land Commission and vested in the government of Uganda.
- It was unlawful for one to acquire or transfer customary land without permission and giving notice to what was termed as the 'prescribed authority' respectively; customary land owners became tenants at sufferance

These changes were however more on paper than in practise. Many of the changes stipulated by the decree never materialised.

b) 1995 - to date

This period saw the emergence of a new legal and policy regime for land governance and administration comprising the 1995 Constitution, the Land Act Cap 227 and later the National Land Policy. Customary tenure system was given formal recognition 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.²⁹

The Land Act Cap 227

The Land Act actualized most of the reforms provided for in the 1995 Constitution³⁰. It reiterated constitutional pronouncements that recognised customary tenure as a legitimate system of land holding as per the Constitution and defined the various ways in which it manifests. In addition, it granted customary land owners the option of formally registering their land by converting it to freehold or by applying for issuance of a Certificate of Customary ownership (CCO) upon completion. This certificate would be recognised by financial institutions and other bodies and authorities as a valid Certificate for purposes of evidence of title.

The National Land Policy.

The National land Policy recognised customary tenure as being at par with other tenure systems and proposed that in order to facilitate the evolution and development of customary tenure in relation to social, economic, political and other factors, government must take measures to design and implement a land registry system to support the registration of land rights.

CUSTOMARY LAND REGISTRATION

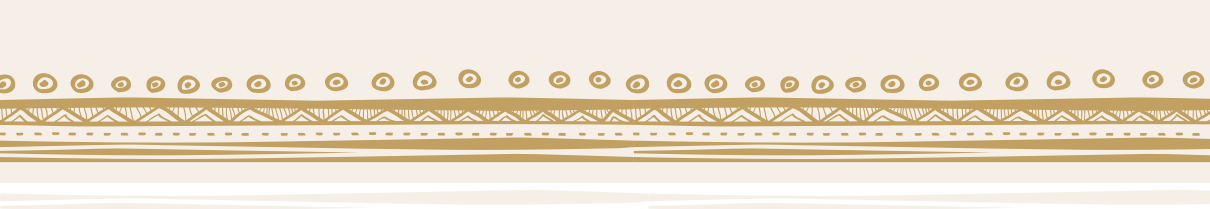
The smallest proportion of land in Uganda is registered. This means that rights recognition applies informal mechanisms and non-documentary evidence to help establish rights. Boundaries are demarcated using natural markers such as ant hills, streams, hill tops, trees, shrubs or stones. These are respected and known. Ascertainment of ownership is often witnessed by the clan or council of elders or the family head.³¹

The Land Act primarily governs the registration of customary land while the Registration of Titles Act governs registration under freehold, mailo and leasehold tenure.

Through the Registration of Titles Cap 230 Act, Uganda adopted the Torrens system of land registration which is used in most commonwealth countries. The Torrens title system is a method of registering titles to real estate.³² The land registry operates the system, with a Commissioner Land Registration and Registrar of Titles as the key officers. In Uganda, the land office comprises five staff: a valuer, physical planner, surveyor, a land officer and a registrar. The owner of the land files a petition with the registrar to have the land registered.³³ The registrar of titles reviews the legal history of the land to determine if a good title exists. If a good title exists, the registrar issues a certificate of title to the owner.³⁴ The certificate is ordinarily conclusive as to the person's rights in the property and cannot be challenged or overcome by a court of law.³⁵ The title is guaranteed by the government of Uganda as a good title. If a mistake is made by the Registrar of Titles, compensation is paid to the person who holds a claim against the land. When the owner sells the property, the certificate alone is evidence of good title, eliminating the need for new examination of title. The purchaser presents the deed and the certificate of title to the registrar, who records the purchaser's name of the title.³⁶

Registration of Customary Land

Registration of customary land was introduced in 1998 with the coming into force of

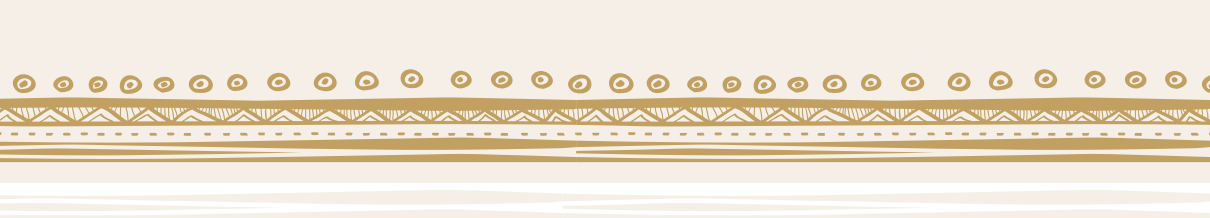


the Land Act, Cap 227. Section 6(1) of the Land Act provides that a person, family or community holding land under customary tenure on public land may acquire a certificate of customary ownership (CCO) in respect of that land. An individual, male or female or a family may apply to the family or clan 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.³⁷ A customary tenure registry is currently existent at sub-county level for this purpose.

