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SUPPORT FOR STRENGTHENING BOTTOM UP APPROACHES**

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Increasing Tenure Security in Northern Uganda - How to use external support for strengthening bottom up approaches

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Key words

Tenure security, pro-poor, innovative land tools, preventive justice, investment

Abstract

“Land is the most important asset” is said often in Uganda, where the majority of the population is deriving a large part of their income directly from working the land. This holds even more for Northern Uganda which after prolonged conflict is currently returning to normality. Land related conflicts and perception of tenure security determine whether investments in improving production and productivity take place. Land related conflicts form the bulk of the caseload in the Ugandan courts, and are often at the basis of crimes (assaults, murder etc.). More attention for “effective” preventive justice - a combination of measures to reduce the emergence of conflict over land and the use of alternative dispute resolution - is essential to reduce the pressure on the formal court system and improve tenure security. This paper presents innovative evolutions in Uganda around securing land rights and documenting transactions, particularly in Northern Uganda where customary tenure systems prevail. These include, documenting transactions, demarcation of field boundaries and starting to use the Certificates of Customary Ownership, Alternative Dispute Resolution mechanisms and legal literacy. Support to document, analyze and upscale such pilot initiatives would help increase tenure security for many in Uganda.

1. Introduction

In Uganda, about 80% of the population are living in a rural setting and deriving a large part of their income directly from the land. “Land is the most important asset.” This remark is made often in publications and discussions. This holds even more for Northern Uganda which after prolonged conflict is currently returning to normality, and where customary systems, including tenure, are the backbone of land governance systems. Land related conflicts form the bulk of the caseload in the Ugandan courts, and are often at the basis of crimes. More attention for “effective” preventive justice - a combination of measures to reduce the emergence of conflict over land and alternative dispute resolution - is essential.

This paper presents evolutions in Uganda around securing land rights and documenting transactions, particularly in Northern Uganda. We will shortly address some of the discussion on tenure security and titling in relation to investment and food security, with a special focus on ‘preventive’ justice. We then move to the situation in Uganda, with a focus on Northern Uganda. A short overview of the legal and policy framework is given, including a short analysis of the (lack of) implementation. Then ground experience from (Northern) Uganda of use of local, innovative approaches is given, followed by some ideas on how to support that work and eventually upscale it. This is one step towards more land tenure formalization, which is considered as an important component of legal empowerment of the poor (de Soto 2001). A brief conclusion ends the paper.¹

2. Tenure security and its effects on food security

Tenure security can be described as the perceived risk of eviction; or the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over the land and the economic benefits that flow from it. Tenure security thus refers to people’s ability to control and manage a parcel of land, use it and dispose of its produce and engage in transactions of enforceable claims on land. The level of enforcement of these rights may range from national laws to local customary rules, which may or may not be supported by the national regulatory frameworks.

Perceptions of tenure security determine whether investments in improving production and productivity take place. Numerous studies have shown that higher levels of tenure security greatly increased the incentives for land related investment and induce better land management such as regulating the use of and protecting grazing lands, forests and watersheds. Lack of secure property rights in land will inhibit sustainable food production, hinder good governance, and reinforce social exclusion and poverty. Secure access to land and natural resources is also important from the perspective of “social protection” as these plots provide a safety net for the poor, in the form of household level food security and enhanced resilience in the face of lack of alternative sources of employment and income.

¹ The paper is based on a review of literature, several policy documents and reports, the authors’ (earlier and ongoing) experience in Uganda and a joint field visit to Kampala, Apac, Lira and Iganga in September 2011 supported by the Embassy of the Kingdom of the Netherlands in Uganda.

Insecurity about land titles (for example multiple claims) affects the business climate. Acknowledged land rights of smallholders is also a pre-condition for so-called “inclusive” business or “responsible” investments such as being proposed by international oil companies and by sugarcane farms. In these investments proposals smallholders will lease out their land or become outgrowers; or communities become a kind of shareholder. .

Conflict over land rights affects food security. A field that is contested or part of an undivided inheritance may not be used at all (following a decision by the court) or users will refrain from investing in the land². Court cases are also costly in terms of money that has to be paid formally (and informally), and time for travel and attendance. The time and resources spent on court cases are no longer available for investments in agriculture.

