

PILOTING OF SYSTEMATIC ADJUDICATION, DEMARCATION AND REGISTRATION FOR DELIVERY OF LAND ADMINISTRATION SERVICES IN UGANDA

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SUMMARY

Uganda got a new Constitution in 1995, which, among other things, brought about fundamental reforms in the ownership, tenure and management of land. The Land Act, 1998 operationalised these Constitutional reforms. Most significant among these are that land belongs to the citizens of Uganda and ownership is under four types of tenure, namely, customary, freehold, mailo and leasehold.

In a bid to effect appropriate and affordable implementation priorities, the Government of Uganda decentralized land administration at various levels. Furthermore, the Land Sector Strategic Plan (LSSP) was developed to guide government, the private sector, civil society and other stakeholders in the administration and optimal use of land resources. The LSSP is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land administration including the implementation of the Land Act.

One of the main strategies of the LSSP is to undertake Systematic Adjudication and Demarcation (SD) of land rights. The success of SD will be determined partly by the speed at which field data can be captured, processed, plotted and incorporated into the National Land Information System (NLIS). Successful SD necessitates, among other things high level of public acceptability. The main activities carried out during SD involve: carrying out baseline studies, mobilization, sensitization, training, participatory adjudication and demarcation. This approach is cheaper and more cost effective than demarcation on demand, and it is more pro-poor in that once an area is selected, all rights including those of people who would not normally be able to afford the service are subject to demarcation. Despite these advantages, the approach must be carried out in a transparent, fair, sustainable manner and without compulsion for communities involved. The LSSP has been designed to ensure that SD does not undermine the land rights of the affected stakeholders.

In Uganda, SD will not only ensure delivery of tenure security, as well as land information, where the aggregated land information is developed from individual forms or records of 'who' holds 'what' land 'where', but also enhance Good Governance, since when more citizens get their property rights registered, more and more realize the need for national peace and stability. This land information would positively contribute directly and indirectly to poverty eradication, gender balance, transparent land markets and agricultural modernization.

2. BACKGROUND

Uganda got a new Constitution in 1995, which, among other things, brought about fundamental reforms in the ownership, tenure and management of land, the most significant of which is that land belongs to the citizens of Uganda who own it in accordance with the four types of tenure namely, customary, freehold, mailo and leasehold.

The Constitution together with the Land Act (which operationalizes the constitutional provisions) put in place measures and institutions to enable the citizens hold this land. Most significant of this is the recognition of customary tenure as legitimate tenure and providing for its regulation, administration and management. These laws enable the customary owners to acquire certificates of ownership and to convert customary and leasehold tenure to freehold and, for security of occupancy on mailo, freehold or leasehold land for lawful or bonafide occupants.

2.1 Key Legislative Provisions on Land

2.1.1 Constitution of Uganda, 1995

- Land in Uganda belongs to the citizens of Uganda who own it under customary, mailo, freehold or leasehold tenure.
- Government may acquire land in public interest.
- Government or a local government shall hold in trust and protect natural lakes, rivers, wetlands, forest reserves, national parks and land reserved for ecological and tourist purposes.
- Non-citizens may acquire leases.
- Parliament is to make a law regulating the relationship between lawful or bona fide occupiers of land and registered owners of land
- Parliament is also to make a law providing for the acquisition of registered interest by lawful or bona fide occupants
- The Uganda Land Commission is to manage Government land
- District Land Boards and District Land Tribunals are to be established.

2.1.2 Land Act, 1998

- Definition of the land tenure systems (customary, mailo, freehold, leasehold)
- Customary land owners may acquire a certificate of customary ownership for their land as conclusive evidence of their rights
- A person may apply for a freehold, or may convert their customary ownership to freehold
- Communities may form Communal Land Associations and manage common land under a Common Property Management Scheme
- Tenants on registered land have security of occupancy and can apply for a certificate of occupancy for the land they occupy.

- Spouses and children must consent to transactions in land on which the live, occupy and derive sustenance. For orphans, the Land Committee must give consent.
- A Land Fund is to be established to assist people to acquire registerable interests in land, and to facilitate Government to resettle landless people.
- Operationalizes Uganda Land Commission, District Land Boards, and District Land Tribunals
- Requires establishment of District Land Offices, Sub-county Land Tribunals, and Parish Land Committees.

