

LANDAC PROFESSIONAL LEARNING PROGRAMME

Report on evaluating land titling as a means of securing tenure in the context of customary tenure: A case of Uganda, Malawi and Mozambique.



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LIST OF ACRONYMS

CCO:	Certificate of Customary Ownership
CEDP:	Competitive Enterprise Development Project
CEPA:	Centre for Environmental Policy and Advocacy
CSO:	Civil Society Organization
DUAT:	Direito de Uso e Aproveitamento da Terra
FAO:	Food and Agriculture Organization of the United Nations
FDG:	Focus Group Discussion
FFP:	Fit For Purpose
FRELIMO:	Frente de Libertação de Moçambique
GLTN:	Global Land Tool Network
NLP:	National Land Policy
RENAMO:	Resistência Nacional de Moçambique
SLAAC:	Systematic Land Adjudication and Certification

1.1 INTRODUCTION AND BACKGROUND

Secure land rights are considered a key determinant of economic development and improved livelihoods in Africa. It is often urged that African indigenous land tenure institutions (customary tenure) must be modified and developed to register land and in turn cause development (Lawry et.al. 2017). This would be experienced through poverty eradication, sustainable housing, agricultural productivity and a strengthened role of the vulnerable groups in the administration of their land resource. However, there is no conclusive research on the impacts created by the various approaches that have been used to register customary land in Africa. This is to say that a number of scholars have published over the years much as these are limited to sometimes the geographic location of an intervention as well as what happens at a particular time.

In Uganda, Mozambique and Malawi, like it is for some of the African countries, a number of initiatives dubbed 'Fit for Purpose' (FFP) approaches have developed tools to waiver vulnerable and poor communities of the cost of land registration through embracing the concept of systematic titling and leveraging on various technological advancements. It is important to note that unlike Uganda where pilots in various areas have been conducted, Mozambique on the other hand has advanced on a massive land titling process, as a consequence of successful pilot projects outcomes while Malawi is still at the inception stage with various discussions being held to lay ground for future FFP pilots. The tools however, have in many cases focused on solving the immediate problems of these communities such as enabling them to access credit for agricultural investment and ignored the longer-term benefits of tenure security for the communities. That notwithstanding, this poses a number of questions which include; are the tools really being used to help people gain agricultural credit across the three countries, do people that have documents of land registration use them and feel secure. This is partly attributed to the fact that there has not been contextualization of these initiatives to the various national legal and policy frameworks and aspirations and how to better support the governments and communities to secure their tenure.

For Uganda specifically, pilots have already been conducted and information has been recorded. For some areas, even documents like the Certificate of Customary Ownership (CCO) have been issued. Despite this cumulative evidence, the approach assumptions in Uganda are placed in question given that the country through its progressive National Land Policy (2013) envisions a Customary Land Registry to permanently regulate and secure rights under

customary tenure. It is also important to note that these initiatives work in partnership with the governments in African countries that are ideally supposed to regulate their operations but have not done so.

In Mozambique, land titling process has been taken by the public sector and Civil Society Organizations through numerous public programs aimed to secure land rights in the context of land rush and multiple land conflict nature (Mandamule, 2016). Similar to Uganda the process is evidenced by issuing of land titles called DUAT (Direito de Uso e Aproveitamento da Terra) (Adriano and Machaze, 2018; Capaina, 2019). Data from the National Land Registry unity under the Ministry of Land and Environment revealed that until 2017 there were a total of 300,000 land titles issued to individuals and collective entities. In Maputo province, 10,698 titles were issued, mostly under men's names. However, while the government is advancing with land titling through multi-year programs such as Terra Segura, the process has been deeply criticized by some Civil Society Organizations including small-scale farmers movements. The National Union of Small-scale Farmers and Livaningo argued that the current land law does not obligate land users (communities) to register "their" land, as the rights to use and explore land can customarily be obtained. Non-published research from Livaningo questioned the type of land being registered, mostly being residence land and not farmlands. These trajectories have led some researchers to conclude that the government might be seeking to secure a "land bank" that later will be leased to investors bypassing the free, prior informed consent principles (Adriano and Machaze, 2018; Mandamule, 2017). Yet others regarded this process as a silent privatization of customary land (PLAAS,2020). Evidences from existing literatures converge on the fact that land titling process creates an impact onto the communities where these land rights documents in relation to securing their land rights and improving their livelihoods are issued in a manner that to some extent contradicts the existing legal frameworks and transform patterns on land access and land use.

2.1 OBJECTIVES

- To assess the situation of Customary Land Registration in the three case study countries in the face of Large-Scale Land Based Investments.
- To document the successes and challenges of customary land registration initiatives in Uganda, Malawi and Mozambique.
- To draw lessons to inform future land titling initiatives in Africa.

3.1 RESEARCH QUESTIONS

1. What are the successes registered from land titling initiatives on Customary Land and particularly from the ongoing initiatives (Fit for Purpose approaches) in Uganda, Malawi and Mozambique?
2. What are the challenges and how are governments planning to address these?
3. At what scale do people understand and appreciate land titling and have their livelihoods been impacted (positively or negatively) after obtaining the land rights document offered to them?
4. Do they feel completely secure from any land evictions, land grabs or are they able to freely negotiate in case there is a need to transfer their land to another party?

4.1 STUDY AREA

The research was conducted in three countries in Africa i.e., Uganda, Malawi and Mozambique. Uganda is a landlocked country in East Africa whose diverse landscape encompasses the snow-capped Rwenzori Mountains and immense Lake Victoria.

Uganda is bordered by South Sudan to the north, Kenya to the east, Tanzania and Rwanda to the south, and the Democratic Republic of the Congo to the west. The study was carried out in the eastern part of the country in the district of Mbale. The main ethnic group in the district are the Bamasaba or Bagisu. The main language spoken in the district is Lugisu also known as Lumasaba. The primary economic activity in the district is agriculture. The respondents were taken from the sub counties of Bumbobi, Bungokho, and Bukhasakya. The topography of Mbale is divided into three distinct types namely: Mbale plain or terrace, the upland and the mountain landscapes. The topography of Mbale district can also be divided into highlands, midlands and lowlands. Generally, the soils in the highlands are clay; the midlands have clay loam while the lowlands mainly have sandy soils. The major challenges facing Mbale town are growth of informal human settlements, poor land records, lack of serviced land, poor land tenure systems, outdated structure plans, political interference in decision making, outdated laws, high urban population, and inadequate human resources (UNHABITAT, 2012).

Malawi, officially the Republic of Malawi, is a landlocked country in south eastern Africa that was formerly known as Nyasaland. It is bordered by Zambia to the west, Tanzania to the north and northeast, and Mozambique to the east,

south and southwest. Malawi spans over 118,484 km² (45,747 sq mi) and has an estimated population of 19,431,566 (as of January 2021). The plateaus of central Malawi rise to elevations of 2,500 to 4,500 feet (760 to 1,370 metres) and lie just west of the Lake Malawi littoral; the plateaus cover about three-fourths of the total land area. The highland areas are mainly isolated tracts that rise as much as 8,000 feet (2,400 metres) above sea level.

Mozambique on the other hand, officially the Republic of Mozambique, is a country located in South-eastern Africa bordered by the Indian Ocean to the east, Tanzania to the north, Malawi and Zambia to the northwest, Zimbabwe to the west, and Eswatini (Swaziland) and South Africa to the southwest. The sovereign state is separated from the Comoros, Mayotte and Madagascar by the Mozambique Channel to the east. Mozambique has a total land area of 786,380 square kilometers, comprising three geographic areas: (1) a plateau and highland region running from the northern border to the Zambezi River (27 percent of total land); (2) a middle plateau region that extends south of the Zambezi River to the Save River (29 percent); and (3) a low-lying coastal belt running south from the Save River to the southern border (44 percent). The northern and central areas of the country have tropical and subtropical climates; the south is dry semi-arid steppe and arid desert climate.



Figure 1: A map showing the location of the countries involved in the study.

5.1 LITERATURE REVIEW: THE HISTORICAL EVOLUTION OF LAND TENURE SYSTEMS IN UGANDA, MALAWI, AND MOZAMBIQUE

This section provides an overview of the various systems of land tenure within the three study countries and how these have evolved over time to appreciate the means through which rights to access, control and own land are obtained by various individuals in the countries.

5.1.1 Land tenure systems in Uganda

Uganda's land tenure reforms began in 1900 and introduced a new land system with tenures including freehold, leasehold and mailo land, based on the western misconception that customary systems of landholding in the significant societies of Uganda at the time were very complex. The idea of individual ownership and documentation of rights, restrictions and responsibilities came into force. Customary rights to land were subsumed by the crown lands regulations under the colonial administration as customary users became tenants of the crown. By its existence today, the customary system was partly transformed but not replaced.