We contend that Certificates of Customary Ownership 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 and the registered instrument does not notice to the whole world of the rights created and the rights created are merely in personam. Instead, the land recordation system simply invites searchers to inspect copies of documents and to draw their own conclusions as to title. Registration does not cure any defect in the document or confer upon it any effect or validity which the document would not have had. The document once filed does not provide conclusive evidence concerning the status of rights to land. Any interested party is invited to search the evidence and make their own determination as to the status of land rights although a personal determination is not definitive as to title. In summary, the CCO as is does not confer a title free of defects.

Fit for Purpose approaches to customary land registration and administration

The Land Act Cap 227, read together with the Land Regulations, 2004 places very low requirements on the capturing of spatial data, survey and mapping of customary land. They provide for a simple hand drawing of a sketch map after the boundaries of a piece of land have been measured using a tape. It is not necessary to draw the sketch to scale and the total area shall only be estimated. No spatial framework is needed and the sketch maps are not geo-referenced by any other means. Cadastral index maps do not have to be established for customary land.³⁸ This has given rise to the use of fit for purpose approaches to register customary land rights in Uganda.

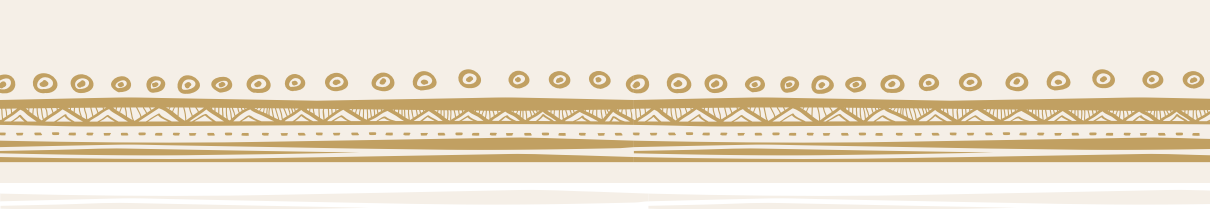


There are currently four tools that have been piloted in the country to facilitate the documentation of land rights of the 70% of the supposedly un-surveyed land (mostly under customary tenure) so as to create a complete and coherent cadastre in a relatively short time. These tools are Systematic Land 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).

Data collected by the tools is highly dependent on the aims and objectives of the project under which the tool is being piloted. This may be spatial or administrative data. It includes; data about the parties such as the name, 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 hand held single frequency GPS tablets for data collection backed by the flexibility of the Land Administration Domain Model (LADM) as it relies on a principle of a continuum of accuracy as one of its principles. A range of base maps are embedded in the field software in order to facilitate visibility of boundaries and identification of general features. These include; Google Maps, OpenStreetMap and 40cm Orthophotos provided by the Ministry of Lands, Housing and Urban Development as their base maps. There is a variability in the software applied in data management, however most of this relies on local database hosts.

Advantages of the using FFP for registration of Customary land

The tools have assisted in the delivery and sensitization of local communities and land professionals regarding land rights and tenure security. 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. Some tools for example STDM



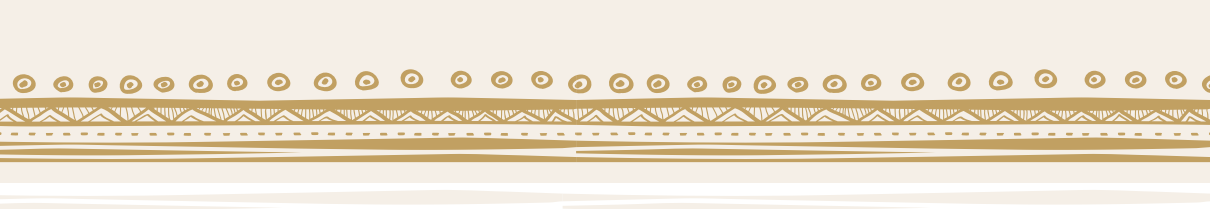
issue legal certificates declaring exclusive ownership of the land identified in the defined tenure regime. The Land Administration Domain Model (LADM) is the primary model under which the entire Fit-for-Purpose (FFP) approach is drawn. In its sense the model is entirely focused on an integrated cadaster and legal register for all formal and informal systems.