The Land Act created the ideal but gigantic land administration institutions that caused implementation pitfalls. For example, given that at the time of passing the Land Act there were 45 Districts, 962 Sub-Counties and 4517 Parishes, there was neither the human nor financial capacity for delivery of land services at the level provided for in the Land Act. Even with adequate financial resources, the supply of trained and competent professionals was insufficient.

2.1.3 Amendments to the Land Act

Resulting from the challenges involving implementation of the Land Act, 1998 amendments to the Act were enacted: The Land (Amendment) Act, 2001 - to enable Magistrates' Courts and Local Council Courts to continue handling land disputes until the Dispute resolution institutions were established. The Land (Amendment) Act, 2004 was enacted to mainly streamline the administrative structures of the land administration system.

2.2 The Land Sector Strategic Plan (LSSP)

To assist Government of Uganda to determine appropriate and affordable implementation priorities, The Land Act Implementation Study (LAIS) was carried out to examine institutional, financial and technical needs for implementation and assess the social, economic and environmental implications of the Land Act, 1998. When Cabinet considered the recommendations on the Land Act Implementation Study, it directed that a Strategic Action Plan be developed for implementation of land sector reforms. The Strategic Action Plan (SAP) was developed which paved the way for consultations countrywide.

To ensure maximum contribution of the Land Sector to the implementation of government programmes including Plan for the Modernization of Agriculture (PMA), the Ministry of Water, Lands and Environment developed the Land Sector Strategic Plan (LSSP), which Cabinet approved for implementation in July, 2002. The LSSP is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of the Land Act. It is intended to guide government, the private sector and civil society in the management and use of Uganda's land resources.

2.2.1 Key Issues for the Land Sector

The following have been identified as issues that the Land Sector must deal with. Population growth, low rate of land utilization, land tenure insecurity, low awareness of land issues, incomplete policy framework and inadequate capacity for service delivery.

For Systematic demarcation to be effectively and satisfactorily implemented, land administration institutions need to be in place. These are decentralised land administration institutions provided for in the Constitution and operationalized by the Land Act and the subsequent amendments. The various levels at which they operate are:

District Level: District Land Boards, District Land Offices (each with 5 professionals - Surveyor, Registrar of Titles, Land Officer, Valuer and Physical Planner), District Land Tribunals

Sub-County Level: Recorders (Sub-County Chiefs), Area Land Committees, Local council III Executive Committee Court.

Parish Level: Local Council II Executive Court and where appropriate, the Area Land Committee

The LSSP is therefore designed to remove barriers to increased land utilization, to broaden land services to rural areas and customary land, to address inequality, tenure insecurity and inequitable systems and processes, to strengthen the land rights of the vulnerable, and of women, to empower local governments and communities to make and implement their own policies and plans for their land, and to provide an appropriate and supportive framework for sound environmental and natural resource management

3.0 SYSTEMATIC ADJUDICATION AND DEMARCATION

3.1 An Overview of Systematic Demarcation in Uganda

One of the main strategies of the LSSP is to undertake systematic adjudication and demarcation of land rights.

Systematic Demarcation refers to a technical approach for demarcating all land rights within a selected administrative area. Advantages of this approach are that it is cheaper and more cost effective than demarcation on demand. Systematic Demarcation is pro-poor in that once an area is selected, all rights including those of people who would not ordinarily be able to afford the service, are subject to demarcation. A number of principles have been incorporated into the LSSP designed to ensure systematic demarcation does not undermine the land rights of those affected but instead that it is carried out with the participation of the entire area including the politicians to ensure the desired outcomes are achieved. These principles are:

- the decision to demarcate is based on local demand, not on central dictate

- where demand exceeds the capacity to deliver, areas are selected according to agreed criteria of environmental, social or economic benefit
- the level and nature of rights to be demarcated are determined at local level by affected communities in order to reflect local circumstances
- all those affected have the right to equal protection throughout the adjudication and demarcation process
- the process is transparent and accountable. Communities and individuals have the right to contest decisions of the adjudication team
- The systematic demarcation approach is being piloted during Phase One and outcomes monitored carefully. Where appropriate, the approach is broadened to incorporate other techniques including land readjustment, participatory land use planning, valuation, or market based land consolidation.

