Catalyzing Innovation

ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY
WASHINGTON DC, MARCH 25-29, 2019

Paper presented at the Land and Poverty Conference

2019: Catalyzing Innovation

March 25-29, 2019, Washington, DC

Lessons from Uganda: Innovating land governance in predominantly customary settings.

David Betge, Thorsten Huber, Zeno Pack

Abstract:

This paper provides practical recommendations and lessons learned to build on the achievements of Uganda's ongoing land tenure reforms. The authors draw on practical experience with implementing land tenure projects in two different regions of northern Uganda. Their findings are based on recent evaluations of these projects, current literature and the results of ongoing engagements with multiple stakeholders. The article highlights key elements for speeding up the current process of developing a comprehensive land governance system while ensuring its sustainability and taking into account opportunities for innovation.

Acronyms and Abbreviations:

ADR – Alternative Dispute Resolution

ALC – Area Land Committee

ARLPI – Acholi Religious Leadership Peace Initiative

CCO – Certificate of Customary Ownership

DLB – District Land Board

GIZ – German International Development Cooperation Agency

IDP - Internally Displaced Person

LIS – Land Information System

LRA – Lord's Resistance Army

MLHUD – Ministry of Lands, Housing and Urban Development

RELAPU – Responsible Land Policy in Uganda

FFP – Fit For Purpose Land Administration

Introduction

Land governance is high on the political agenda in Uganda and land is '*a national priority*' (MLHUD 2015). With the *Land Act of 1998*, a process of land reforms was started which is meant to transform '*Ugandan society through optimal use and management of land resources*' (ibid.). These efforts entail a comprehensive *National Land Policy* and the building of a *Land Information System* (LIS) with a digitized registry (World Bank 2018). The measures taken by the government and its partners respond to strong pressures on land caused by high population growth, increased land-based investments, and land speculation resulting in a rise in conflicts around land (MLHUD 2015). They are also aiming to accommodate the different tenure systems recognized by the constitution and the fact that a great majority of land in Uganda is managed through customary systems (see e.g. Atkinson et al. 2016, UNHabitat 2015). One of the ways to do this is through issuing *Certificates of Customary Ownership* (CCO). The *Land Act* states that any person, family or community holding land under customary tenure on former public land may acquire a CCO for that land (Uganda Land Act 1998, §4 (1)). At the same time, the tools, processes and structures needed to register land, including customarily held land on a large scale, are at times unclear or even contradictory. Recent research suggests a strong demand for land registration among communities, but also strong insecurity about the best way to facilitate this (Atkinson et al 2016). There have been allegations that customary tenure is "treated as inferior compared to all the other forms of tenure in Uganda" (UNHabitat 2015: vii).

Over the past years, international partners of the Ugandan government started a number of pilot projects to develop functioning land tenure registration systems. The *German International Cooperation Agency* (GIZ) and the Dutch non-governmental organization (NGO) ZOA are among the actors with ongoing projects aiming to improve tenure security within settings with predominantly customary ownership.

ZOA's land rights work in Uganda

ZOA is one of the pioneers in Uganda when it comes to working on customary land rights security for rural households. ZOA works on land tenure registration and land conflict resolution in Nwoya district of the Acholi region, in the North of Uganda. In this area, people were forced to live in camps for around a decade until 2007, due to the war between the government of Uganda and the *Lord's Resistance Army* (LRA). When the population started to return to their homes, the number of land-related conflicts increased massively. People found their land occupied while others laid claim to land without proof of rights. Local courts were overburdened and traditional authorities unable to resolve the large number of conflicts.

ZOA set up a tenure registration program supported by the Dutch *Pharus foundation* and in cooperation with the Ugandan government. This project revolves around setting up local structures to facilitate land demarcation and registration according to the applicable legislation following the requirements of the Ugandan Land Act. The tenure registration itself is flanked by campaigns to engage with the local population and traditional authorities regarding the process and its objectives, facilitated by conflict resolution and inter-community communication about these issues. Essential to the registration process itself are capacity building of local state actors and other stakeholders and linking these different efforts with actors and processes on higher levels of government, including the national ministries. The project aims to support economic development in the district through increasing tenure security and providing support with agricultural activities. The initial ZOA project has triggered further

projects by ZOA that facilitate land tenure registration with a specific focus on vulnerable groups and securing land for sustainable agri-business and green growth.