The coming of the Constitution of Uganda in 1995 saw some changes in how land was owned and governed in Uganda. It abolished the Land Reform Decree of 1975 which was theoretically in place. It restored Mailo and Freehold land tenure systems in addition to the leasehold tenure that existed. Customary tenure system was also formalized. The Constitution declared that land belonged to the citizens of Uganda and that they could hold it in any of the four land tenure systems. The 1995 Constitution brought about the last major land tenure reform Uganda has ever had. It, in many respects, became a revolutionary law, overturning a century of land relations and laying the groundwork for the possible evolution of a market in land mainly based on individual ownership.

The Land Act 1998 as amended in 2010 legislatively actualized most of the reforms provided for in the 1995 Constitution. It officially recognized customary tenure as a legitimate system of land holding as per the Constitution and defined the various ways in which it manifests. The Land Act also recognizes that subdivisions of customary land may be recognized as belonging to a person, a family, or a traditional institution. In addition, it granted customary landowners the option of formally registering their land by converting it to freehold or by applying for issuance of a Certificate of Customary ownership (CCO) upon completion. This certificate would be recognized by financial institutions and other bodies and authorities as a valid Certificate for purposes

of evidence of title. This law, however, iterates the unnecessary preconceived Western notions about customary land tenure being complex, as laid out throughout its tenor.

The introduction of the National Physical Planning Act, 2010 also impacted the way customary land is managed. The Act establishes various physical planning structures starting at national level all the way down to sub county level. Through these structures, there is close supervision of the implementation of physical development plans across the board. This now checks the authority of especially traditional structures on how customary land may be utilized within a particular area. This has induced a lot of conflict around customary tenure, thus most of the lands have not been registered with a national system and by virtue of granting a leasehold, this tenure can only be reverted into Freehold.

In the ideal sense, a policy informs the law, implying that a National Land Policy (NLP) should have been passed before the Land Act. Unfortunately, in Uganda, the reverse happened with the NLP being passed in 2013, 15 years after the enactment of the Land Act. The goal of the Policy is to ensure an efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development. It recognized the fact that the majority of the Ugandans held their land customarily and highlighted three major problems that were associated with it.

1. It does not provide security of tenure for landowners.
2. It impedes the advancement of land markets.
3. It discriminates against women.

Considering these three issues, the policy proposed two statements which were to recognize customary tenure in its form to be at par (same level) with other tenure systems and to establish a land registry system for the registration of land rights under customary tenure. In its tenor, the policy revokes the aspirations of introducing the Freehold tenure as the uniform tenure across the country and hence alienation of a customary tenure, for which both derive their legality from the 1995 Constitution. The Policy seeks revitalization of the customary land tenure with the modern state of the land management and administration mechanisms. This calls out for an overall determination of the locus of the different customary communities that can strongly be built into the legal system to eventually support the actualization of the Certificate of Title for Customary Tenure.

As it stands today, Uganda has four tenure systems: Mailo, Customary, Freehold and Leasehold tenure. The Mailo system is rooted in the 1900 Buganda Agreement, in which the British returned appropriated land to the Buganda Kingdom. The king and his nobles were awarded large blocks of land, occupied by smallholders, known as Mailo land, in reference to the square mile unit in which they were measured (West 1972). In practice, land under Mailo tenure continued to be governed by Buganda law and custom, including being transmitted exclusively to male heirs. The Mailo system introduced private property for customary authorities but ignored the rights of the occupants (tenants or kibanjas holders) who were cultivating the land, as very few chiefs engaged directly in farming. Therefore, the agreement was amended in 1928, introducing busuulu (ground rent) and envujju (tribute) laws, that aimed to recognize and strengthen the rights of occupants by putting a limit on the rent to be paid and protecting tenants against eviction without compensation.

Customary Tenure is where the land is owned based on the norms and traditions of a given society or community. One can even own land individually under customary tenure if it has been handed down from generation to generation using that society's customs. Special protection is accorded to the rights of women, children, and persons with a disability to own, occupy or use customary land. (Section 27 of the Land Act) In 2015, the government of Uganda introduced Certificates of Customary Ownership (CCOs) for owners of customary land. A customary landowner can apply for a CCO as proof of ownership of the land. This tenure is the most common form of land holding in Uganda.

Freehold Land Tenure System is the way of owning land in Perpetuity or Time Without End and was set up by an agreement between the Kingdoms and the British Government. Grants of land in freehold were made by the Crown and later by the Uganda Land Commission. The grantee of land in freehold was and is entitled to a certificate of title. Most of this land was issued to church missionaries and academic Institutions and some individuals. Freehold is the premier mode of private land ownership under English law.

Leasehold Land Tenure System is a kind of land ownership for a particular period. In Uganda one can get a lease from an individual, a local authority, an organization or Company, an institution like Buganda Kingdom or from Uganda government for a period usually 49 or 99 years or in between under agreed terms and conditions. The leasehold transactions, being essentially contractual, allow parties to define the terms and conditions of access and usage in such a manner that suits their give-and-take land use needs. A grant

of land would be made by the owner of freehold, customary or Mailo or by the Crown or Uganda Land Commission to another person. The grantee of a lease for an agreed period is entitled to a certificate of title.

5.1.2 Land tenure systems in Mozambique

Since the colonial period, land has been regarded as an important asset for development (Chichava et al, 2013). Therefore, for hundreds of years, the Portuguese shaped the nature of land administration in the country. The Portuguese initially took control of concessions from local chiefs and through contested large-scale land acquisitions (Newitt, 1969). By 1596, the Portuguese court had started granting title deeds to colonial Portuguese such that they set up what is known as a prazo system, whereby conquistadores (Portuguese for conquerors) claimed administrative power over the locals and their land. However, the relationships with previous chiefs and the new rights holders varied, and the Portuguese crown had difficulty controlling what the colonists were doing in Mozambique.

Some traditional leaders-maintained power by making alliances with the colonists, and Mozambicans were subordinated under the power of such chiefs based on somewhat fictitious definitions of shared language and culture (O'Laughlin, 2000). Therefore, land governance in Mozambique varied across the country, with traditional leaders and colonists in complex relationships, such that in some cases, communal land governance survived within the presence of a system of formalized titles issued by the Portuguese (Newitt, 1969:74).

According to Glover and Jones (2019), in the 19th century, the Portuguese abandoned the prazo system, and instead gave large concessions to chartered royal companies. From the 1930s, the Portuguese colonists began developing large irrigation schemes for rice production, with canals and rectangular plots, which prevailed until some years before the country's independence in 1975 (Porsani et al., 2017).

When the country became independent in 1975, the Frente de Libertação de Moçambique – The Front of Liberalization of Mozambique, commonly known as FRELIMO took over as an independent government. During this period, a dual system of customary land under traditional leaders and large estates formerly held by colonists was established. According to O'Laughlin (1996) and Virtanen (2003), FRELIMO tried to nationalize all land by bringing land governance under a single legal system, which patently failed. Despite many

customary leaders having had close ties with the colonists, local peasants were afraid of them, and efforts by FRELIMO to quash customary land control led to conflict. Furthermore, although the policy was for peasants to move from smallholder cultivation to become workers on state-owned farms (a kind of collectivization), in practice FRELIMO invested far more in modernizing the farms than in paying wages to labourers (Porsani et al., 2017).

In 1977, FRELIMO nationalized all privately owned land and intensified efforts to develop large state-owned farms, thus neglecting peasant families as agricultural producers (Chichava, 2013). However, despite investing more than 90% of its agricultural budget in the state sector, the government failed to produce tangible results (Chichava, 2013). By the mid-1980s, a deteriorating economy and collapsing agricultural sector forced the government to abandon socialism and it began divesting state assets (Glover and Jones, 2019). Despite securing investment for some plots of state land, the process was chaotic. Some land was given to political elites; others were subject to overlapping, conflicting claims. By the end of the civil war, many former state-owned agricultural projects either were in disrepair or had been reclaimed by smallholders, with only a few larger commercial operations still functioning (Glover and Jones, 2019). At the same time, traditional leaders continued to occupy “a no man’s land between the people and the state, seen by each as representative of the other” (Fairbairn, 2013).

After the end of the civil war between FRELIMO and the Resistência Nacional de Moçambique – The National Resistance of Mozambique, commonly known as RENAMO, the country was dependent on international aid. This, according to Amanor and Chichava (2016) led the government to reversal to its previous efforts of centralising land administration under the national government. In 1997 the government introduced a new Land Law which recognized customary land rights (Amanor and Chichava, 2016; De Satge and Kleinbooi, 2011). The 1997 Land Law is widely regarded as an exemplary model in democratic and participatory law making” (De Satge and Kleinbooi, 2011:83). Under the law, customary land rights can only be acquired through community consultation, therefore, customary structures can be regarded as the mainland administrators in the country.