Tenure security can be looked at in three ways: as perceived by the occupant, as a legal construct and as the de facto situation. In the context of Uganda, the most important distinction to make is between the socio-legal meaning of a land right and the legal-administrative system to document this. Much of the literature on land administration advocate a strong push towards the ‘land titling’ of individualized land (ownership) rights, even though the World Bank Report on Land Policies (Deininger 2003) has clearly nuanced this. Deininger writes that “title is not necessarily equal to higher tenure security” and that “it will be important to distinguish between tenure security and transferability” (Deininger 2003: 39).

There has been a recent wave of land law reforms in sub-Saharan Africa that aim to give legal recognition to customary rights, strengthen women’s property rights, and establish processes for creation and maintenance of documentary evidence that are less demanding and costly than titles while at the same time offering transparent and non-discriminatory options for upgrading as need arises (Hilhorst, 2010). This finds its roots, in part, in a growing consensus that, even in rural African contexts where individual titling of land may not be desirable or feasible and use of land as a collateral for credit is at best a distant possibility, providing poor land owners or users, who are often female, with options to have their rights documented can still yield significant benefits. These benefits, which come about largely due to the ability to draw upon formal mechanisms to enforce property rights, include incentives for land-related investment, enhanced gender equality and bargaining power by women, improved governance, reduced conflict potential, and lower transaction costs for productivity-enhancing land transfers through either rental or sale. The 1998 Land Act is an example of this recent wave of land reform.

3. Legal and policy framework

² cf interviews Iganga.

Legal framework

Since colonial times, each government has developed a new set of formal land policies without nullifying previous rights, such that today there is a confusing overlay of several different land rights systems. Land features prominently in the 1995 Constitution, which declares that ‘land in Uganda belongs to the citizens of Uganda and vests in them ...’ (article 237 Constitution 1995). This includes the land under customary rights, which until then had been considered public land, with the occupants in possession being no more than tenants at suffrage. The new law, however, acknowledges that this land belongs to those who possess it according to the applicable customary law, which –for those who are made aware of this provision– has already led to an increased sense of tenure security (see Deininger et.al. 2006).

The 1995 Constitution recognizes the different land tenure systems that could be found on the ground as being: customary; freehold; mailo and leasehold. The 1998 Land Act provides for a range of land management institutions, for customary owners to acquire Certificates of Customary Ownership or to convert customary and leasehold tenure to freehold, and for security of occupancy on mailo, freehold or leasehold land for lawful or bonafide occupants (LSSP 2001: 2).

A study provides evidence for the influence of legal knowledge (legal literacy) on investment decisions. This knowledge consists of i) awareness of the land rights awarded by the law and the channels to enforce these rights; ii) knowledge of the scope of others to impose restrictions on land use, and iii) recognition and protection of women’s land rights. Among customary owners, 39% were aware that the new law legitimizes customary tenure, and this legal knowledge increases long-term investment. For soil management, a short term investment, knowledge of the law matters more than having transfer rights to the land (Deininger et al 2006). These findings suggest that awareness on the contents of the Land Act has significantly improved tenure security.

Even though customary land rights were legalized in the Constitution, many sources point out that the Constitution supports a strong drive towards freehold, seen as an individualized, modern title, contrary to customary tenure that tends to emphasize cultural values more than the economic and financial aspects from the land (Mugambwa 2007: 52-53; Adoko 1997). The Land Act of 1998 can –at best– be seen as ambivalent towards customary tenure, since it also introduces the right for any customary land owner to convert –upon request– his or her land to registered freehold via a specific procedure, but without any conditions save the required precise survey (see also Adoko 1997; Batungi & Rütther 2008).

The statutory land administration system in Uganda is –at best– serving a small percentage of the society (elite and upper middle class), and are not available (and unaffordable) for most of the society (Adoko 1997). Just rehabilitating the land registration system (of the Torrens type) is unlikely to have much impact on the tenure security of the majority of the people. The costs involved will be too high for many to enter into and/or update within this system, and it will be a long time before the necessary capacity to have this option available to large parts of the population will be available. This is not only a matter of money, but also of training and retraining staff.

Missing from the debate seems any discussion of the implications of this choice in terms of the resources and effort needed, not only for the first registration, but also for keeping up-to-date of records and titles afterwards (see also Bruce and Knox, 2009). Land title registry offices are located at the district level (often with one office serving a number of districts and part of the functions still not devolved from Kampala/Entebbe to these offices) and can at present barely handle the existing workload. The recording of certificates is supposed to be at the sub-county level by an existing official, reducing the travel time for the land rights holders enormously.