Challenges encountered while using these tools for registration of customary land

Parcel data collected using Global Positioning Systems (GPS) is maintained in World Geodetic System (WGS) 84. This is contradictory to what is required in the National Land Information System that is currently based on the International Terrestrial Reference System epoch 2005 (WGS84) /UTM Zone 36(N/S). This results into data ambiguity since some tools are unable to embed the existing cadastral sheet to identify already mapped areas and those that are not.

Furthermore, it is important to note that aside from the Cadastre Inventory Saving Paper (CRISP), none of the other initiatives currently record overlapping land rights and instead do so through parcel-by-parcel approaches and visualization that in many cases intend to seek adjustment to administrative workflows and requirements in order to produce legitimate and government recognized land tenure documents.

The tools exhibit differences in the data models and classes. This is noticed where for some tools classes may be indicated merely as attributes in a different tool. For example, with the STDN tool which adopts; 'local government', 'informal settlements' and 'rural agriculture' as the major classes for the various tenure data. This deviates from what is stipulated in the Land Administration Domain Model which recognises Spatial Unit, Party, Rights, Responsibilities and Restrictions (RRR) as the main classes. The Land Administration Domain Model is the standard onto which all Fit for Purpose tools are modelled. The above creates a disparity in the data collected hence making its integration into the national system difficult.



In contrast to other countries' application of fit for purpose, mobile mapping devices have been mainly suitable for utility mapping rather than ortho-rectified photographs and provide better accuracy. They have been used to identify boundaries in a participatory manner. This information is later scanned and digitized into the national cadastre. This supports seamless data integration with a cadastre of industry-recognized standards for scale, positional accuracy, resolution, and any other requirements. Uganda has in many cases not adopted this approach.

In addition, interoperability concerns in data management were observed. For instance, there are differing unique parcel identifiers generated by the different tools which have been arrived at differently. Those unique parcel identifiers are also divergent from the known ones such as the block and plot system, the volume and folio number used under the Torrens System. Further, the Customary Land Identification Number (CLIN)s used on Certificates of Customary Ownership are largely unstable owing to the fact that they are currently based on district administrative boundaries that keep changing over time with the creation of new districts. This makes it difficult to represent and reference data seamlessly especially in terms of linking both the cadastre and register.

The tools also apply different image backgrounds (base maps) such as Google Earth images, local ortho photos or land use data like google maps/OpenStreetMap which affects the quality and accuracy of cadastral development.

The National Land Information System today (Ug LIS)

The National Land Information System (NLIS) currently centres on only three tenure systems that is freehold, mailo and leasehold. These operate based on the Torrens system of land registration and were modelled to feed into the national registry. Customary tenure is instead mapped and adjudicated and CCOs issued to people through procedures and techniques that do not meet the standards and requirements of the National Land Information System. Fit for Purpose tools that have been employed to have customary land plotted and included in the national cadastre currently present information with varying spatial accuracies and specifications in relation to what is required in the NLIS. With these

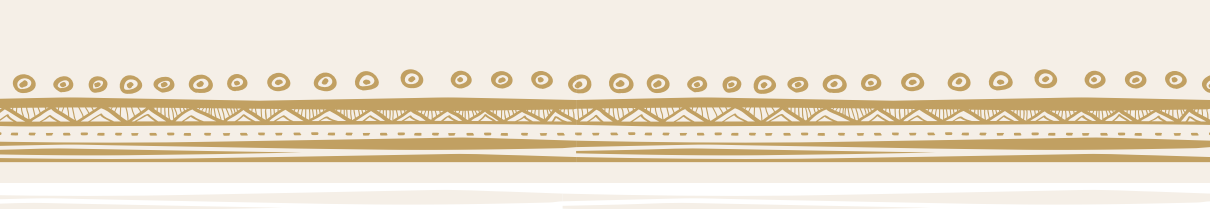
identified spatial challenges, there is still limitation on the entry of this customary land data into the NLIS. These need to be addressed if the aspiration to have customary tenure at par with other tenure systems as envisioned in the National Land Policy is to be realised.

ISSUES CURRENTLY PLAGUEING CUSTOMARY LAND REGISTRATION

Establishing a land title register consists of four main stages: adjudication which is the initial determination of existing land rights; demarcation, which is the marking of the limits of each parcel on the ground; survey, which involves measurement and mapping; and recordation which provides for description of the land parcel and tenure rights, responsibilities and restrictions.³⁹ The initial determination of existing rights 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 four processes are interdependent.