The current tenure system is governed by a range of legal frameworks that were created for the national reconstruction after the colonial and civil war that overthrew land administration systems in the country (USAID, 2011). The common understanding from all the land legal frameworks is that land in Mozambique is the property of the state and the selling, mortgaging, or encumbering of land is not permitted. The 1997 Land Law therefore defines

limited land use rights for occupants and users based on a unitary system of tenure known as the DUAT (Direito de Uso e Aproveitamento da Terra), i.e., the right to use and benefit from land (Cabral and Norkfolk, 2016).

The DUAT is at the heart of community land rights in Mozambique and can be obtained in three ways: First, communities can obtain a perpetual DUAT for land recognized under customary systems. As such, communities are the holders of a single state DUAT, which recognizes that the customary norms and practices also determine individual and family land rights within the community. Secondly, individuals occupying land in 'good faith' for at least 10 years have a perpetual DUAT for residential and family use. In these two forms, communities and individuals can prove land rights through testimony without registration or titling, i.e., they are not required to hold formal DUAT titles to prove their land rights (Cabral and Norfolk, 2016). Currently, more than 90% of land in Mozambique is used under unregistered good faith occupancy and customary tenure (Balas et al., 2017). This however, does create problems of visibility of rights, which often leads to the erroneous (or disingenuous) interpretation that land is available when this is not the case.

However, communities may seek a formal DUAT and would then go through a formal community consultation and mapping process, called 'delimitation' (Porsani et al., 2017). Thereafter, they will receive a certificate and may mark their land with place markers around the perimeter; and may then "apply for a formal land title" (Fairbairn, 2011, p. 7). While it is not compulsory for communities to obtain a formal DUAT, it is recommended in instances where an investor is interested in investing in community land (Technical Annex to the Land Law Regulations, Article 7) (De Satge and Kleinbooi, 2011). Acquiring a formal DUAT confers communities with a legal personality in concrete form, such that they can enter into third-party contracts and open a bank account (De Satge and Kleinbooi, 2011). The 1997 Land Law further states in Article 24 that communities should be involved in managing natural resources, resolving conflicts, titling processes including issuance of DUATs, and identifying and defining the limits of the land they occupy (De Satge and Kleinbooi, 2011). Based on this system, arguably, the whole country is 'occupied' by local communities (De Satge and Kleinbooi, 2011, p. 86) and every household is allocated land as needed (Borras et al., 2011).

Without a formal DUAT, local governments and investors often fail to adequately recognize community land rights and uses, leaving both communities and investors at risk (USAID, 2011). The growing risk and increasing pressure of large-scale land-based investments have led many individuals and communities to turn to the formal DUAT titling process to obtain the

documentation for their land (Hilhorst et al., 2016). However, few communities or individuals have the resources needed to apply for and receive a formal title. The process is cumbersome, time-consuming, and prohibitively costly for many. It involves high application fees, depending on the number of hectares, the use of the land and location of the land. The DUAT handling and travel costs for recognition and consultation can be up to MZN 7,000 (USD 93.22) and the annual fees can be up to MZZ 1,500 (USD 0.20) per hectare; costs of authorization are also applicable, which are MZN 600 (USD 8) for temporary and MZN 300 (USD 4) for permanent DUAT (Direito do Uso e Aproveitamento de Terra, 2015) (renewable for 50 years).

Furthermore, the institutional capacity of local land authorities to survey land and register DUATs is limited (Van den Brink, 2008), so most Mozambican land has remained unregistered, and customary tenure holders are invisible on official maps and in land registries.

Lastly, individuals can apply for a DUAT for up to 50 years, with one renewal; and a land rights concession, typically for natural resource extraction or developing agricultural, forestry or fishing activities (Akeson et al, 2009; Cabral and Norfolk, 2016). While community members can obtain a DUAT by occupying land for 10 years, individuals requiring land for a non-housing or non-community purposes must apply for a DUAT title (Hilhorst and Porchet, 2012).

5.1.3 Land tenure systems in Malawi

Prior to the colonial era land in Malawi was held communally by the various tribes in the country and in trust by the community's local traditional leaders. Ownership of land was traced back to familial descent. It was the responsibility of traditional leaders who would then allocate land to family heads who would then allocate to individual family members. Land was inheritable and could not be "sold" as it was considered as a sacred trust and not a commercial commodity. This guaranteed that families would hold the land indefinitely as there was no reason for the family to dispose of the land except if found to have been accused of witchcraft which was considered a capital crime (Mbalanje, 1986).

Allocation of rights of access and control with the community and family culturally subjective to the prevalent marriage system of the region. Malawi has a dualistic marriage system that sees the married couple residing either in the husband's (patrilocal) or the wife's (matrilocal) native home. In the patrilineal or patrilocal marriage system, the corresponding rights to own and control land are inherited from father to son. Women are thought to possess

access rights to their father's home as members of the family, and their husband's home through marriage. In matrilineal or matrilineal marriage systems the opposite is true as women inherit and own land while men attain access rights when they get married (Takane, 2008).

The implication of this system is that men and women's right to access (and not own land) in matrilineal and patrilineal societies respectively is highly contingent on their marital status. In the case of a divorce and death of a spouse, these access rights are arbitrarily ended.

Following the Berlin Conference of 1884, the boundaries of Malawi (then Nyasaland) and by 1891 Britain annexed the Nyasaland territory and made it a protectorate in 1892. During this period land was categorized as crown land private under a Certificate of Claim and Native trust land that were decided at the discretion of the Crown (Chiwenga, Kasowanjete, Kambewa, & Chaweza, 2019). Following Malawi's independence, the Land Act of 1965 vested all land in Malawi to the President. It recognized land as falling into three categories: Public, Private and Customary land. Public land in this act was defined as land which is occupied, used, and acquired by the government and any other land not being private or customary land. Private land was defined as which was held, owned, and occupied under a lease or freehold title or a "Certificate of Claim ". Customary land was defined as land used, held, and occupied under customary law.

In 1996, a Presidential Commission of Inquiry on Land Policy reform was established to conduct stakeholder consultations towards the amendment of the legal framework around. This was done in response to challenges that resulted from the residual effects of the colonial laws from which the 1966 acts descended from. Notably among these challenges were that the legislation failed to reflect principles and precepts of the democratic republic era the nation was thriving for rather those of the colonial era from which Malawi had emerged from; cater for the nation's increasing population and reduction in population to land ratio; provide for the systematic adjudication and registration of customary interests on land; and lay out principles for the good management of land development processes (Gondwe, 2002) (Malawi Government, 2017).

The results from the commission led to the formulation of the National Land Policy (2002) and subsequent Land Acts (2016) that followed. Under this act, land has been recategorized as public and private land. Public land which is defined as land held in trust in trust for the people of Malawi by either Government, a local government authority or a traditional authority. This

includes land acquired and privately owned and designated for purposes such as public schools; hospitals, offices and infrastructure; national parks; recreation areas; forest areas; conservation areas; historic and cultural sites; and communal areas designated for grazing. Private land is owned, held, or occupied a freehold or leasehold title and customary estate which is customary land that is registered as privately owned by individuals, families, clans, or groupings of majority Malawian citizens. The introduction of registered interests in customary land accords the holder legally recognized rights that allows for the protection of spouses of deceased and orphans within communities irrespective of cultural practices; and provides for the securing of free, prior, and informed consent as well as fair and appropriate compensation in case of large-scale land acquisition. Beyond recategorization of land, the law has also set up structures and procedures for decentralized land management and dispute resolution from community to the national level as opposed to centralized governance by the central ministry responsible for lands (Ministry of Lands, 2016).

5.2. LEGAL AND POLICY FRAMEWORK ON LAND IN UGANDA, MOZAMBIQUE, AND MALAWI

Table 1: Legal and Policy framework on land in Uganda, Malawi and Mozambique.