Documenting rights is perceived as enhancing (perceptions of) security. However, certificates are not leading automatically to more investments, although they may reduce the risk of conflict. There has been experience with systematic demarcation in Uganda in the late 1950s and 1960s, which resulted in registered freehold titles. It was found that a substantial percentage of awarded titles was never collected by the right holders, and the numbers of subsequent registration of transfers and inheritances were discouraging (Okec 1969). Moreover, most landowners who had had their land surveyed and demarcated did not bother to complete the process by registering their title under the Torrens system legislation [so as to create commercial value]. “There was no evidence of any significant increased production or investment in the land under the pilot scheme. It seems their only concern is to have their boundaries marked for all to see to ward off encroachers. Even registered titles soon ceased to reflect the actual state of affairs, especially because of subsequent unregistered transfers due to subdivision of the land amongst the proprietor’s relatives under customary succession law. The process of keeping a register seemed to be a waste of funds.” (Mugambwa 2007: 43).

Policy framework

A national land policy (NLP) has been formulated through an extensive and consultative process. The final draft of the NLP was presented to Cabinet in March 2011 and still at that level. Once adopted, it will guide the legal reforms in the land sector. The draft NLP includes several measures geared at rationalizing and streamlining the land dispute resolution structures and recognizes the role of customary institutions in

making rules governing land, resolving disputes and protecting land rights. The draft support the registration of land rights under customary tenure (and the issuance of CCO's). The draft contains a number of important reform proposals to cause gender equality with regard to land rights and inheritance of land.

4. Regional differences in tenure systems

It is estimated that about 20% of Uganda falls into the category of freehold, leasehold or mailo land (LSSP 2001: 34). This includes the wider Kampala area, where much development is taking place. It is possible that the area of titled rural land has become much larger in the last decade, but this information is not publicly available. This is probably the case for areas where oil exploration or mining are already or are expected to take place, and areas suitable to large scale farming , particularly cattle farming. Consequently, most male and female smallholders hold their land under customary tenure. The rules vary from place to place and are usually related to the traditions of particular tribes or clans living in the area. Although customary tenure is widely seen as almost identical to group rights, the rights have been individualized in certain areas, and almost everywhere include certain rights at the household level. Individualized customary tenure is the norm in Western Uganda, where an informal land market (selling, leasing of land) is in place and transactions are semi-formalised. They are put in writing and people are asked to sign.

Central south Uganda

Freehold title is important in Kampala and the peri urban areas, although even in Kampala mailo land exists. Central and southern Uganda is dominated by mailo land. The land is owned by (in some cases absentee) land lords and worked by tenants. This system is currently under stress and a major cause of conflict.

The provisions in the Land Act of 1998 were not effective in resolving the land use deadlock, resulting in mass evictions of occupants by registered owners. The Amendment of 2010, strengthened the position of tenants but sparked off new controversies, and did not address the root causes of evictions (Rugadya *et al*, 2008 – JLOS study). The amendment has adversely affected the land and credit market. Owners refuse to rent out land, and financial institutions are not very keen on taking tenanted land as collateral.

Northern Uganda

Land rights in Northern Uganda are dominated by customary law. The regulation of customary tenure by the customary authorities has been advocated vigorously during the consultation for the new land policy. The North of Uganda presents a special situation, which is typical for situations where peace returns after a long period of conflict that caused displacement. In Northern Uganda people may have been displaced for over 20 years. The returning refugees and internally displaced persons often found their land occupied by other family or community members. These are situations that need to be resolved in such a way that returnees have access to land and can rebuild their livelihoods, while preventing the generation of new frustration and resentment by those who have to give up the land. An additional complicating issue is land taking by (outside) elites who then obtained freehold titles, thus legalising these takings while dispossessing rural communities of their land. Evictions are also taking place in the name of conservation by Uganda Wildlife Life Authority and the National Forestry Authority. Part of this “land grabbing” takes place in (communally held) grazing areas, undermining the reconstruction of an animal husbandry sector. In the Karamoja area, individuals and communities have lost their land to mining activities and commercial farming in some areas.

5. Tenure insecurity

In Uganda, tenure insecurity differs for the various categories of rights in Uganda (freehold, leasehold, mailo and customary land). Specific groups, like women, tenant farmers (kibanja holders), and households living in densely settled areas where land disputes are common, are highly insecure (LSSP, 2001).