3.2 Justification for Systematic Demarcation in the National Development Agenda

In Uganda, systematic demarcation will deliver tenure security, as well as land information, where the aggregated land information is developed from individual forms or records of ‘who’ holds ‘what’ land ‘where’. This land information does not only contribute directly and indirectly to poverty eradication, gender balance and agricultural modernisation, but is in fact necessary in enabling cost-effective policies to be put in place.

There is a need to spend a greater proportion of the country’s resources on systematic demarcation and recording of land holdings in customary areas. An important component of tenure security is the confidence with which one can transact (lend, sell, lease) in land. With population growth, specialization and incorporation of rural areas into market economies, and the importance of being able to transact in property rights rises. There is already a thriving informal land market in some areas. Recording of land ownership should reduce the costs associated with transactions.

There is evidence that the most occurring types of land disputes with potential to erupt into social strife are either boundary related (30%) and/ or encroachment based (26%). When there is documentary evidence to a parcel of land, the conflict is deterred.

Secondly, production benefits are more likely to accrue from tenure reform of which systematic demarcation is part and better land management where farm support services are made available. There is a strong case for focusing the implementation of the Land Act in areas where infrastructure and services are being made available and where returns are likely to be greatest in the short run.

Information gained from systematic demarcation and the land information management system will be useful for a range of national and local government activities, including:

- Good Governance by allowing individuals to check their land rights and those of their neighbours
- The physical location of additional health clinics and dispensaries

- The provision of more school classrooms in line with the population density
- Determining the pattern of rural feeder roads, and minimizing the costs of land acquisition, especially for roads through town areas
- Arranging village water supplies; and location of water pumps
- Planning for the introduction of rural electrification on a commercial basis
- Providing the basis for implementing cost-recovery and user-charges for water, electricity, and other utilities to be provided by the private sector
- Preparations for the National Census, and reducing the expenditures required for satellite imagery and the sampling of households across the country
- Assistance in land dispute resolution and a reduction in costs for tribunals/appeals
- Improving the estimation and collection of local government taxes
- Strengthening the rural tax base and revenues from Graduated Tax; PAYE, VAT
- Preparation of requests for additional Government/donor budget support for sector-wide approaches for funding under: PEAP; PMA; decentralization; health sector, education sector; and land sector programmes

In summary, a Land Information Management System based on systematic demarcation will enable more efficient physical and economic planning at the District and national level for the provision of social and economic services' provide additional funding' and help to strengthen the local tax base so as to finance sustainable development for poverty eradication.

3.3 Procedure Adopted for Systematic Adjudication and Demarcation Pilot Schemes

3.3.1 Baseline Studies

Baseline studies are conducted under the supervision of the Systematic Demarcation Technical Committee ((SDTC), which is a multi-disciplinary and multi-sectoral committee), for gauging community expectations, gleaning the nature of the social-cultural dynamics that may have impact on the program, assessing the existing land conflicts and assessing the impact of the program at a later date. Highlights of the baseline shall be used to design strategies for smooth implementation.

3.3.2 Mobilisation and Sensitization

Confidence and consensus building are the major elements for the success of the SD program and this can best be achieved through effective mobilisation and sensitization. Therefore, these two elements must be given top priority in the execution of the program.

3.3.3 Training

A training manual was developed to ensure training of the members of the Systematic Demarcation Team. Systematic Demarcation knowledge is to be largely acquired through training sessions that involve fieldwork as well. This training is part of a wider process required to impart the relevant skills for the successful implementation of Systematic

Demarcation. It is the expectation that those trained will have attended other sensitization workshops and acquired the required knowledge about the Land Act and other Land Issues.

3.3 Adjudication and Demarcation Procedures

3.4.1 Notification for Conducting Adjudication and Demarcation

The communities are notified about the SD exercise and this notice is placed two weeks before the commencement of the exercise. These notices are posted in public venues including community, health, trading centres, as well as in market places.

3.4.2 Sensitization

Sensitization is a continuous process following the massive village mobilisation and sensitization exercises. Announcements on radios and other print media that have national coverage are placed to inform the public about the program. Posters and other means are also concurrently used. The announcements indicate the date and schedule for adjudication in the selected villages inviting concerned parties. Emphasis is put on utilizing local FM radio stations which are spread nation wide and have a wide listenership.