LEGAL PROVISION	UGANDA	MOZAMBIQUE	MALAWI
Recognition of Customary Claims to Land	<p>• Constitution of the Republic of Uganda (1995)</p> <p>Article 237 provides that land shall be vested in the citizens in accordance with the four land tenure systems, namely, freehold, leasehold, mailo and customary.</p>	<p>• Law 19/97 (1 October)</p> <p>Establishes key norms for land administration and tenure, including the concept of a unitary right (DUAT), rights acquired through good faith and customary occupation and the local community as a land-holding</p>	<p>• Land Act (2016)</p> <p>Section 7 recognizes Customary interests either held privately as customary estates or in trust by traditional leaders on behalf of the community as communal land</p>

		entity.	
Operationalization of Recognized Claims through Titling	<p>•Land Act Cap 227 as Amended in 2001, 2004 and 2010</p> <p>Section 15, the Act recognizes the right of people to hold communal land</p> <p>•Registration of Titles Act Cap 230</p> <p>The Act provides that a certificate of title is conclusive evidence of ownership of the land in respect to which it describes by the person in whose name it is registered</p>	<p>•Decree 1/2003 (18 February)</p> <p>Amendment to Land Law Regulations, specifically allowing local communities to register delimited land in the Real Property Register</p> <p>•Decree 50/2007 (16 October)</p> <p>Amends Article 35 of the Land Law Regulations to require local communities to request government authorisation for the titling of their acquired DUAT rights.</p>	<p>•Customary Land Act (2016)</p> <p>Section 20 – 23 provides for the registration of customary land thus converting it into a customary estate and the issuance of title either to individuals, jointly to spouses, clans, or any other form of associations of Malawian citizens or majority Malawian stakeholders.</p>
Rights conferred through Registration	<p>•Registration of Titles Act Cap 230</p> <p>Right of Transfer</p>		<p>•Customary Land Act (2016)</p> <p>Section 20 Subsection 2 confers the right to perpetual ownership, control and use of a customary estate, right to bequeath land</p>

			<p>Section 25 confers the right to lease and sublease a parcel of customary estate</p> <p>Section 28 confers the right to dispose of a customary estate upon meeting the prescribed requirements for disposal.</p>
<p>Decentralized land administration and management</p>		<p>•Law 8/2003 (27 March)</p> <p>Legislation on local state administration, known as LOLE. It sets the district as the territorial planning base for economic development and the locality as the lowest level of state administration.</p> <p>•Decree 11/2005 (10 June)</p> <p>Regulations of Law 8/2003 on local state administration organisms, introducing statutory consultative councils at various levels.</p>	<p>•Customary Land Act (2016)</p> <p>Section 5 – 12 sets up Customary Land Committees over a group of villages to oversee land administration activities such as land titling and conferring of titles. CLC consists of 6 elected locals and the traditional leader responsible for the group of villages.</p> <p>Section 44 -48 establishes a land tribunal at Community, District and National Level to preside over land related matters with consideration to</p>

		<p>•Decree 66/98 (8 December)</p> <p>Rural Land Law Regulations and Technical Annexe: specify procedures for community consultations, community land delimitations and land demarcation.</p>	<p>gender inclusion among nominated members of the tribunal.</p>
<p>Acquisition of Land and Compensation, thereof</p>	<p>•Land Acquisition Act Cap 223</p> <p>Makes provision for the compulsory acquisition of land for public purposes and for matters incidental thereto and connected therewith. The Act further provides that the Government shall pay compensation to any person who suffers damage because of the exercise of the powers of acquisition. Any dispute as to the compensation payable under this section shall</p>	<p>•Decree 70/2008 (30 December)</p> <p>Investment guidelines that introduce further regulations on large scale land acquisitions (>10,000 ha).</p> <p>•Ministerial Diploma 158/2011 (15 June)</p> <p>Details stages for the community consultation process.</p>	<p>Land Act (2016)</p> <p>Section 17 – 18 provides for the acquisition of unallocated customary land for public utility and the payment of compensation as result of the acquisition.</p> <p>•Customary Land Act (2016)</p> <p>Provides for the acquisition of customary land by the Minister for public interests and outlines the procedures for consultation and dialogue with affected rights holders.</p> <p>•Lands</p>

	<p>be referred by the Attorney General to the court for decision.</p>		<p>Acquisition (Amendment) Act (2016)</p> <p>Section 9 provides for the lump sum payment of compensation by the Minister valued by an independent valuer, to the affected rights holders.</p>
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6.1 METHODOLOGY

In-depth research and desktop reviews to document land registration in the African context. This was done to highlight the different modes of administration of customary land in Uganda, Mozambique and Malawi and what initiatives have been taken to secure land under this tenure system. It was a major secondary source of information and also provided for a benchmark on what the primary sources of information would provide. Interviews and community dialogues were the methodology employed to obtain additional information on the subject matter.

Interviews with government officials, development partners and Civil Society Organizations in the land sector were geared towards ascertaining the policy understanding of the stakeholders in the land sector and what the implications both positive and negative that these initiatives have on the tenure security of the communities as well as the development of land administration and management in Malawi, Mozambique and Uganda.

Community Dialogues where Fit for Purpose initiatives have been implemented (Mozambique) piloted (Uganda) and where customary land titling has been carried out/piloted (Malawi). Focused group discussions were conducted among customary communities with an intention of establishing whether attaining the documentation of their land rights have helped secure their tenure and whether their livelihoods have been greatly impacted.

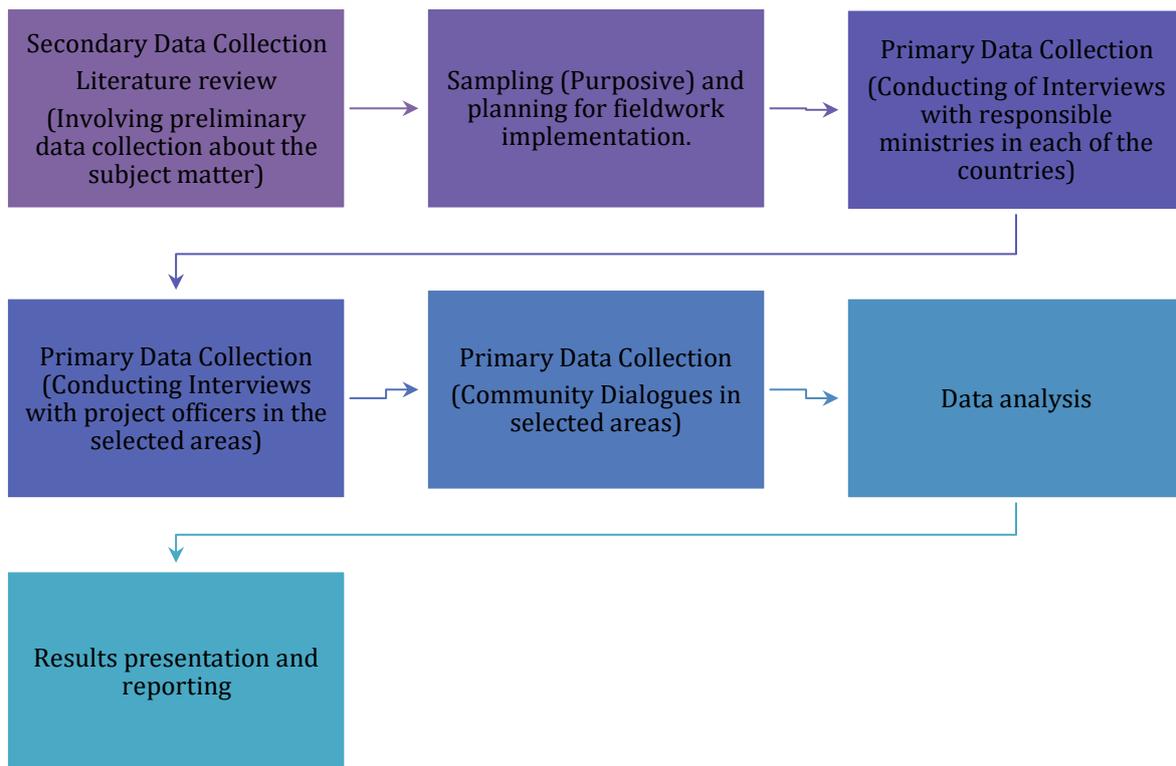


Figure 2: A flow chart showing the research methodology.

7.1 RESULTS AND DISCUSSIONS

7.2 UGANDA

7.2.1 Interviews

Introduction

In Uganda, the Ministry of Lands, Housing and Urban Development developed its own software for Fit For Purpose called Systematic Land Adjudication And Certification (SLAAC), named after the World Bank funded Systematic Land Adjudication and Certification programme. The Ministry of Lands Housing and Urban Development has already piloted the use of FFP in the adjudication and processing of Certificates of Customary Ownership (CCOs) and freehold titles. In Kasese district (Western Uganda), more than 4,000 CCOs were issued using a customized version of Open Tenure, an open-source software provided by the Food and Agriculture Organization of the United Nations (FAO). The Open Tenure software has further been used in Nwoya district (Northern Uganda) where more than 3,000 CCOs have been issued on customary land. The tool has been piloted in Jinja and Mbale district (eastern Uganda) and Sheema district (South Western Uganda) where more than 300 parcels have been mapped. The tool is currently being used in Kabale (South – Western Uganda) together with STDM in a Land Tenure Security project supported by GLTN. According to the ministry, the SLAAC tool will be used to generate more than 800,000 titles in various parts of the country under the Competitive Enterprise Development Project (CEDP).

The interviews were geared towards ascertaining the policy implementation and direction of the stakeholders in the land sector particularly the Ministry of Lands, Housing and Urban Development (MLHUD) and what the implications both positive and negative the SLAAC tool has had on the tenure security of the communities as well as the development of land administration and management in Uganda.

Successes of the SLAAC Project

- Reduced disputes within these areas.
- Faster developments in the adjudicated areas due to increased security of tenure.
- Increased economic returns from the land.
- Reduction in the cost of land registration and also that government has been appreciated more because the program has also reduced land disputes in areas where it has been carried out.