The position of women is weak, basically because she may not be allowed to inherit³ her deceased husband’s property and may also not be regarded as eligible to inherit a share of her parent’s inheritance. This is said to be based on custom, despite the existence of statutory law on this matter. The struggle for recognition of rights started already during the discussion of the Land Act of 1998, when a clause for co-ownership between husband and wife was lost, but spousal consent on transactions of the core household property was made part of the law. For some, only the application of statutory law that forbids discrimination can improve women’s position. However, others point out that there are checks and balances also in customary law and that the principles are not against women, but customary rules and practices are abused.

The position of the youth is becoming a point of concern as the land is getting more scarce. They will have to wait for an inheritance and meanwhile work with their parents or enter into leasehold and shareholding

³ Different for Muslim communities where women do inherit, although her share is smaller.

arrangements. This may strain family relations; part of the land-related criminal cases involve father and son⁴. Youth are also a factor in the weakening of customary land administration structures. They are less inclined to respect decisions of clan leaders and may prefer the LC courts. Youth are also more often engaged in cases where a plot of family land is sold to outsiders without consultation (Mercy Corps, 2011).

Farmers and herders are insecure about their rights because of fear for government appropriation, eviction by land lords or “land grabbing” within families, by other community members, by outsiders.

Uganda does not have an Involuntary Resettlement Policy to cater for the increased number of forced evictions due to expropriation by government (due to infrastructure projects and evictions from wetlands, forests and other protected areas and for investment projects). Moreover, the principal law on compensation i.e. the Land Acquisition Act, 1965 is not only outdated, but it is also inconsistent with the provisions of the 1995 Constitution. (JLOS study 2008).

Where government actions cause tenure insecurity trust in the rule of law and ‘good governance’ more in general will weaken. Land administration services are vulnerable to corruption, as clients might be prepared to pay extra for obtaining (fraudulent) titles. Perceived “land grabbing” by the elite (urban or rural), which is legalised by a freehold title is regarded as a form of impunity. Such cases are widely discussed in the media and may undermine trust in authorities.

6. Land conflict

Land related conflicts form the bulk of the caseload in the Ugandan courts, and are often at the basis of crimes (assaults, murder etc.). Land disputes are said to affect 33% to 50% of all landholders (respectively Rugadya, area of titled 2009; Mercy Corps, 2011). A study in land and family justice undertaken in 2008 at the request of the Justice, Law and Order Sector (JLOS) (Rugadya et al., 2008) found a high prevalence of land conflicts at household level (34.9%). Child headed households reported a comparatively higher prevalence of land conflicts (41.3%). Land conflicts point to lapses in tenure administration and management especially with regard to boundaries (32%), ownership (19%) and its transmission, occupation, trespass and fraudulent transactions. Inheritance and succession wrangles account for (15.5%) and illegal occupation at 12.3%. Conflict can also emerge when a family member sells a plot of land to

⁴ Personal communication Mathijs van Leeuwen; and Hon. Chief Magistrate Lira.

somebody from outside the family without consultation (particularly young people seem to be involved in this type of sales; Mercy Corps, 2011).

Only 20% of land conflicts are not reported to any dispute resolution option. The leading options of first instance are local councils I and II (57.7%), followed by Clan and other community leaders (27.5%). Land justice⁵ seeking behaviour and choice of options at the first reporting level is strongly influenced by distance to the resolution option (22.9%), perception of 'legal requirement to go there' (21.3%); and familiarity with how the particular option actually works (18.9%). With a dispute resolution rate of 59.9% for land conflicts at first instance and an average dissatisfaction rate of 13.3% the land justice system was rated as fair. However, corruption and illegitimate demands for money slow the justice delivery process, 88% of those who seek land justice are asked to pay un-receipted payments. The refusal to honour summons is a reason in impeding the process of justice (11.6%).

Forum shopping is another problem because the customary dispute settlements systems, the various local government council courts and the formal courts lack a clear hierarchy and may work in parallel. Forum shopping has created overlaps and conflicts in the processing of land disputes.