3.4.3 Adjudication and Dispute Resolution

The Adjudication Team which includes the Area Land Committees (ALC) are directly responsible for carrying out adjudication in the pilot area. They are also responsible for identification of land disputes and as much as possible amicably settle them. Where they fail, the unsettled disputes are forwarded to LC courts, Land Tribunals or High Court depending on the subject value of the dispute. It is expected that most of the land disputes are resolved before or during demarcation.

As a general principle, land disputes are resolved using customary rules in the area, which should not be contrary to the principles of natural justice and equity. The customary rules that deny the rights of women, children, and the disabled and other marginalized groups are not applied.

Adjudication and Dispute resolution only takes place in the presence of all affected parties. All proceedings are conducted in a transparent manner. It is the responsibility of the ALC to record the proceedings and the final resolution of disputes. These records must be kept safely with the Recorder (who is the Sub-County Chief in the area) and be accessible to the public on request.

The following types of disputes are expected to arise during systematic demarcation: boundary disputes, succession disputes, ownership disputes, landlord/tenant disputes, community versus individual interests, government/individual disputes.

3.4.4 Clearing of Boundaries: Communities are encouraged to clear their land parcel boundaries at least a week before demarcation begins.

3.4.5 Marking of Boundaries

Successful boundary marking revolves around two major aspects namely; the team composition and the equipment utilized.

Equipment Selection

It was realized right from the outset that the success of Systematic Demarcation (S.D) would be determined partly by the speed at which field data can be captured, processed, plotted, and incorporated into the National Land Information System.

The equipment must be very user friendly both in data collection and post processing. The need for equipment simplicity is due to the fact that ultimately when S.D rolls out, the staff at the district need not be so highly educated or trained so as to be able to carry on effectively with S.D activities. The mode of operation of the equipment should have no recurrent costs attached for the data correction. Single frequency GPS were found most ideal for SD.

Composition of the Systematic Demarcation Team

The SD teams are composed of various stakeholders from each of the 5 levels as depicted below.

| Personnel | N0. | Duration of involvement |
|-----------------------------------|------------|--------------------------------|
| Area Land Committees (ALC) | 5 | Full time |
| Local Council (LC) Representative | 1 | Full time (in area village) |
| SDTC | 2 | Full time |
| Parish Women Council Rep. | 1 | Full time |
| Assistant Land Technician | 1 | Full time |
| DL Officer | 1 | Full- time |
| District Land Surveyor | 1 | 1 week during the exercise |
| Lands & Survey Department MWLE | 1 | 3 days during the exercise. |

In order to ensure completeness of the SD exercise it has been found necessary to co-opt experts from various fields including: Wetlands officials, Physical Planners, Road Engineers, Legal Officers from Administrator General's office.

3.4.6 Mode of Operation

The marking of boundaries is carried out by the Systematic Demarcation Team together with the owners, neighbours and other interested parties.

The marked boundaries are certified by the owners signing an appropriate Form. Boundaries for tenants on registered land are certified by the registered owner or his/her duly appointed representative (Proxy), the tenant and 2 witnesses.

In the absence of the registered owner, the representative must produce evidence of representation by presenting a legal document (for example powers of attorney or a will). In case there is no legal document to identify the duly appointed and rightful representative, the responsibility of identifying the rightful representative is with the ALC, LCs and elders of the area. All these must append their signatures to the form as key witnesses to evidence of ownership.

3.4.7 Measurement

One of the key elements of SD is to ascertain size and shape of the land parcels. It is therefore important that the SD teams collect uniform data using a uniform unit of measurement for ascertaining the size and shape of the land parcels.

3.4.8 Data to be collected on Land Parcels

A uniform data collection form containing the data as specified below has been developed:

- Name and sex of owner(s)
- Name of spouse (s)
- Address of the owner (s)
- Current use of the land
- Type of Tenure
- Number of people living and depending on the parcel
- Coordinates of the corners/turning points
- Easements (e.g. rights of way, Water points, wells, clay, sand)
- Utilities (e.g. telephones, electricity lines, water pipes, railway lines)
- Permanent structures (rocks, hardwood, trees and buildings)
- Wetlands and other eco-system data
- Names of immediate neighbour (s)
- Other third party rights (e.g. leases,

3.4.9 Land Readjustment

Where there are irregular pieces of land, the SD team encourages the parties to agree on land readjustment, using the principle of 'give and take' to eliminate irregular corners.