- Communities have benefited from the increased tenure security.
- Environmental protection and mobilized resources by the government.
- Reduced wrangles among family members.
- People are increasingly able to access credit and it helped in succession issues.

Challenges

- Limited resources in terms of financial and human resources.
- Technical gaps and record storage.
- Following the land registration procedures was very long and hectic.
- Area Land Committees in most cases were not committed and this dragged the process.
- Some people had not yet received their titles.
- Lack of trust in the government by the people due to increased cases of land grabbing.
- Traditional leaders that would demobilize their communities in some instances.
- The different land holdings under customary tenure such as family and communal land were difficult to deal with.
- Most women were not involved in the processes due to ignorance.
- Many technical issues with the equipment that was used i.e. tablets (low battery, freezing due to overloading).

Recommendations

1. Certain standards especially in surveying needed to be adhered to allow seamless data integration of the data into the National Land Information System (NLIS). These included; the datum, resolution, accuracy and projection of the data regardless of the tools or software that would be used to capture the data. He also noted that ortho-rectified photographs produced by MLHUD were strictly being used for mapping.
2. Improving security and creating a web portal to allow for access to information (NLIS) through classifying it into corporate data, what can be made available for public use and what cannot be.
3. Integrate customary land data into the National cadastre.
4. Develop workflows for subsequent transactions on land under customary tenure.
5. Amend all land laws to allow formal registration of customary land and also implement the National Land Policy.
6. Urgent need to reform the legal and regulatory framework to allow these digitization initiatives take shape.

7. Land registration procedures for Uganda need to be revised to allow flexibility in the survey equipment that can be used for boundary demarcation.
8. Amend laws to allow proper registration of land under customary tenure and also make land registration mandatory.

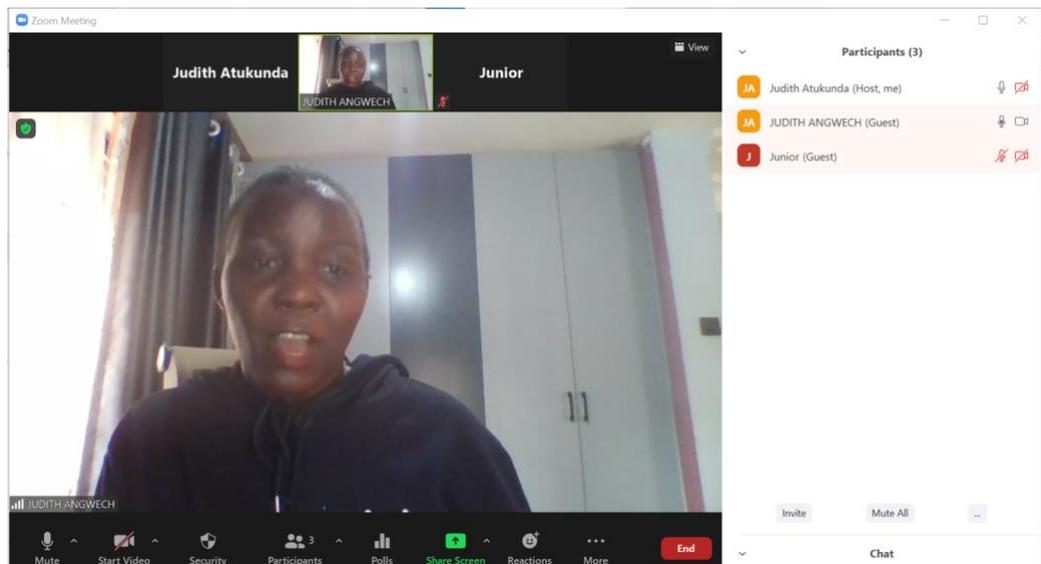


Figure 3: Virtual meeting with Ms. Judith Angwech.

7.2.2 Community Engagements

Introduction

In Uganda, land is owned by the people of Uganda and is held under four tenure systems as highlighted in the introduction of this report. During the community engagements attention was mainly focused on those that owned land under the customary tenure and were beneficiaries of the Systematic Land Adjudication and Certification Program that the Ministry of Lands, Housing and Urban Development has been carrying out in a phased manner since the early 2000s.

First the study area, which is Mbale district in eastern Uganda was selected due to its centrality in the development of the country and especially because it has been a center of pilots and hotspot for Large Scale Land Based Investments in the recent years according to the Uganda Land Observatory (<https://ugandalandobservatory.org/>). A sample of 15 participants/beneficiaries was taken from three sub counties i.e. Bumbobi sub county, Bunghokho sub county and Bukhaskya sub county.

The sample included 2 female beneficiaries as well as 13 male beneficiaries. Due to the glaring COVID – 19 pandemic in Uganda and all the restrictions that the government have increasingly put in place, it was not possible to conduct physical community engagements. The team in Uganda therefore resorted to using alternative means to be able to obtain information from the community respondents. A coordination team was set up in Mbale that were responsible for identifying the beneficiaries of the project and providing their preferred modes of communication to the research team. This was later on guided by a set of three questions to be able to obtain information from the respondents and these were;

1. What was your experience of the Systematic Land Adjudication and Certification program by the Ministry of Lands, Housing and Urban Development?
2. What benefits have you obtained from the process of land registration and when was it carried out in your area?
3. What challenges have you faced so far as a result of having your land registered in relation to your neighbors and outside forces such as Large-Scale Land Based Investments?

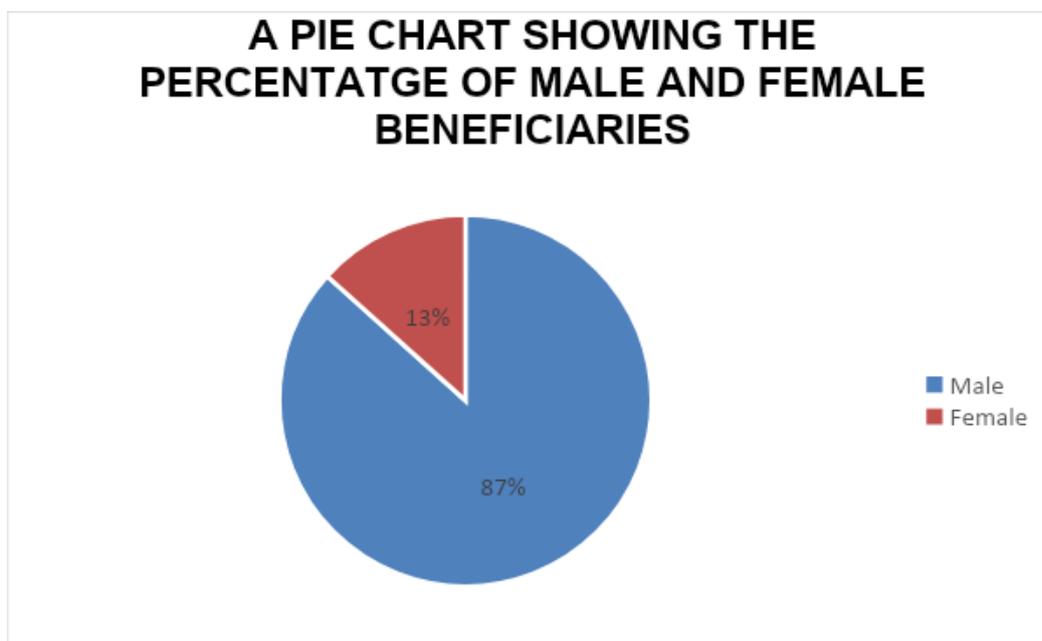


Figure 4: A pie Chart showing the percentage of male and female beneficiaries of SLAAC.

From the community discussions, a number of issues were highlighted and are explained in the bullets below;

- None of the beneficiaries that were contacted had received their land titles at the time of engagement with the LANDac research team. Most of them expressed dissatisfaction in the government and noted that they had started to lose hope as their titles were taking longer than anticipated. However, some indicated that they were aware of a few of their colleagues that had received their title at the launch of the issuance of titles by the Minister of State for Lands.
- Beneficiaries noted that they had not faced any major challenges in terms of disputes and encroachment on their land by outsiders as in some areas since mark stones were planted at the time of survey and these were still very visible. Some however noted that they still relied on their natural boundary markers as these were easily understood by the locals.
- It was also noted that with or without a land title, the people still continued to transact on their land through agreements, however there was a common understanding that if they had been given their land titles, they would have higher chances of acquiring much more financial gains from their land as it could be used as collateral in the banks.
- One of the beneficiaries mentioned that there were no benefits at all from the process given that he had not yet received the final product. He added that he did not feel secure on his land especially because of the new cities program that is being implemented by the government that makes some people's land vulnerable especially that which is not titled.
- It was also clear that the SLAAC project was implemented in a phased manner with some of the beneficiaries highlighting that their land was surveyed about 10 years ago, others 7 years, 3 years ago and 1 year ago. All these however, noted that they had not yet received their land titles till date.

