

2. Why is land administration failing to protect land rights?

Ugandan land law has very good intentions to ensure that everyone's land rights are protected. Customary land law, which Parliament has supported with full legal backing, also takes very seriously the protection of everyone's land rights, especially women and children¹. Despite this, the situation on the ground is alarming. Land conflicts are rampant – and most of these disputes are deliberately created by people with 'power' trying to grab the land rights of those with less 'power'. The situation which is most well known is the widow being threatened by her late husband's family. (The situation is so common that many people think that in-laws have inheritance rights under customary law. They don't. A widow takes over the role of family head, with the same rights and responsibilities that her husband had, over all the family's land.) This is only one manifestation of the problem of the strong taking advantage of the weak. Old people who have no sons in the village to protect them are vulnerable to land grabbing from their neighbours. Orphans have to depend on the goodwill of their uncles, and often these are the very people who steal their land. The most common victims are divorcees and unmarried women, guaranteed a share of their parents' land by both customary and State law, but rarely treated fairly by their own brothers². This problem is making thousands of people destitute and causing many more to live in fear; it is a problem that is in no-one's interests; and yet it is going on every day. Part of the solution

must come from the justice system (see the accompanying discussion paper *why is the legal system failing to protect people's land rights?*). However, the justice system alone cannot solve the problem: the cases are simply too many for courts to deal with. Part of the solution lies in preventing cases from arising, and the land administration system has a key role to play in this.

What does 'land administration' mean?

Every society needs a system of land administration. These systems are organised in many different ways: in some countries there are computerised record keeping systems, in other societies 'records' could be kept in an unwritten form by community elders. Whatever system is used, the functions of land administration are broadly the same:

- to make sure that rights are clear (so everyone knows who has what rights to which land)
- to make the transfer of land rights easy (for inheritance, rental, sale, etc.).

This will serve two related purposes. It will:

- reduce the number of disputes, because it is harder to make spurious claims if you have little chance of winning;
- make it easier to solve disputes which arise.

The tasks of land administration are not complicated in principle, though they may be difficult in practice. They are: to make land boundaries clear; to keep records of these boundaries (whether written or not); to keep a record who has what rights to those plots of land. Because rights are continually changing, with inheritance, allocation, gifts, sales, etc., land administration has to continually update these records.

¹ See paper, 'What land rights do people have under the rules of customary tenure?'.
www.land-in-uganda.org

² A full research report detailing the evidence will be available on www.land-in-uganda.org

Customary land administration

In the past, customary land records were kept orally. Clan leaders would know which land belonged to which family, and the family heads would know which family member had rights within the family land. This worked well without anything being written down. However, today, the system no longer works. Land is becoming a scarcer resource, and is no longer valued only because it can be used: people want as much as they can, because it has a market value. This pressure creates more disputes than before, and the disputes have much more serious outcomes. When someone loses their land, there is no more 'spare' land for them to resettle themselves, and so they can remain destitute. For many reasons, in many parts of the country people no longer submit to the customary authorities in the same way. Cases are taken to courts, but these courts struggle to deal with cases where there are no 'formal' records of land ownership. There are cases of customary authorities taking advantage of the administrative vacuum to make decisions either in their own interests, or biased towards the more powerful and richer members of the community – on whom they depend.

State land administration

The State has set up a formal system for administering land, but only when that land is registered – i.e. when it is formally surveyed and when a title is issued. In other words, State land administration does not concern itself at all with customary land, which is over 80% of land in the country! State law recognises customary land administration, but has ignored it and done nothing at all to support it. The law gave landowners a right to receive Certificates of Customary Ownership. These would not entail the high costs of surveying and formal registration and would keep the land

under customary tenure (giving continued access to justice through customary forums or LC courts). However, these Certificates have never been promoted, the necessary mechanisms have not been put in place (Area Land Committees, Recorders) and few, if any, have ever been issued anywhere in the country.

Current land administration in practice

A weak customary land administration combined with a State administration that simply ignores customary land can only produce one outcome. The land administration of customary land is not performing any of its functions properly, and the consequences are entirely predictable.

- Too many land disputes
- Courts are overwhelmed, so there is no justice for anyone
- Land grabbing is rampant
- Social disharmony at village level
- Lack of trust between villagers and the State
- Most people live in fear of future land grabbing

The statistics on the number of disputes are frightening enough. No less worrying is the manner in which disputes are being dealt with. Judgements can be almost arbitrary, because LCs have no recourse to any authoritative records of land ownership, they have to rely on the 'testimony' of neighbours and they frequently call upon the spectators at a case to 'vote'. (It is obvious that this does not necessarily mean the person voted for is in the right). Legal rights should not depend on popularity. Land grabbers can ignore court rulings knowing that, in the absence of any land records, a higher court could easily come to a different judgement, one in their favour. An effective land administration system is needed to prevent this kind of situation arising.