There is insufficient capacity in the institutions charged with the adjudication and settlement of land disputes. The 1998 Land Act also introduced a specific dispute resolution system for land issues. This was aimed to consist of local land, whose decisions could be appealed at the District Land Tribunal. The chairman of the latter had to be eligible to be a judge, but the other two members are lay persons, though they should have specific land knowledge. After longstanding coordination problems between the Ministries of Lands and of Justice, the District Land Tribunals were moved to the Ministry of Justice in 2004, which closed them down in 2006 after too many problems, including staffing, coverage and funding. The separate local land courts were never setup, and their duties are performed by the general local courts. To some extent these local courts operate in competition with the customary dispute resolution mechanisms, without a clear hierarchy between them. By the time the mandate of the Land Tribunals expired in November 2006, the caseload was as follows; registered cases: 6,900; completed cases: 2,468; pending / partially heard cases 4,432. There is a big vacuum in the land dispute resolution system, particularly after the Land Tribunals stopped operating in 2006.

⁵ "Land Justice" is defined as "improving land dispute resolution mechanisms while also engaging with other stakeholders to enhance land administration and registration".

More attention for “effective” preventive justice - a combination of measures to reduce the emergence of conflict over land and alternative dispute resolution - is essential to reduce the pressure on the formal court system. Many studies also point to the importance of addressing land related conflicts, including the claims of returning IDPs, for achieving stability in Northern Uganda (Rugdaya and Nsamba-Gayiiya, 2008; Rugadya et all, 2009; McKibben and Bean, 2009; Akin and Kantono, 2011).

7. Registration of Customary land

The 1998 Land Act as amended makes it possible to record customary ownership, both as an individual right if it takes that form, or as a collective right through Communal Land Associations. This certification system runs parallel to the existing land registration system (Torrens registration system) which applies to the other tenure types (leasehold, mailo and freehold). This option is likely to be less expensive⁶ and using a less complicated procedure. “The certificate of customary ownership is deemed by the Act to be conclusive evidence of the customary rights and interests endorsed thereon (section 8(3)). Subject to any restrictions endorsed on the certificate, generally, a certificate holder – individual or group – has a right to deal with the land just like any other landowner. Thus, he or she may mortgage, lease or sell the land, except where such right is precluded or restricted by the certificate (Section 92(2) (c), (d) and (f)).” (Mugambwa 2007: 52). The procedure for getting a Certificate of Customary Ownership (CCO) is more local, and a poor land holder has more chance of applying him- or herself for such a certificate, or preventing another from doing so. This form of recording does not require a precise survey, and the records are kept at local level. The certification process should be dealt with at sub county level, with oversight by the District Land Board, supported by a district land office. The original setup of bodies and offices was very elaborate and could not be sustained, leading to a reduced setup via the 2004 Land (Amendment) Act.

Implementation, however, has been very limited. Most people talked with during the field visits were not aware of any CCOs issued. In Lira the snr. Land offer mentioned 2 CCOs issued due to the need to use them as collateral for a loan. In Apac the relevant authorities at the district level have been trained. It is not clear if they have received instructions and guidance form the central level . No CCOs were shown to us.. In 2011, the website of the Ministry of Lands includes a form for the application of a CCO, but not of the certificate itself..

⁶ Around Lira the cost of survey and titling of an individual parcel are around 1 Million USH, about the same as the price of an acre of farmland away from town.

This situation is changing since 2012 and the first Certificate of Customary Ownership was issued in February 2012. Hundreds of certificates are in the process of being issued in Northern Uganda, with the assistance of an international NGO. Norwegian Refugee Council (NRC) is facilitating the processing of 700 certificates and also ULA reported the processing of a few hundred certificates.

The fact that certificates have not emerged in practice, has contributed to making them little known and poorly understood (LEMU 2006).. Without any certificates issued, there is no experience with them, and it appears they are not taken seriously and are neglected by the establishment, as can be seen from the fact that they were not included as a possible form of collateral during the recent debates on the bill to revise the Mortgage Act. However, they are stated as part of the solutions in the draft NLP. Certificates cannot become a real land tool as long as no substantial number of them is issued through a trusted procedure. One argument used in literature against certificates of customary ownership in favour of freehold titles is that banks are not accepting certificates as collateral. First of all the primary objective of certification is improving tenure security (and not necessarily easier access to loans), and even titles may have problems being accepted as collateral by the banks. Moreover, for smaller loans, certificates are likely to be acceptable. It should be noted that several European countries and most of the United States do without title registration systems, and have flourishing mortgage sectors; it is a matter of having efficient land transactions supported by trustworthy institutions (Zevenbergen 2002).