Conclusion

From the study, it is evident that for a successful land titling project, all parties involved from those delivering on the program and the targeted beneficiaries must see an end in the process and also achieve the desired outcomes. The program should also be well grounded in the legal and policy frameworks within a country to allow for authenticity but also for easy integration with other sectors of the economy. Land titling initiatives need to be tailored to revised procedures within land administration to allow for both benefits from quickening the processes but also still operating within the allowable frameworks to deliver tenure security to citizens.

Recommendations

- The government needs to fast track the process of land title issuance and also revise the processes and procedures that lead to that as they are still lengthy.
- Strengthen and equip the decentralization mechanisms through Ministry Zonal Officers to allow easy access to land services by communities especially for follow up reasons as they process their land registration documents.

7.3 MALAWI

7.3.1 Introduction

Between October 2016 and February 2018, the Malawi government passed and enacted 10 land related laws. The goal of these laws was to enhance tenure security for smallholder farmers in Malawi by providing for systematic registration of customary claims to land. Following this development, a consortium comprising of Oxfam (lead partner), Centre for Environmental Policy and Advocacy (CEPA) and LandNet was tasked with piloting this and other provisions within the law under the *Strengthening Land Governance System for Smallholder Farmers in Malawi* Project using a grant from the European Union (EU). The consortium worked in partnership with the Government of Malawi (GoM) through the Ministry of Lands, Housing and Urban Development (MLHUD) and Development Alternatives Incorporated (DAI) Europe to implement the 55 months' project from September 2015 to March 2020.

The overall objective of the project was to contribute towards increased sustainable agriculture production practices and secure livelihoods for rural women and men in Malawi. Specifically, the project was designed to pilot, test and recommend for scale up improved gender sensitive land governance systems for customary estates. The expected results were to develop and test an institutional framework for establishing customary land estates through the titling of customary claims to land; and ensure conformity of rural land governance systems to international guidelines. Upon completion of the project, the project had managed to register land parcels as follows:

Table 2: Registered Land Parcels by the project-Malawi.

Pilot District	Target households	Number of Households registered	Percentage of households against Target Households	Estimated Number of Households Per District	Number of Registered Parcels	Area Covered (Ha)
Rumphi	1,000	405	41%	2025	900	743
Phalombe	1,000	993	99%	4965	2,187	773
Kasungu	1,000	685	69%	3425	1,124	2205
Total	3,000	2083		10,415	4,211	3,721

This study was aimed at assessing the effectiveness and efficacy of the land titling within the scope of the piloting done. The study has been guided by the following key questions:

1. What are the successes registered from land titling and particularly from the ongoing initiatives?
2. What are the challenges being faced and how are governments planning to address these?
3. Have their livelihoods been impacted (positively or negatively) after obtaining the land rights documents offered to them?

The study used a mixture of key informant interviews (Lands Officer, Land Clerk, Civil Society Representatives, and Traditional Leaders) and focus group discussions (land committees, women forum representatives, registration beneficiaries and community members that did not register their land).

7.3.2 Discussion of Results

a.) Securing Tenure Rights, Processes, Success and Effects

Of its targeted 3,000 households in the 3 districts, the project has managed to register land parcels belonging to 2,083 households which represents a 69.4% success rate. In total 35.3% are land parcels that have been registered by men, 44.2% by women, 17.8% jointly and 2.7% public communal land. Presented below is the process that was used in registering the land parcels.

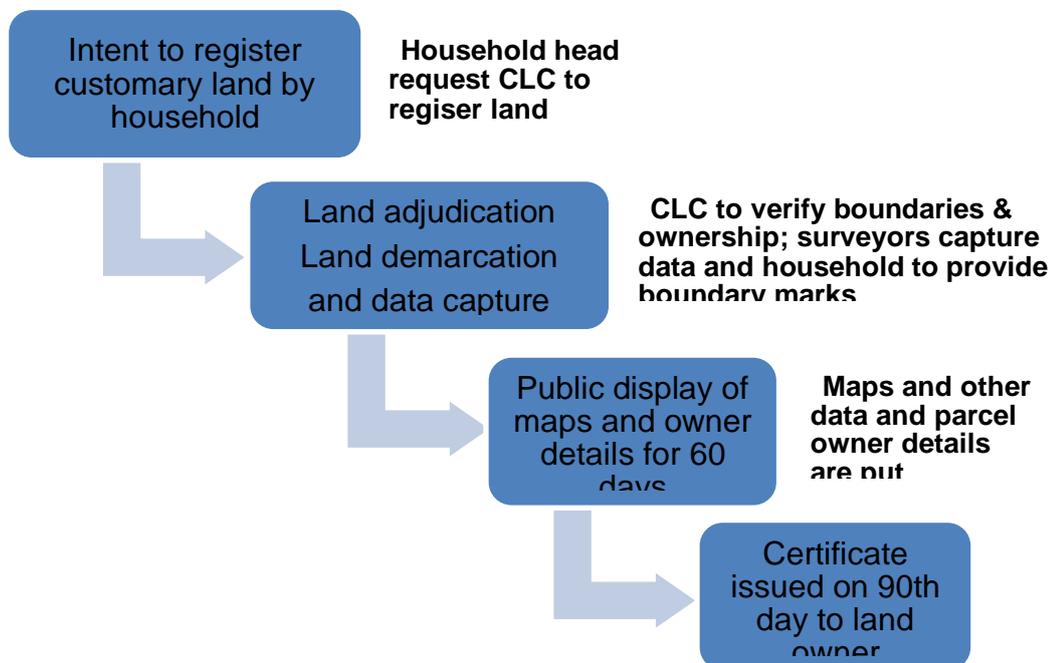


Figure 5: Process used in registering the land parcels

Having registered their land parcels, communities have said that disputes related to uncertainty of ownership of land in their communities have

decreased as the rightful owner now has legal tangible evidence of their ownership in the form of a Customary Estate Certificates. This is opposed to previously when the ascertaining ownership was based on word of mouth. The issuance of the certificate has provided a sense of security for community members who expressed interest in making more long term and sustainable investments. Furthermore, the introduction of these certificates has provided the opportunity for community members to access sizable loans from lending institutions such as the Malawi Rural Development Fund (MARDEF), a microfinancing Non-Governmental Organization that has expressed interest in providing such services.



Figure 6: Beneficiaries displaying their certificates.

In addition to registration, to aid the process of advancing tenure security for smallholder farmers, the land laws sought to democratize and decentralize land management and conflict resolution processes. This was envisioned to take the form of land committees and tribunals for land management and dispute resolution functions respectively. In two of the three communities under the jurisdiction of Group Village Headmen Maoni and Nazombe in the districts of Phalombe and Kasungu, have been established. Principles of equal representation were also taken into consideration when establishing these communities. This is evidenced by the presence of 3 and 4 women in the 6-member committees of Group Village headmen Nazombe and Maoni respectively. The introduction of these committees has sped up the dispute resolution process as opposed to formerly when all land disputes had to go through the courts at district and national levels that were expensive to access and took lengthy periods of time to resolve land issues due to the huge backlog of other criminal cases in the system.

b.) Challenges Encountered

i. Cultural Barriers

Despite advocating for joint spousal titling and gender equality in accessing, owning, and controlling land, the project was ineffective in combating prevailing cultural norms that discriminate against either gender within the communities that piloting took place. In Phalombe, a matrilineal society, most men were left out of the registration of customary land (68.2% female-owned vs. 29.7% male-owned vs. 1.6% jointly owned registered land parcels). In matrilineal societies ownership of land is

culturally vested in women under the ultimate authority of their maternal uncles. During the registration, the women did not register their land with their husbands for fear of their uncle's disapproval arguing that the husbands do not technically belong to the clan, hence most men are landless as they cannot go back to their villages to register land as the women there (sisters) have already registered their clan land as well. Not only were the husband's denied the right to register land as their own but also their children were not allowed to register land in their father's home. In patrilineal society where cultural vesting of ownership is with their male counterparts, women in the northern region district of Rumphu (24% female-owned vs. 74% male-owned vs. 0% jointly owned registered land parcels) have encountered the very same problems leaving them landless. This has made it difficult for either to secure sustainable livelihoods for them and their children in the case of a divorce or death of a spouse.

ii. Insufficient Resources to Sustain the Titling Process

Following the end of the project lifespan, the community feels that they have been left high and dry. The resources provided by the project were responsible for employing a land clerk, a technical government personnel tasked with assisting the local committees in facilitating registration; monitoring and evaluation of the effectiveness of the committees; transportation during adjudication before registration for committee members; and communication costs. Once the project phased out, the committees tasked with aiding community members to register their land and preside over land issues have been left to fend for themselves and use their own resources to perform their duties which is demotivating. The absence of the land clerk who was also meant to provide policy guidance to the committees has left the committees working in a vacuum of knowledge as they go about their duties which is problematic.

iii. Inadequate Awareness Raising Prior to Commencement of Piloting

Community members, district government officials and civil society organizations representatives lamented the lack of adequate sensitization prior to commencement of the piloting of the land registration process. They expressed concern over how rushed the process was that they did not have enough time to internalize the development properly and understand it. This lack of understanding of the titling process raised fears among community members who interpreted the change as a means for the government to expropriate land from communities and hand it over to investors. This misunderstanding of the laws also affected the manner of registration. Some community members also expressed concern purporting that they were not aware of the option of joint titling and hence registered individually, however if they had knowledge of it, they would have registered differently.

iv. Rampant Illegal Land Transactions

Despite the laws barring the sale of customary estates once registered for a period of five years following registration, cases of the contrary are on the rise. Land that was previously protected through an unspoken clan

agreement to not sell after individualizing that ownership has now become easier to sell. These transactions are being done without the knowledge of the local land committees and leaders without changing of ownership on the certificates. These arrangements that are outside the bounds of what is legally permissible could result in a multitude of problems in the coming years.