GIZ's land rights work in Uganda

The GIZ project *Responsible Land Policy in Uganda* (RELAPU) is part of the *Global Project Responsible Land Policy* and belongs to the special initiative *One World No Hunger* (SEWOH) of the *German Federal Ministry for Economic Cooperation and Development* (BMZ).

The projects' objective is „to improve access to land as a key precondition for poverty and hunger reduction in rural areas for certain population groups, especially for women and marginalized groups." The project on customary land tenure is implemented in the two districts Soroti and Katakwi of Teso Region in Eastern Uganda.

The aim of the project in Teso is to demarcate and register land ownership rights of rural households in order to enable those to apply for *Certificates of Customary Ownership* (CCO), similar to the approach done by ZOA in Nwoya. Teso had been riddled by numerous conflicts originating from the war of the Ugandan Government against the *Lord's Resistance Army* (LRA), cattle rustling between the Karamojong and Iteso and the resistance of the NRM against the former Ugandan President Idi Amin. This left many people in Teso as *Internally Displaced Persons* (IDP) and resulted in the loss of their homesteads. Once the households returned to their homesteads, land wrangles erupted due to unclear boundaries or land being occupied by others.

Land in Teso is a highly sensitive issue and at the onset of the project, the project team was met with high resistance towards the efforts to document land ownership rights. Based on lessons learned from ZOA in Nwoya and as a result of cautious sensitisation and information provision, flanked by conflict mediation activities, the situation has dramatically changed. Nowadays, the population in Teso is highly interested in having their land documented. Especially the innovative approach of the GIZ project to have land documentation directly carried out by the mandated local land administration structures (Area Land Committees) at sub-county level. These receive through the sub-counties, direct financial contributions of GIZ RELAPU. In this way the capacities of these mandated structures are built ensuring a higher level of sustainability of the project approach

ZOA and GIZ efforts to support sustainable land registration in Uganda

The two projects employ low-cost approaches that utilise cost-efficient technological solutions to improve land administration.[1] The approaches are broadly based on the ideas and methods of the *Social Tenure Domain Model* (STDM) and *Fit For Purpose Land Administration* (FFP)[2]. Local administrators and members of the *Area Land Committees* are trained in using simple GPS devices and complementary digital tools to collect and store data on people-to-land relations (parcel coordinates, personal data of different rights holders, and various types of rights). A strong challenge is to find an efficient way to store and manage the collected data, which can be used as a standard on both the local as well as the national level. Furthermore,

---

[1] However, even with the current low-cost approaches, costs are still an issue in the context of prevailing poverty.
[2] See: Fit For Purpose Land Administration – Guiding principles for country implementation, Authors: Stig Enemark, Robin McLaren and Christiaan Lemmen, United Nations Human Settlements Programme UN-Habitat, 2016.

there needs to be constant attention towards a participatory approach that accommodates the needs and interests of customary communities.