Systematic demarcation pilot

It was planned that the issuing of CCO's was to start in priority areas via systematic demarcation. (LSSP 2001: 34). Very few systematic demarcation pilots were launched and even less have been completed⁷. Moreover, in this systematic approach more precise surveying technology has been applied than what the law prescribes as a minimum for certificates. This has again sparked the discussion whether freehold titles should be directly issued in the pilot areas, and thus skip what is then dubbed the transitory stage of certification to be later followed by conversion.

The pilots were on hold for several years due to budget constraints. Issuing of titles started in 2011. The costs per plot for demarcation in a systematic way were estimated at 50.000 shillings. During the field visit to Iganga a ball park figure of USH 200,000 per plot for surveying work was mentioned.

It seems that in Iganga the demarcation and recording of a plot in ones name on the map was perceived already as enhancing tenure security (within the family and community) for the 800 parcels included

⁷ Reportedly only Ntungamo, M'bale and Iganga

(several villages stayed out due to fears, but would now be happy to join in). The process of demarcation has been a push also to solve local disputes and also to wrap up inheritances.

However, when beneficiaries were asked to pay 20.000 shillings for their application, and 50.000 per plot for receiving the title, many refused, claiming that the title should be given for free as this was originally promised. The Ministry of Lands is planning to hand over the title anyway, , but changes will only be recorded when the fee is fully paid (cf interviews in Iganga). No title was seen during our field visit, but it was claimed by some that also the name of the wife was recorded. Some had also granted a plot to their daughters, others not. One person who had received his plot told that he invested in tree planting. Two persons have used the title as collateral for a credit; one person is a businessman and his several pieces of land, the other person used this for paying the school fees of her daughter who is at university. The Ministry of Lands is in the process of evaluating the pilots on systematic demarcation.

However, this system developed in the systematic registration pilots for obtaining freehold title cannot be used by the poor at scale easily partly because of: their design; a lack of capacity to deliver at scale; cost to the clients; ignoring of secondary rights. The professionals designing the systems have chosen the highest quality of legal/technical design rather than designing for impact and coverage. The focus is on plots and not on systematic recordation. The system is also poorly integrated with the local public administration system (decentralization), and the customary tenure administration structures which are quite legitimate in Northern Uganda.

8. Pro-poor land recordation

Lessons have to be learned from the issues with conventional land titling systems when designing a pro-poor system with wide coverage. A pro-poor system would need to allow for participatory adjudication or enumeration for the poor and their social land tenures. Secondly, the land recordation system should be closer to the ground to improve record correctness, also to ensure ease of access and improve land management, land tax and planning. Offices at a lower level of local government are needed, which work in co-management between the Ministry of Lands and the local customary authorities, private sector actors (including NGO's/CBO's) and voluntary support of community members, who can interpret the current status of local tenure arrangements and assist in the process. Co-management should include a governance approach which manages malpractice and corruption. This will also mean that there will be a two way flow of information and capacity development between local communities and (national) experts (Zevenbergen, Augustinus, 2012).

Complete data should not be the goal at the first stage of the design, otherwise it will be difficult to get coverage. Less accurate forms of boundary and land rights data should be sufficient and non conventional boundary markers allowed. (Zevenbergen, 2011).

Tenure security can only be accomplished by tools that are understood by the public, and that –in their perception– can be trusted and give them more than it costs them (both in monetary and in other terms). Large impact can be made with innovative (and admittedly less than complete) land tools, as has been shown by the rural land certification in the four major regions of Ethiopia. In three years 20 million parcels have been certified, and data collection for the remainder is nearly completed (Deininger et al 2008). Another example is Rwanda where the government is rolling out the land tenure regularization process with great speed, although some less positive reports on the real acceptance by the rural smallholders have started coming in.

9. Ground experience in local, innovative land tools

In this section we explore the possibilities for promoting the documentation or recording of rights in land in order to enhance tenure security and reduce land-related conflicts.

Pro-poor land recordation systems

Working towards the strengthening of pro-poor land recordation systems is one way for preventing conflicts and facilitating preventive justice. When adhered to, such records will also enhance tenure security within families and communities. This “paperization” of rights may also contribute to stability in the North as it may reduce land grabbing and strengthen the position of those holding records in court cases. Having documented rights increases also the possibility of being compensated at least, or become part in investment agreements. With respect to the latter, this is a first step as it requires a level playing fields in which land rights holders are informed and able to defend their interests (see also Oxfam 2011).