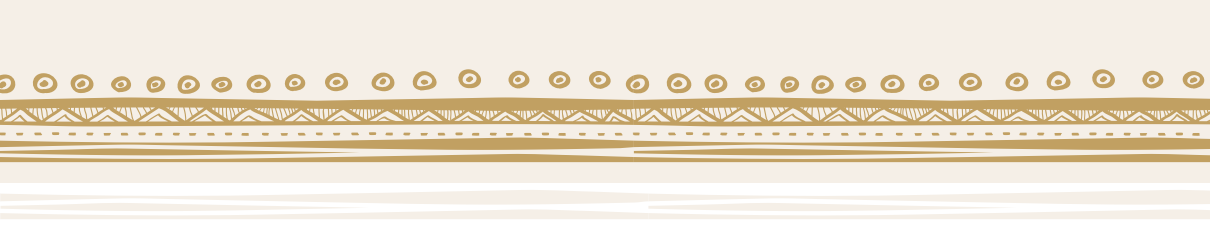
An assessment of registration of customary land law and practices established that it was generally coherent with the general stages of land registration and is in fact quite similar to the procedure laid out for acquisition of a Certificate of Title. However, significant loopholes within these customary land registration processes undermine the quality of the outcome or document issued (CCO). These loopholes include;

- a) The nature of survey & mapping done which : 1) codifies the tools (tape) to be used in the exercise hence inhibiting evolution of the survey & mapping practice, 2) use of sketches not drawn to scale compromises the accuracy of the information presented as it does not reflect the actual area of the land, 3) inhibits smooth subsequent transactions on the CCO, due to the need to rigorously revisit all the stages of land registration, 4) the unstable unique identifier (Customary Land Identification Number-CLIN) for the proprietary register, which is based on the



administrative nature of the boundaries such as districts that keep changing creating interdependence of the overall registry onto the administrative boundaries. 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 (one block and plot) to two different administrative areas. Even Though any unique identifier must be simple, 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)** The lack of state guarantee on Customary Certificate of Ownership 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. Lack of state guarantee makes it difficult for third parties such as credit institutions to rely on the information presented and extend credit to these applicants.
- c)** The Land Act stipulates that the CCO shall be taken to confirm and is conclusive evidence of customary rights and interests specified in it. This borrows heavily from the Torrens principle of indefeasibility of title. The principle is to the effect that once a person is registered as proprietor, his title cannot be defeated except for fraud. They are immune from attack by adverse claim to the land or interest in respect of which he is registered. The certificate of customary ownership not being founded on the concept of title of registration, it becomes close to impossible to enforce this protection.
- d)** The option of conversion of the certificate of customary owners to freehold intrinsically implies that the CCO offers less safeguards as compared to the certificate of title.
- e)** There is overall lack of maintenance of the registries at sub county level. For example, although the Land Act Cap 227 and Land Regulations (statutory instrument no. 100 of 2004) mandate the recorder at the sub county level to record all subsequent updates of the transactions on any CCO, this in many



instance is not the case. This defeats the mirror principle of registration and greatly contributes to the unsearchable nature of these registries.

- f) The general boundary rule exercised for customary land survey mapping is problematic. There is no standard tolerance, measurement or ratio that can be attributed to the relationship between the position of the “general boundary” shown on the Land Registry title plan and the position of the legal boundary in the current national registry. Also the general boundary found on site and which will usually take the form of a fence, wall, hedge, posts, line, ditch or line of trees, for example may, or may not, follow the line of a legal boundary contributing to problems and disputes.
- g) The Land Act Cap 227 provides for optional registration of customary rights and interests. This indicates that there is going to be sporadic initial demarcation of land parcels which can very easily contribute to overlaps in the title plans when eventually entered into the customary land registry.

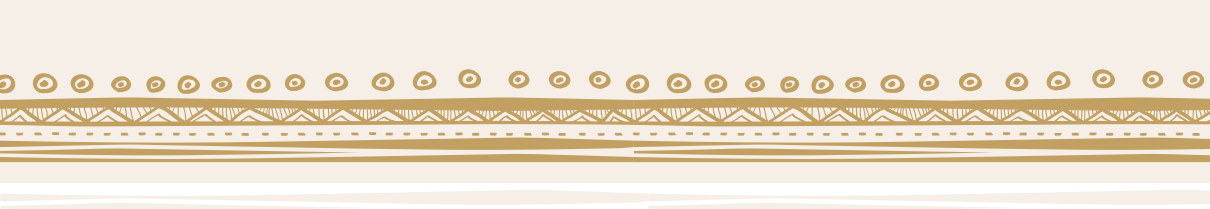
Overall the four stages of the land registration should be reflected and coherent across all forms of tenure as provided in the 1995 constitution of the Republic of Uganda. These must be encapsulated within the legal, spatial (surveying & mapping) and institutional framework in a context sensitive manner.