Graphic 1: CCO process as used applied within ZOA and GIZ projects
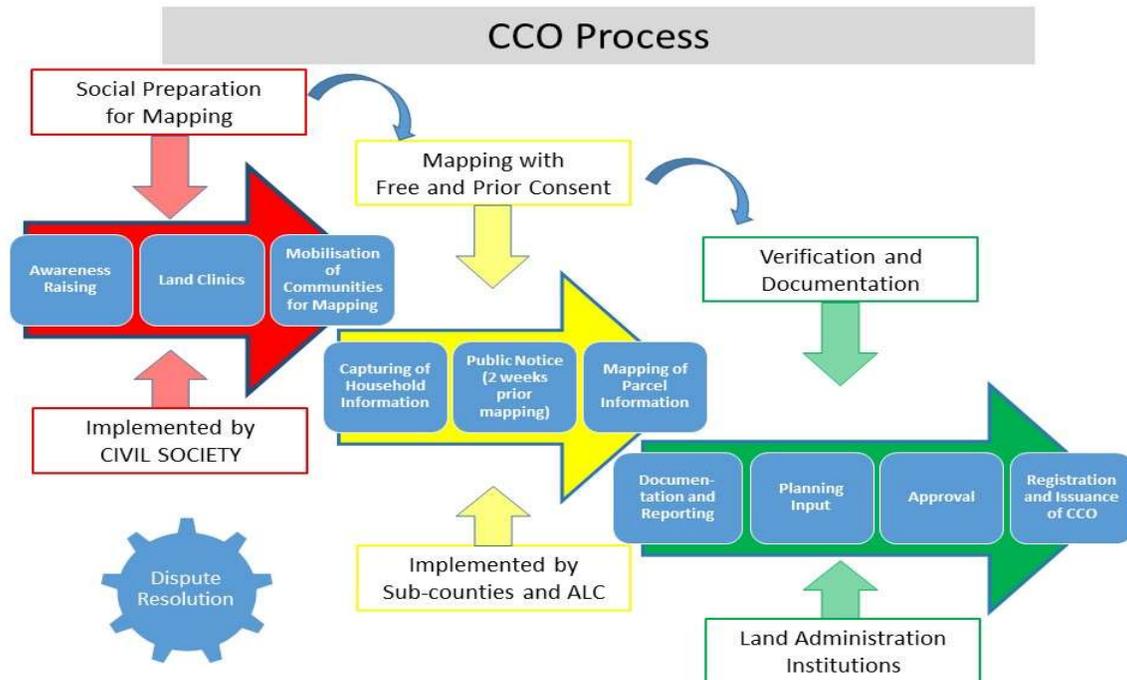
Both programs (ZOA and GIZ) have so far achieved a number of successes beyond the registration of CCOs. The provisions governing customary tenure registration within the existing legal and regulatory framework were largely unknown before the intervention, among the communities, political and traditional leaders and other duty bearers. CCO registration allows for a continuous management and administration according to customs. The basic requirement for a sustainable land administration system is that the changes through subsequent transactions are registered continuously after the initial registration, an issue that has not been sustainably resolved yet. Generally, the traditional structures (clans) can continue to play their role in land governance within the CCO system.

Before the start of the two projects, misinformation had led to mistrust among political and traditional leaders in Northern and Eastern Uganda in general, and the Acholi and Teso sub-regions in specific. CCOs were suspected to be an instrument of land grabbing or commoditization of customary land. In both sub-regions, a high mistrust against any land related activities supported by the *Ministry of Lands, Housing and Urban Development* (MLHUD) was prevalent. Especially for the project activities in Teso, Eastern Uganda this was the case as the GIZ RELAPU project is implemented in direct partnership with the MLHUD. Through exposure visits for opinion leaders from the political, religious, traditional and administrative leadership, radio talk shows, radio spot messages, drama and community dialogue meetings at the village, parish and sub-county levels, information about the urgent need for land conflict resolution and opportunities for increased tenure security through registration of customary land were disseminated. For GIZ, the fact that project activities of

ZOA in Nwoya had already been ongoing for more than a year created the opportunity to organize exchange visits of leaders from Teso to Nwoya. This created the necessary understanding and the buy in of local leaders to the project approach and paved the way for full implementation of the project in Teso.

The district leadership took the lead in building widespread support for land registration by conducting stakeholder workshops and outreach activities within the community. Because of the success of both projects, other districts in Northern and Eastern Uganda have sent requests for support to ZOA and GIZ respectively, and the *Ministry of Lands, Housing and Urban Development* has asked for rolling out customary land registration services.

Successes and challenges

Both projects now provide an evidence base for the argument that technical upgrades to land administration are possible by integrating low-cost, fit for purpose solutions into the existing process for CCOs. At the same time, numerous challenges to long-term sustainability were revealed. The registration of subsequent land transactions (after initial registration) for example seems to be going slowly which poses a danger to the long-term accuracy of the collected data. Additionally, the focus of projects is often on first-time registration, whereas subsequent transactions are left out of the process. So far, there are no technical guidelines on the process of registering transactions. Furthermore, for both projects, land conflicts are a central challenge that need to be addressed with a range of tools. While progress was made by facilitating mediation and improving the capacities of various local bodies to accommodate conflict resolution (including traditional authorities and local government bodies), this remains a critical issue[3]. Then benefits of registering customary land need to reach all strata of society, in particular vulnerable groups and the strongest possible alignment with traditional governance modes needs to be achieved.

Graphic 2 below attempts to illustrate where Ugandan and project documents can be aligned in the continuum of land rights and in terms of (perceived) tenure security. Especially, CCOs with good documentation should provide a very high tenure security, at a low cost.