Documenting transactions

Land markets have become more important over time. Increasing transactions are put on paper, instead of conducting these just in the presence of witnesses. The use of incomplete contracts or documents can be a source of confusion, especially at a later stage. Disputes over whether a transaction was justified and its conditions can result in conflicts. Making available standardized forms and providing assistance for consultation on and witnessing and recording of transactions is one approach to reduce the risk of conflict, and thus facilitating land markets.

Such an approach can be described as ‘preventive justice’ and is for instance often claimed to be an important role of the Latin notaries in many countries (such more formal documents in many cases became the base of land registration systems of the ‘deeds type’, which legally-dogmatic differ clearly from the ‘title type’ (like the Torrens system), although in daily practice the difference between e.g. the Netherlands and Austria is minimal. The approach also puts the emphasis more on giving security to an increasingly active land market, and not just ‘freezing’ the current land holding patterns. If not run appropriately, such systems can however run themselves down rather quickly, but much the same can be said of the current Torrens titling in Uganda. In Uganda some reports on bottom-up documenting transactions have come up, but these do not seem to get a lot of attention. Work, by government, NGO’s and CSO’s alike, is focusing on resolving disputes that have emerged, and recording the existing land holding situation.

Demarcation of plot boundaries

Several civil society organizations are assisting communities to demarcate fields and put boundary markers in the form of trees (for example jatropha and an euphorbia species). This demarcation may be the closure of mediation between parties in conflict or an inheritance partition. This is a relatively low-cost, participatory way to prevent later conflicts. The impact will increase when it is done as part of a public process that involves all land users in a certain area and local authorities, and produces a reconfirmation and public acknowledgement of plot boundaries. Natural local boundary markers can be documented with surveying techniques, or by drawing the boundaries onto images from aerial photography or satellite imagery. The enthusiasm in Iganga for having ones name and boundaries on the map after systematic demarcation (even without collecting the title) supports this as well. Increasingly NGO’s and CSO’s are getting familiar with the end user parts of such approaches, which are then included in village mapping exercises. Uganda seems to be lagging behind in this at all levels.

Group titling of communal lands

Particularly in Northern Uganda there is much interest for a group title that covers all communal lands of a community, or for examples the communal grazing areas of it. NGO’s such as ULA and LEMU are seeking to establish Communal Land Associations that could apply for such a title. In Karamoja region surveys have even been completed (ULA). However, these NGO’s have not succeeded in obtaining the legal recognition of these associations let alone the issuing of a group title, even though this is like the CCO’s part of the current Land Act.

10. Ideas for moving forward

As we have pointed out lack of tenure security or clarity has negative effects on many aspects of the society. Interventions in many ways and at different scales are possible, but it is not ‘one size fits all’.

Based on this and depending on the local circumstances one of a number of tools will be most suited to Northern Uganda.

The following is required for ‘boosting’ pro-poor demarcation of land rights:

1. Stocktaking of ongoing experimentation, analysis (effectiveness, efficiency, sustainability, implications for women, youth) and sharing of experiences and best practices.
2. Experimentation with appropriate cost-effective methods for community boundaries demarcation individual land holdings and family land holdings.
3. Experimentation of community land mapping, with support of different technologies.
4. Supporting bottom-up recordation of land rights and transactions in these rights.
5. Communal Land Associations – providing for demarcating and certification of group rights.
6. Actually issuing CCOs
7. Priority setting: what community needs what?

1. Stocktaking

An analysis of all the ongoing projects (often CSO/NGO facilitated and donor supported) with different means to increase tenure security. These include demarcation (putting markers or planting trees), neighbours acknowledging each other’s rights, negotiating about conflicting claims (also within families). Furthermore the effect of these projects on gender and youth, as well as the more economic implications should be analysed. It will be important to share this experiences of the different groups and areas to learn lessons and find out good practices. The main experiment by the government are the systematic demarcation pilots on the one hand which have ended in issuing of freehold titles over CCO’s, and the initiatives under JLOS with respect to ADR.

2 and 3. Community boundaries demarcation and Community land mapping

This step of boundary demarcation that communities can largely set themselves, and does not require much administrative effort from district and national land sector agencies and expensive experts. It will have a large impact on internal conflicts. These can be identified and settled during this process of land rights adjudication and demarcation. The demarcation itself will prevent many of them in the future.