The two solutions for land administration

There are two possible solutions to this chaos. One is to accept that customary land administration doesn't work and so to extend the formal administration of registered land to all land in the country – in other words, to survey and title all customary land. Whatever the advantages or disadvantages of titling customary land³, it is obvious that this process cannot be undertaken quickly or cheaply. It would take many, many years, (The Ministry of Lands, Housing and Urban Development - MLHUD) has allocated over 20% of its budget¹ to 'systematic demarcation', and has estimated that at current capacity it will take over 1,000 years to complete the country² – even assuming that land never needed to be re-surveyed and subdivided when children marry and receive land allocations.

Even if this is the long term future for Uganda, it is also obvious that trying to title land can be done with much less risk of conflict, if it is done after a customary land administration is in place. Ignoring customary administration is simply not an option, whatever one's views on titling land. The only solution in the short and medium term is to make customary land administration work, even in the absence of formal land surveys and titles. The unwritten system is no longer working; a formal system will take decades to set up; but a middle way can be made to work. Some of the advantages of both systems can be combined by having written documentation, but within

³ LEMU believes there are advantages and disadvantages to titling land. The implications of titling are more complicated than is often realised. The costs and difficulties when subdividing plots in order to allocate land to children are often forgotten. Landowners also lose the option of having cases heard in the cheaper customary forums or LC courts. See LEMU's information pack, "*Will papers help me protect my land?*", available at www.land-in-uganda.org

the 'informal' (cultural) administration and justice of customary tenure. The Certificate of Customary Ownership is one possible vehicle, though more informal forms of documentation could also be made to work. (More local alternatives to 'a Government paper' would be especially useful if CCOs cannot be made to work well. There are two potential difficulties: institutions such as the ALCs can demand excessive fees for their signatures – currently, many demand over 200,000/-; and some institutions, e.g. courts, could wrongly assume that customary processes of administration were not 'formal' enough for certificated land, e.g. at inheritance. This would negate much of the value of the CCO.)

The task is not complicated. It's simply a matter of making sure that the very basic tasks needed, described above, are carried out at local level in the simplest and cheapest way possible.

What needs to happen?

Clear boundaries need to be established, and who has rights to which land needs to be documented. That is all.

a) Marking land boundaries

Land boundaries need to be marked in a way that ensures public recognition of current plot borders. Each community can decide how to do this, but in most places specific tree species are already given this function. – usually trees.) Each community can decide who to involve – all neighbours must work together, and they can be joined by LCs, clan leaders or Area Land Committees, to give the demarcation a formal recognition.

b) Recording the land boundaries

The simplest way to record land rights is to draw a map of the demarcated plots, and to write the names of the families owning each plot. (Inherited customary land is always family land. Land which is bought may belong to an individual, until they have children.) The Land Act established that the sub-county chief should act as a recorder for land, and so a copy of these maps could be kept there.

Essentially this is the process for issuing a CCO. The suggestion here is to recognise that where part of the formal process for a CCO is impeding the process – e.g. the ALC demanding too much money – communities can simply go ahead and issue their own “CCOs”, which will help them prove their rights.

c) Recording all land transactions

The Recorder would have to make sure that changes in rights – through inheritance, allocation, sale, etc. – were recorded on all the maps, including the copies kept with clan authorities. When recording sales, they would also be able to confirm whether the required consent of the family had been given.

d) Disseminating land rights.

The principles of land rights – e.g. what the rights of widows or divorcees are – need to be disseminated widely, so that it is clear that all transfers of land rights are happening in accordance with the law. Land administration cannot protect land rights until it knows what those rights are.

How can this happen?

On their own, customary authorities are not being proactive about land administration.

They feel powerless, and are not sure what their roles or their powers actually are. However, land administration can't be made to work without them. The solution must come from a partnership between State institutions and customary institutions. Initiatives could come from the MLHUD which can be taken forward at District level and at sub-county level. This would make clear to the customary authorities what their roles were, what their authority is and what their responsibilities are. The judicial system would be made to understand how land administration was working, so that the records were always consulted in disputes, whether before customary courts, LC courts or Magistrates.

Can the State trust customary authorities with land administration? It is clear that the current vacuum cannot be allowed to continue. The State is faced with a simple choice: either take over the responsibility for land administration itself, or entrust it to the customary land authorities, giving them the authority to administer land, but with provisions for holding them to account.

Simple initiatives will not solve every problem. However, they are easy to pilot and to replicate, and entail few costs. Their potential to reduce disputes is high, and they will also help ensure better outcomes when disputes do arise. At a time when tensions around land can run high and mistrust is common, a partnership of the State with local communities to bring about clear, transparent land administration will be in everyone's interests.