---

[3] For example, forum shopping i.e. the approach of *favourable* institutions still frequently occurs.

Graphic 2: Continuum of Land Rights adjusted to Ugandan Context.
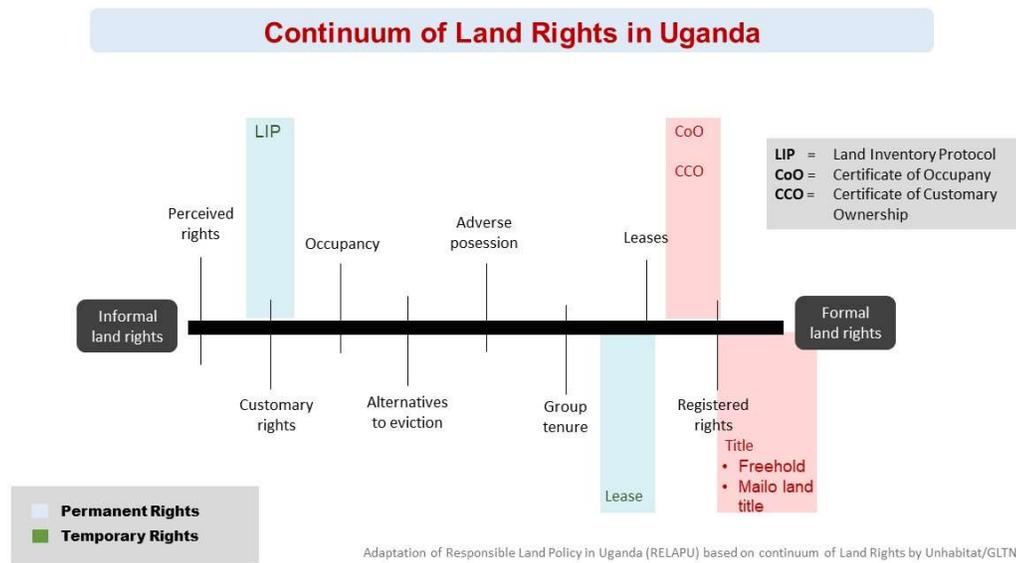
The CCO process directly links to the customary and the statutory system. This means that the role of traditional dignitaries needs to be taken into account very clearly. For example, in Nwoya district the Rwodi Kweri (local traditional leaders, comparable to village chiefs) play an important role in the work of the *Area Land Committees.* This requires a certain formalization and guidance relating to their role. Among other things, a coherent handover from one Rwot Kweri[4] to another is required to ensure that the CCO process is understood and sustained across transitions. Furthermore, the process of selecting and training mediators needs to be reviewed and possibly formalized to ensure adequate individuals are selected and receive training of the required quality and intensity. It is also clear that increased capacities within the legal system will be needed to facilitate sustainable resolution of land conflicts. The training of local paralegals might be an option to support people to protect their rights within the formal judicial system.

Recent evaluations of the first pilot phase in Nwoya district (ZOA) and the mid-term review of GIZ-RELAPU in Teso have revealed several challenges that need to be addressed:

- Comprehensive representation of all rights holders on CCOs. So far, there are strong variations between different individual cases and not all individual rights are sufficiently documented.
- Stronger involvement of marginalized individuals and groups in the process. This requires efforts on the sides of all implementing actors.
- Lack of an accessible and low-cost process for registering subsequent transactions. It appears that people are reluctant to register mutations on their land after initial registration, which seems to be the result of transaction costs, among other things.
- Improved documentation of community engagement processes. It is not clear if in all cases coherent processes for engaging with communities are followed, that allow for a sufficiently participatory and informative process.