This step has been practiced in many places, in and outside Uganda, under all kinds of names, like village mapping, community driven adjudication or systematic demarcation. It involves two parallel and

intertwined activities, identifying and documenting the rights the people have, and determining and demarcating & mapping the areas (parcels) to which these rights apply. Both go hand in hand, since only the land right holders can agree to where the mutual boundary between them is.

The most simple version focus primarily on the process in which the community, and esp. neighbours, acknowledge each other's land rights and put markers on the boundaries. A next step is to document the outcomes of this process, for which the simplest version would be to make a map showing all the boundary lines, with the names of the right holders written in each parcel (more advanced is already to have a number there, and put the names behind these numbers in a kind of ledger).

Such maps can be prepared in many ways, with different levels of accuracy, and different levels of using modern technology. These two don't go necessarily hand in hand. Especially satellite imagery is high tech, but its use can be rather simple. In Uganda, expertise to work with these imagery is available at university departments, like the Geomatics and Land Management department of Makerere University.

In many countries such expertise is also available within certain NGO's, and it seems prudent to assist the Ugandan NGO's (and some CSO's) to acquire such expertise and base equipment. These organizations can then beef up their work on community boundary demarcation, and the documentation of it via community land mapping.

4. Supporting bottom-up recordation of land rights and transactions in these rights

At the simplest level this would only involve giving local governments some training, instructions and material (like ledgers, paper etc.) to help the landholders that are transacting in land rights with doing this in a (simple) paper form, and keeping a copy of such documents in one place for each locality. It can be expanded as described in Zevenbergen, 2011.

5. Communal Land Associations

The Land Act has provisions for the forming of Communal Land Associations that are a specific form of legal person that 'owns' communal lands under customary law. Several NGO's have been assisting communities to set these up and have the communal lands registered (even titled) in the name of such CLAs, but progress has been limited. The procedures might be too complicated or instructions might not yet be fully available. Lessons should be learned and where necessary follow up (e.g. in direction of Ministry) can be given how to make it workable. Also a more simple approach on demarcating and documenting communal lands should be considered.

6. Actually issuing CCOs

The issue of issuing CCOs is similar to 5. Although the law allows it and regulations are also available, including much of the forms, there is little experience, no instructions and the local officials have not yet been trained. Reportedly in Apac District the District Land Office with support ran a training course of all the sub-county chiefs (registrars) and Area Land Committees on how to proceed with issuing. If any forms or instructions are still lacking from the central level, these should be swiftly finalized (taking the lessons of the projects into account). More districts should be supported in the training of the local actors (learning from the Apac training with adding additional insights that came from the projects). Finally the landholders should be sensitized in the possibilities, advantages and their role. CCOs are normally the last stage of the process described under 2+3, and build on the information collected in such ways. Again simple materials, like paper, ledgers etc. should be supplied to issue the certificates and setup a simple system for updating them.

7. Priority setting

In relation to relative stability and representativeness, a number of districts, and parishes within them, could be selected for doing the tests, including acquiring aerial images, running training and sensitization. The most important criterion would be community interest in addressing tenure security and acceptance of the method to be implemented, as to get local ownership of the activities that assure sustainability in the long run.

The governance of these processes is important though. Land formalization can be a means of land grabbing by the elite, as well as within families and the community when secondary rights are not acknowledged. For example, it can harm the position of women when a certificate or title is given to the (male) household head. There are also fears that those with newly-formalized land rights, particularly freehold, may lose land through distress sales (ARD 2007).

11. Conclusions

The previous sections have shown that in Uganda the legal and institutional framework is in place for pro-poor land demarcation. The 1998 Land Act has an innovative character, such as the communal land associations and the certificate of customary ownership. However, progress in implementing them has lagged behind expectations. Very few CCOs have been issued until very recently, and the situation for the Communal Land Associations seems to be even worse.

Northern Uganda needs approaches to land demarcation that are appropriate, low-cost, allow for wide community participation and have a wide coverage. A range of promising experimentation is ongoing, often initiated by non-state actors like NGO's and CSO's, mostly located in Northern Uganda. Here, the urgency of addressing land-related conflict is high and widely acknowledged. It is also an area where many NGO's and CSO's are active, of which several are working on institutional innovation. Finally, at the district level some training and discussion is ongoing that facilitate work on pro-poor land demarcation.

There is a need for better documenting, analyzing and up-scaling. The approach will be incremental, as not all communities face similar tensions around land tenure issues. The results of work in Northern Uganda are applicable to other parts of Uganda with customary land systems, particularly in eastern Uganda.

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