Conclusion

Despite promising enhanced tenure security through titling of customary land for smallholder farmers, the government and its implementing partners have failed to establish means of sustaining the benefits to the communities while diffusing pre-existing power imbalances in communities.

Recommendations

To ensure the sustainability and successful upscale of the customary land registration initiatives the following recommendations are made:

- Adequate mass sensitization of community members on land titling and its implications on their land rights.
- Close monitoring of emerging issues and challenges that are arising following the change in land governance dynamics that titling has introduced.
- Investing in mindset change programmes that address discriminatory cultural practices related to land ownership, access, and control.
- Developing sustainable local financing options beyond project funding by donors.

7.4 MOZAMBIQUE

7.4.1 The Differentiated impact of land titling programme

Securing women land rights is one of the challenges for most of the farmer communities in Mozambique, especially for women. According to a senior officer at SDAE in Gurué, the land-based investors poorly full fill the national land rights guidelines. Most of land-based investments have secured land through land grabbing process. Women are among the victims of land-based investors and community elites or even community members such as husband. The inter-households, inter-villages, entre-villages conflicts and traditional practices favoring men “known as the cock” are behind the land rights gendered differentiations. “When a man divorces his wife, he always takes things with him. The women are left with nothing. The man thinks that everything belongs to him. In most cases, women lose everything”, explained one of the interviewers. However, as described above, formalization of customary tenure is considered by the Government of Mozambique as key, determined to secure land rights, foster economic development and improve livelihoods. The process has been taken by public sector and civil society organizations through numerous programmes aimed to secure land rights in the context of land rush and multiple land conflict across the country as outlined above.

- *To assess the impact of land titling programmes, there were semi-structured interviews and over the phone to 50 small-scale farmers in the north, centre and south of Mozambique. Data collection was done in separate period in Gurué District and Nhamatanda (centre) and Xai-Xai (South). Because of Covid-19 pandemic there was conducted a One-on-one interview over the phone with 5 key informants; 3 of them were members of civil society organizations and 1 senior officer of District Service of Economic Activities.*

Most smallholders across the country are under customary tenure and therefore, the formalization process is confusing some small-scale farmers, in the sense that there is differentiated knowledge about the process. Some small-scale farmers do not understand why they must have a DUAT certificate while they have been leaving and farming for more than 20 years without any paper that would prove their land ownership as questioned a smallholder in Gurué “we are asked to have DUAT, I don’t know why I must acquire it now. For ages we have been farming and dwelling here without any document”. Other small-scale farmers understand the reason why the government is promoting DUAT because they heard from local NGOs “we know that DUAT

can prevent conflicts or I can secure my land if an investor comes to claim for it," said Lidia Waite. However, this group raises concerns about lack of dialogue. This is explained by the fact smallholders are not asked or explained about the purpose of land titling programme. Maria Joana is a smallholder farmer in Nhamatanda who explained that when the Terra Segura programme came to her house, they simply said that they wanted to measure the land around her house. "They did not tell what it is, we accepted because it is the government".

According to Zamchiya, et al., (2021) consultation can increase effectiveness in implementation and enhance compliance because it generates a sense of co-ownership and legitimacy. However, a few women with better access to information through participation in local groups know about the DUAT but do not know the process of acquiring it. This is an example of Dorca Domingo John, a married mother of 6 who live with her husband. Dorca never heard about DUAT "I never heard about DUAT and we don't know what it is. Yet others are eager to have it, however, they do not know where and how to acquire it. "I heard about DUAT certificates, I was told by a civil society organization that it is important to secure land in the case of conflicts but I don't know how and where to acquire it. Here at my house, they just took some measures but they never come back, said Finicha Domingos, a married woman with 5 children. Absences of adequate dialogue with smallholders suggest that the land titling process is a top-down driven process.

Land titling process is being compulsory introduced to smallholders. This is sustained with the State speeches on the incentives for those who accept to have DUAT. A women farmer explained that some small-scale farmers accepted to register their land because they expect to receive farming inputs or being included in Sustenta programme (a national programme for the integration of family farming into productive value chains, which aims to improve the quality of life of rural households by promoting sustainable agriculture) to increase production and productivity. A smallholder explained that "having DUAT should be a voluntary process and not a compulsory one, but the government is forcing all of us to have it, as if it was a right mechanism to secure land. I have seen people losing land with their DUATs in their hands". Compulsiveness or incentive providence as strategy to ensure DUAT attribution might reveal the authoritarian spirit of the State, as having DUAT does not entail having input or increasing production and productivity.

The formalization of land is shaping local structures power on land governance as explained by a smallholder, before this land formalization process began m'fumo (traditional leaders – inherited by blood tie) are the ones who are

allocating land to the new comers, but now is the secretary of the neighborhood, chief of ten houses or chief of block are the one allocating land" (all appointed by government). While the government strength land administration system by granting power to government representative entities such as secretary, chief of bloc or chief of ten houses some villagers argue that this shapes the power of traditional leaders ``now traditional leaders are only responsible for conducting traditional ceremonies such as mbamba, which is done to call upon the spirit to bless an event or anytime of infrastructure, explained a female farmer.

7.4.2 Lack of gender sensitiveness

Equal land rights for both men and women is fundamental human rights and depicted in fundamental legal frameworks including the Universal Declaration of Human Rights, the International Convention on Economic, Social and Cultural Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women among other international frameworks. At national level, these rights are primarily secured through the Constitution of the Republic, which establishes the principle of gender equality and prohibits discrimination based on gender. The Land Law of 1997 (in review) officially recognizes women as co-title holders of community-held land and further states that all community members (including women) have the right to participate in decision-making processes. However, in practice women in Mozambique only have secondary rights to land through their male relatives.

DUAT are largely registered under the husband's name of male relative family members in Mozambique. For example, Siluvo, a locality in Nhamatanda district, central of country "800 DUATs out of 3000 were registered under women, most of them being widows". In chicumbane a community in the south of Mozambique 400 DUAT out of 2000 were registered by Women. This translates to only 26.6% of women with DUATs, which is less than the World Bank Group (WBG) target of 40%. This is consistent with Mozambique's National Directorate of Land's 2015 data which showed that only 20% of DUATs were registered to women (Zamchiya, et al, 2021).

Maria Nsosu, a mother of 3 children whose land is registered in the name of her husband, recognized the importance of DUAT "the DUAT will resolve the problem of land related conflict in the village. With this certificate no one will come to claim our land". However, Maria could not resist to voice out about her concern "the land we are living in was registered under my husband's name. I don't feel secure because if our marriage ends, I will be expelled out

with no rights". Maria is just an example of many other married women with similar claims and whose land are registered under their husband differently from widow and divorced who have a chance to have land registered in their own name. This shows gaps in de juri and de facto of the national guidelines that argue on joint title (co-title holder).

Those women with DUAT in their husband's name regretted "I wanted to register the land in my name but the government agents told me that I should register in my husband's name because he is the head of the house". Another explained "although her husband was not around, I registered in my husband's name because I respect him and he is the owner of the house. Yet another confessed that they did not know that there is a possibility of having a joint. "I would like to have land in my name because I am the one who work with the land and not my husband. And because I don't want to lose land and other resources around the house when my husband dies". Moreover, they consider themselves to be marginalized because they don't know what will happen tomorrow and also because they constantly hear stories of community and farmers that have lost their land because of family matters (divorce or family quarrels). Land rights for both women and men is a prevailing gap to be addressed in rural areas, and there is a need to dismantle the gender gaps. This can be done through massive promotion of joint titles.