---

[4] Note: Rwodi Kweri is the plural, Rwot Kweri the singular (traditional leaders)

- Limited legal literacy of stakeholders. Community engagement needs to take into account the limited legal literacy of many among the local population. There needs to be sufficient room to address legal empowerment. Further support measures for legal challenges might be needed.
- Lack of funding of government land actors such as DLB, ALCs and the ministry itself. Structures on local level such as DLB, ALCs and the *District Land Offices* often have insufficient funds to fulfil their duties. There is limited support from the MLHUD at the central level. This also affects staffing of local structures.
- Limited capacities of the *District Land Board* to speed up finalization of CCOs. After the data collection process, the processing of applications is time consuming and leads to delays.
- There is lacking guidance on how to meet physical planning requirements for the application for CCOs. Physical planning committees are not in place everywhere. It is also unclear what exactly their role needs to be in the process.
- No clear technical guidelines including on data capture, storage standard and the fees that can and should be asked in relation to the CCO process. A number of the issues above could be solved by issuing clear technical guidelines for the CCO process.
- Upscaling: Uganda has about 2,000 ALCs, which have a maximum term limit of 6 years (two times three-year-terms). The constant need for capacity building will remain a challenge for both, local authorities and MLHUD. Potentially some changes need to be considered. The same applies to the 130 DLBs.

To keep the current momentum of improving land administration and governance in Uganda several changes and improvements are necessary:

- Improvements of the technical process for land demarcation and data management → Technical guidelines based on a review of the current processes and an identification of good practices applied in the pilot projects. These should be issues by national authorities.
- Decision of the MLHUD on technical standards for data capture and storage and strategy for data to be integrated into the Land Information System of Uganda.
- Adaptation of existing legislation to accommodate systematic documentation approaches including technical developments (an attempt was made with a national strategy, which has not been finalised)
- Stronger exchange and cooperation among actors involved in pilots including sharing of best practices.
- Long-term vision on the national level that allows for locally adapted solutions derived through participatory processes and their recognition by law and uptake in technical guidelines → Integration of lessons learned and best practices into land policy work in order to further improve land laws and regulations.
- Long-term strategy to scale up working solutions at national level including serious commitment for funding.
- Capacity building of relevant local stakeholders such as customary representatives to become effectively involved in land tenure registration.
- Capacity building of the judiciary to complement the ongoing efforts. This might also require a change in oversight regulations to ensure that local courts are supervised on the local level, in contrast to the current situation. Additionally, a stronger recognition by the legal system of Alternative Dispute Resolution (ADR) processes could help to reduce pending cases in court.

Conclusion

The current efforts of the Ugandan government, local communities and their partners are bearing fruits. While there are still challenges to be tackled, the progress is visible and inspiring. Bridging the divisions between customary and statutory land governance is a central challenge to inclusive development (FAO 2010). Developing a coherent land governance system that accommodates customary tenure requires ongoing, incremental adaptation and improvements. Unprejudiced cooperation and the willingness to learn from different experiences and perspectives as well as further significant investments in the process will be the basis for continued success. With clear legal and technical guidance from the Ugandan government, this can become a model for the successful alignment of statutory and customary tenure systems.

Bibliography:

ATKINSON, Ronald R. et al: Piloting the Protection of Rights to Customary Land Ownership in Acholiland: A Research Project of the Joint Acholi Sub-regional Leaders' Forum (JASLF) and Trócaire Report on the Field-Research Component, Online: https://www.trocaire.org/sites/default/files/resources/policy/phase_i_research_report_-_piloting_the_protection_of_rights_to_customary_land_ownership_in_acholiland_final_report.pdf (accessed: 08-01-2018).

FAO 2010: Statutory recognition of customary land rights in Africa. An investigation into best practices for lawmaking and implementation. FAO Legislative study, Author: Rachel S. Knight, available online: http://www.fao.org/docrep/013/i1945e/i1945e00.pdf (accessed: 07-02-2019).

MLHUD - Ministry of Lands, Housing and Urban Development, 2015: THE UGANDA NATIONAL LAND POLICY IMPLEMENTATION ACTION PLAN 2015/16 – 2018/19, Online: http://mlhud.go.ug/wp-content/uploads/2015/10/National-Land-Policy-Implementation-Action-Plan-2015-16-to-2018-19.pdf (accessed: 08-01-2019).

UNHABITAT, 2015: CERTIFICATES OF CUSTOMARY OWNERSHIP, Experiences from the District Livelihood Support Programme in Uganda, Authors: Dinah Mayanja, Dorothy Massa, Okello Julius, Report 1, 2015.

WORLD BANK, 2018: Land Administration Reforms Cut the Red Tape, Online: https://www.worldbank.org/en/news/feature/2018/04/20/land-administration-reforms-cut-the-red-tape (accessed: 08-01-2018).