RECOMMENDATIONS

Land registration is a societal activity both shaping and 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 land registration activities rely on some form of land administration infrastructure which permits the complex range of rights, restrictions and responsibilities in 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 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 registration.

Recommendations:

- **Hybrid System:** Adoption of a hybrid system of land registration that is specific to the Ugandan customary context but incorporates relevant attributes 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.
- **Legal reform:** Laws with a bearing on customary land registration such as the Land Act Cap 227, the Survey Act Cap 232 among others need to be revised to reflect all progressive proposals. Advocate for the development and passing of a Customary Land Registry law. This law will detail all the clauses relating to the transfer of customary land and registration of certificates of customary title. Government should not attempt to mould customary land registration processes to fit within existing legal structures as this will not solve the current impasse or recognize the nuances unique to customary land tenure.

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- 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. In addition to this, there is need to document the rights, responsibilities and restrictions of each land interest accruing from the bundle of rights.
 - The Ministry of Lands, Housing and Urban Development sets standards to regulate 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.
 - We further recommend that registration of customary lands is conducted in a systematic way. The selection of priority areas for registration should depend on the problems the 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.
 - The Ministry of Lands, Housing and Urban Development through the National Land Information System, should standardises the processes that facilitate efficient digital data flows between the different steps involved in land record maintenance, boundary demarcation and cadastral mapping and registration under customary tenure. In addition, the standards stipulated should be flexible enough so as to allow future technologies to be adopted without changes to the rules and regulations. 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.

- There is a need for the government to carefully and constantly monitor pilots on customary land registration. It is crucial to garner information from already existent initiatives and extract benefits and shortfalls that can be used to improve customary land registration moving forward.
- Prior to establishment of a Customary Land registry, the government should conduct an assessment of existing women land rights both registered and unregistered as well as cultural inheritance, marriage and divorce patterns to inform titling or certification programs.
- The extent of the powers of traditional leaders in the land registration process needs to be clearly defined. In order to minimize disputes on whether or not a traditional leader is recognized as such within that community and has the authority to perform stipulated duties, we propose that a living register of customary/traditional leaders should be developed and maintained by the Ministry of Gender, Labour and Social Development and copies availed at each MZO. Linkages between formal and traditional land administration structures need to be clearly established to avoid uncertainty.

Conclusion

The proposals 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 Certificates of Customary Ownership (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.

Endnotes

- 1 Section 8(1) of the Land Act Cap 227.
- 2 <https://www.land-links.org/issue-brief/the-future-of-customary-tenure/#summary>
- 3 FAO, 2002
- 4 Article 237(3) (a).
- 5 Section 3(1)
- 6 Page 12 *Public Provision of Land Formation: Registry and Cadastre: The Land Governance Assessment Framework Technical Expert Report*. LANDnet Code: LN007
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- 9 Ibid
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- 27 Okuku, J. A. (2006). The Land Act (1998) and Land Tenure Reform in Uganda. Africa Development Journal XXXI (1), 1–26.
- 28 Decree No. 3 of 1975
- 29 Article 237 (1) of the 1995 Constitution Of the Republic of Uganda.
- 30 The National Land Policy, 2013 at page 5.
- 31 *Public Provision of Land Formation: Registry and Cadastre: The Land Governance Assessment Framework Technical Expert Report*. LANDnet Code: LN007. Page 14
- 32 *Public Provision of Land Formation: Registry and Cadastre: The Land Governance Assessment Framework Technical Expert Report*. LANDnet Code: LN007. Page 7
- 33 Sections 9 and 10 of the Registration of Titles Act, Cap 230.
- 34 Section 38 of the Registration of Titles Act, Cap 230.
- 35 Section 59 of the Registration of Titles Act, 230
- 36 *Public Provision of Land Formation: Registry and Cadastre: The Land Governance Assessment Framework Technical Expert Report*. LANDnet Code: LN007
- 37 Section 22(1) of the Land Act, Cap 227 as amended.
- 38 *A Fit-for-Purpose Approach to Register Customary Land Rights in Uganda* (10221) Hans-Gerd Becker (Uganda)
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