3.4 Other Activities

Other activities that need to be carried out to ensure success and completeness of the SD exercise include:

- Topographic Survey of Trading Centers for Physical Planning purposes
- Editing of Information
- Public Display after drawing of cadastral maps

4.0 Achievements of Systematic Demarcation

4.1 Achievements of the Ministry

- Developed Guidelines for Systematic Demarcation
- Developed Training Manual for SD
- Developed Sensitisation materials for SD
- Translated Sensitisation Material into local languages
- Trained personnel in GPS applications for SD in University of Florida
- Together with Data Grid Inc., customized GPS equipment for use in SD
- Started the process of development of a database management system to ease data collection and management of SD data
- Most of the land disputes were resolved
- Topographic surveys were carried out for physical planning of the trading centers in the area
- Exposed to all stakeholders including policy makers the need to come up with guidelines on for example: Restriction on parcel sizes, provision of access to parcels,
- Finally the SD in Rukarango enabled the staff of MWLE acquire vital learning experiences that are being studied and bettered to enable SD in the other parts of the country to be implemented

4.2 Achievements in Rukarango Parish (*the first pilot*) found in Western Uganda with diverse tenure arrangements and environmental issues.

- Information was collected on who owns what piece of land and where, for a total of 2419 parcels of land. As a result of work carried out, spatial information was generated for 2419 land parcels.
- 40 local people were trained in skills of participatory dispute resolution and adjudication.
- Land conflicts resulting from boundaries and encroachment have reduced to zero.
- Enhanced security of tenure especially among spouses. Women's land rights are much clearer and well defined.
- Succession planning has been enhanced such that the person granting land under the will knows exactly the size of parcel being alienated and subsequently no conflicts arise in inheritance.

5.0 Other Pilots:

- **Masaka Pilot** (Southern Uganda Predominantly Mailo system of land holding with tenants by occupancy and succession and inheritance issues) .Mobilisation and Sensitisation has been carried out but work is pending sorting out inheritance issues.
- **Soroti Pilot** (Eastern Uganda predominantly customary tenure) - Mobilisation and Sensitisation has been carried out, but after some interruption, work is due to resume using upgraded equipment and updated procedures.

6.0. Challenges

- Capacity both in terms of personnel and equipment to deliver services for Systematic Demarcation
- Inheritance issues in areas where Land Registers are not up to date
- Ability of all stakeholders to take up their roles and responsibilities
- Sorting out complex issues related to previously unsurveyed parcels

Table 1: Other Challenges to Systematic Demarcation

| Challenges | Possible Solutions and/or Safeguards |
|---|---|
| Require acceptance and collaboration of the community | Mass mobilization and sensitization |
| Initial cost very high | Initial central government funding |
| Suspicion and distrust | Transparency, timeliness, adequate sensitization and inclusion of local/traditional leaders |
| Uncooperative individuals | Focused sensitization, local participation |
| Sabotage and politicization | Involve all stakeholders, massive sensitisation by local leaders. |
| Sustainability | Build capacity of each individual district to gradually carry on with the SD. Also all due effort should be made to involve as many stakeholders as possible. |

7. WAY FORWARD

The following activities have been planned:

- Development of a database management system
- 6 new demarcation areas, baselines carried out, ready to start
- Certification or Registration of land rights
- Possibility of scaling up under World Bank Project – private sector involvement

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BIOGRAPHICAL NOTES

The author has held various positions in the Uganda Government Department of Lands and Surveys culminating in the position of Project Coordinator of the Land Tenure Reform Programme in March, 2003. Handled part-time lecturing assignments at the Department of Surveying, Faculty of Technology, Makerere University, 1992 – 1996. Involved in introduction of computerization of mapping operations in the Department of Lands and Surveys, development of the LSSP and is also directly involved in development of the National Land Policy, National Land Information System and testing of innovative approaches to delivery of land services as part of the wider land reform process.

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