

# UNLOCKING THE IMPASSE IN MAILO TENURE THROUGH ISSUANCE OF CERTIFICATES OF OCCUPANCY (COO) IN UGANDA: THE CASE OF MITYANA, MUBENDE AND KASANDA DISTRICTS UNDER THE GIZ-RELAPU MAILO PROJECT.

## INTRODUCTION

Land in Uganda is a critical factor of production and an essential pillar of human existence and national development for both woman and men. It has multiple values and functions which enables survival, livelihoods and agricultural production. Land is also a symbolic resource that heavily influences status and identity of the majority of Ugandans.

Uganda has a population of 34.7 Million, approximately 85.2 % live in rural areas and 14.8% of the population lives in urban areas. Uganda's economy heavily relies on agriculture which accounts for 22.5 % of Uganda's GDP and about 68% of the household livelihoods are dependent on agriculture. Women constitute the biggest percentage of about 51% and majority of these women are involved in the informal sector and about 80% in the agricultural sector and yet a small percentage of women own land.<sup>1</sup>

Uganda has been implementing a number of Macro -instruments intended to alleviate poverty for the Ugandan population, key among these is the National Development Plan I (2010- 2015) and II (2015-2020) and Vision 2040. The plan seeks to fulfill obligations at national, regional and global level which include; EAC, COMESA, IGAD, African Agenda 2063, and the Post 2015 Development Agenda. The goal of this Plan is to attain a middle income status by 2030, this will be realized through strengthening the Country's competitiveness for sustainable wealth creation, employment and inclusive growth. This plan sets key objectives to be achieved during the five year period and these are; Increasing sustainable production, productivity and value addition in key growth opportunities; Increasing the stock and quality of strategic infrastructure to accelerate the country's competitiveness; enhancing human capital development ; And Strengthening mechanism for quality effective service delivery.

Gender equity and equality in land tenure relations is critical for the achievement of the goal and objectives of National Development Agenda.<sup>2</sup> Improving women's access to and control over economic resources including land has a positive effect on a range

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<sup>1</sup> Uganda Bureau of Statistics Report 2010

<sup>2</sup> Uganda Gender Strategy for Implementing the National Land Policy, 2018

of development goals, including poverty reduction and economic growth<sup>3</sup>. In rural and urban areas, evidence also shows that, particularly for rural women, the gender inequality of access to the key productive assets is a fundamental determinant of poverty and social disadvantage.<sup>4</sup> Gender inequality is intimately related to women's poverty, experience of domestic violence and exclusion. In addition Gender inequality in land ownership is attributed to male preference in inheritance, male privilege in marriage and gender inequality in the land market<sup>5</sup>

## **LEGAL AND POLICY FRAMEWORK ON WOMEN'S LAND RIGHTS IN UGANDA**

Uganda has made significant strides with regard to the legal and policy frameworks that support gender equality and women's empowerment. At the national level, there are national planning frameworks key among these include; Vision 2040 National Development Plan- (NDPII) (2015-2020) and National Gender Policy 2017, all of which recognize that the attainment of gender equality and women empowerment is a prerequisite and key strategy for accelerated socio-economic transformation. Other progressive legislation include the Equal Opportunities Commission (EOC) Act 2007. The EOC assesses Ministries, Departments and Agencies of government( MDAs) compliance to gender and equity requirements in planning and budgeting before receiving Gender and Equity certificates from Ministry of Finance, Planning and Economic Development. However there are still glaring gaps between formal land rights (*dejure*) and substantive land rights (*defacto*) which still remain a major challenge in Uganda.

## **1995 CONSTITUTION OF THE REPUBLIC OF UGANDA AND WOMEN LAND RIGHTS**

The 1995 Constitution guarantees that all persons are equal before the law<sup>6</sup> and that everyone has a right to own property.<sup>7</sup> The Constitution further entitles men and women to equal rights during and after the marriage and provides for affirmative action in favour of groups marginalized on the basis of gender or any other reason created by history, tradition or custom.<sup>8</sup> The Constitution further provides that the state shall provide facilities and opportunities necessary to enhance the welfare of

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<sup>3</sup> Uganda National Development plan (2015-2020)

<sup>4</sup> Ibid

<sup>5</sup> Naome Kabanda; World Bank paper on Implementation of Uganda's Gender Strategy through issuance of CCO's using fit-for -purpose approach; a case of Kabale and Adjumani Districts.