7.4.3 Land titles: beyond land rights protection

Land registration is expected to prioritize marginalized people (including single women, the disabled and the elderly). Most small-scale farmers in Mozambique are in favour of obtaining DUATs, because at the moment, their land ownership is merely secured by customary practices. However, most of them are concerned with the type of land that is being formalized, as explained by a smallholder mother in Nhamatanda District, centre of Mozambique "the government is not giving us DUAT for our farmlands but for the residence land". Francisca Benjamin farms in 4.5 hectare and lives in 1 hectare, however, she was given a DUAT for the residence land, which is 1 hectare. Francisca asks "how are we going to secure our farmlands if some investors come? In this situation, we are likely to lose our farmland because we don't have DUAT to prove our land ownership".

Still other women farmers fear that the formalization could block them from accessing natural resources such as firewood, medicinal plants, charcoal, grass for covering houses and other resources. "The government might be given DUAT in the forest where we called resources for daily bases. It will not be good that the government gives DUAT in those areas because we will be

blocked from accessing our daily living resources. For us to access we will then face long distance, as we will be collected or fetching far away", sustained, Florinda Sibanande.

Most women with DUAT felt land secure. "With this document (DUAT certificate) I can show to anyone who would come to claim land rights over land. I feel I am safe now". Another small-scale woman farmer added "now that we have DUAT we are safe and I am happy because at least here at home no one will come and take away my farmland. I can build whatever house I want". However, while having DUAT is perceived as a mechanism to protect land rights, other smallholders even with DUATs raise concerns of losing their rights over the land title because in other parts of the country smallholders are losing land rights even DUAT in their possessions. "We have heard that in Tete, Nampula and Zambezia province some small-scale farmers lost their land with DUAT in the hand to local and international investors' ", said a divorced mother in Nhamatanda.

While others are enjoying the advantages of having DUAT certificates, others don't know its existence. This is an example of Dorca Domingo John, a married mother of 6 who lives with her husband. Dorca never heard about DUAT "I never heard about DUAT and we don't know what it is. Yet others are eager to have it, however, they do not know where and how to acquire it. "I heard about DUAT certificates, I was told by a civil society organization that it is important to secure land in the case of conflicts but I don't know how and where to acquire it. Here at my house, they just took some measures but they never come back, said Finicha Domingos, a married woman with 5 children.

8.1 CONCLUSION

Land titling and certification is not an end in itself but a means to an end. It is very clear from the three case studies that governments have set out to strengthen the security of tenure for especially smallholder farmers as these are the most vulnerable in relation to how secure their rights are. This is incorporated in the existing legal and policy frameworks much as some of the initiatives take opportunity of the available loopholes within the law to have these projects roll.

Furthermore, approaches in Uganda, Malawi and Mozambique are steered by both the government and private sector with both making various contributions to ensure the success of the land certification initiatives. From the study, it is evident that for a successful land titling project, all parties involved from those delivering on the program and the targeted beneficiaries must see an end in the process and also achieve the desired outcomes. This however is sometimes not the case as the governments and their implementing partners have failed to establish means of sustaining the benefits to the communities while diffusing pre-existing power imbalances in communities especially for long term benefits that come with registration of land.

Across the three countries, it is evident that women's rights are still the least represented in land registration initiatives with most of them not being able to understand, comprehend and appreciate the processes as the case is in Mozambique or even completely not appear among the beneficiaries of the initiatives as the case is in Uganda. There are not any significant differences in the initiatives across the three countries as these all are premised on the Fit for Purpose approach to land administration. These are majorly pilot project that leave a question of continuity for governments especially when funding is terminated or ends.

9.1 RECOMMENDATION

It is recommended that future land titling programs should be well grounded in the legal and policy frameworks within a country to allow for authenticity but also for easy integration with other sectors of the economy. Land titling initiatives need to be tailored to revised procedures within land administration to allow for both benefits from quickening the processes but also still operating within the allowable frameworks to deliver tenure security to citizens. Particular attention needs to be paid to the rights of women, children and other vulnerable populations as provided for within the integral policy frameworks of the three countries as in the case for formal existing land registration procedures. This as well applies to all other sects akin to land registration including land markets, land acquisition, large scale land based investments among others.

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APPENDIX 1: PHOTOS TAKEN DURING CONSULTATIONS - MALAWI



Figure 8: Group discussion community members that did not register their customary land.



Figure 7: Beneficiaries of customary land registration during the Focus Group Discussion



Figure 10: Village Heads and Clan leaders during the focused Group Discussion.



Figure 9: Customary Land Committee sharing some insights



Figure 11: Women Land Forum Members, Area Development Committee and Village Development Committee members making their inputs on the titling and registration of customary estate.



Figure 12: Customary Land Tribunal sharing ideas during the focused group discussion.

APPENDIX 2: INTERVIEW GUIDE FOR MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT OFFICIALS.

EVALUATING LAND TITLING AS A MEANS TO STRENGTHEN TENURE SECURITY IN THE CONTEXT OF CUSTOMARY LAND IN UGANDA.

SECTION A: CONTACT INFORMATION

Name of
Interviewer:

Name of
Interviewee:

Position held:
.....

Place of Interview:

Date of Interview:

SECTION B: INTRODUCTION

LANDac is a partnership between Dutch organizations and their Southern partners (LANDnet Uganda and ACTogether Uganda) working on land governance for equitable and sustainable development. Each year professionals from each country identify a knowledge gap or persistent land governance challenge, and together propose and execute either research or activities in the field to contribute to alleviating the challenge.

This interview is geared towards ascertaining the policy implementation and direction of the stakeholders in the land sector particularly the Ministry of Lands, Housing and Urban Development (MLHUD) and what the implications both positive and negative that land registration initiatives have on the tenure security of the communities as well as the development of land administration and management in Uganda.

The team is opting to use a qualitative research approach. With this approach, purposive samples will be undertaken to ensure that the team gathers

legitimate data within limited time and appropriate key informants in the selected study areas. Key informant interviews will focus on seven officials from MLHUD implementing the Systematic Land Adjudication and Certification (SLAAC) program.

SECTION C: INTERVIEW QUESTIONS

1. How has land titling/registration been executed in Uganda recently in light of Fit for Purpose land administration on Customary land?
2. Who has been involved (actors/institutions) and their roles in the pilot project in your community versus the requirements laid out in the country's legal framework?
3. What success have been registered in as far as the implementation of Systematic Land Adjudication and Certification is concerned?
4. What are the challenges normally experienced during customary land registration in Uganda?
5. How has this land registration/titling process been helpful to communities in terms of improving their security of tenure and livelihoods?
6. What do you think needs to be improved in terms of the regulatory framework to allow for the addressing of the challenges faced?

NB: Proceedings from the Interview will be kept confidential and will only be used for purposes of this research unless otherwise agreed upon by all parties

APPENDIX 3: COMMUNITY DIALOGUE GUIDE FOR CASE IN UGANDA

EVALUATING LAND TITLING AS A MEANS TO STRENGTHEN TENURE SECURITY IN THE CONTEXT OF CUSTOMARY LAND IN UGANDA.

COMMUNITY DIALOGUES

SECTION A: CONTACT INFORMATION

Name of Community:

Place of FGD:

Date of FGD:

SECTION B: INTRODUCTION

LANDac is a partnership between Dutch organizations and their Southern partners (LANDnet Uganda and ACTogether Uganda) working on land governance for equitable and sustainable development. Each year professionals from each country identify a knowledge gap or persistent land governance challenge, and together propose and execute either research or activities in the field to contribute to alleviating the challenge.

This Focus Group Discussion (FDG) is targeting beneficiaries of the Systematic Land Adjudication and Certification program by the Ministry of Lands, Housing and Urban Development (MLHUD). This is being done in a bid to strengthen and ensure tenure security for the communities living and holding land under the various tenure systems in Uganda. The FDGs will be conducted among customary communities with an intention of establishing whether attaining the documentation of their land rights have helped secure their tenure and whether their livelihoods have been greatly impacted.

The team is opting to use a qualitative research approach. With this approach, purposive samples will be undertaken to ensure that the team gathers legitimate data within limited time and appropriate community beneficiaries in the selected study area, Mbale district.

SECTION C: COMMUNITY DIALOGUE QUESTIONS

- What is your understanding of land registration?
- How do you normally get information on land titling and registration?
- How has land titling/registration been done in your community in past decades (over 10 years ago)?
- How is land registration land today in your community, any pilot projects?
- Who has been involved (actors/institutions) and their roles in the pilot project in your community?
- What are the challenges normally experienced during land registration your community?
- How have you been involved in the process of land titling?
- How has the land titling process helped you or community members to improve their security of tenure and livelihoods?
- Do you feel completely secure from any land evictions, land grabs or are they able to freely negotiate in case there is need to transfer their land to another party?
- What do you think needs to be improved in this nature of land titling?

NB: Proceedings from the Focus Group Discussions will be kept confidential and will only be used for purposes of this research unless otherwise agreed upon by all parties.