<sup>6</sup> Article 21

<sup>7</sup> Article 26

<sup>8</sup> Article 32(1)

women to enable them realize their full potential and advancement<sup>9</sup>. It is important to note that most of these principles have been enshrined in subsequent Acts of Parliament, Policies and Strategies.

The Land Act 1998 equally has several provisions that provide for security of tenure and safeguards the land rights of women. Under the Land Act it is unlawful to discriminate against women in respect of ownership, occupation and use of any land, it also sets for mandatory consent by spouses before transacting on family land<sup>10</sup>. It further provides for the mandatory representation of women on all land tenure governance institutions with one third representation being women<sup>11</sup>. The institutions are responsible for the management of land across the board.

### **NATIONAL LAND POLICY 2013**

The NLP commits itself to “redress historical injustices to protect the land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity”.<sup>12</sup> One of its core principles is “equity and justice in access to land irrespective of gender, age, disability or any other reason created by history, tradition or customs”.<sup>13</sup> The NLP stresses the importance of considering socially and culturally acceptable tenure relations as a means of expanding opportunity for rights for women and other vulnerable groups. It also commits to ensuring recognition, strengthening and education on the rights of women, children and other vulnerable groups in all existing and emerging land tenure regimes<sup>14</sup>.

The NLP makes specific commitments on gender which include ; guaranteeing the transfer of land under all tenure regimes without denying any person rights on land on the basis of gender, age, and ethnicity, social and economic status<sup>15</sup>; The NLP compels government to modify the rules of inheritance under customary land tenure to guarantee gender equality ,equity and to make provision for joint ownership of family land by spouses<sup>16</sup>. The NLP further mandates government to develop guidelines and procedures under customary land regarding allocation and distribution of land and the guidelines should comply with the principles of equality

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<sup>9</sup> Article 33

<sup>10</sup> Section 39 Land Act 1998 defines family land to mean, land on which is situated the ordinary residence of family, from which family derives a substance, which is treated as family land according to cultural, customs, tradition or religions of a family.

<sup>11</sup> Section 56(3) and section 47(4) of Ibid

<sup>12</sup> Objective iv of the NLP, 2013

<sup>13</sup> Principle ii of the NLP, 2013

<sup>14</sup> Uganda gender strategy for implementation of the National land policy 2018

<sup>15</sup> Para 37(i) and (ii) of NLP 2013

<sup>16</sup> Para 41 of NLP 2013

and natural justice , to protect women and children’s legal rights to inherit and own land<sup>17</sup>; Also ,government under *Paragraph 66* of the NLP commits to review and regulate cultural norms, values and practices in access to and ownership of land by ensuring that rules and procedures relating to succession do not impede transmission of land to women, girl child and children ; to redress gender inequity and inequality to inheritance and ownership of land in statutory laws<sup>18</sup> ; to ensure that women are fully integrated in all decision-making structures and processes in access to and use of land<sup>19</sup>; guarantee that access to land by way of transfer or transaction is not denied on the basis of gender disability, ethnicity, social or economic status<sup>20</sup>; Lastly, government asserts that legislation and management practices shall accord all vulnerable groups equal land rights in acquisition, transaction and use of land.<sup>21</sup>

## LEGAL AND POLICY FRAMEWORK ON LAND OWNERSHIP IN UGANDA

According to the 1995 Constitution of Uganda, Land belongs to the Citizens of Uganda and is held in accordance with four tenure systems namely; customary<sup>22</sup>, freehold<sup>23</sup>, leasehold<sup>24</sup> and mailo<sup>25</sup>. It is estimated that customary tenure constitutes 80% of Uganda’s land, taking up all the rural land except for most parts of the Central region which are predominantly mailo tenure.

Mailo tenure separates the ownership of land from occupancy or ownership of developments by creating rights of *lawful* and *bonafide occupants* <sup>26</sup>.More often than not, there has been conflicting interests and overlaps in the rights of two categories on the same piece of land. While mailo land is a registered tenure it’s foundation is anchored in the 1900 Uganda Agreement<sup>27</sup>, the lawful and bonafide occupants do not have documentation of their occupancy and user rights.

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<sup>17</sup> Para 42 of NLP 2013

<sup>18</sup> Para 66(i) of NLP, 2013

<sup>19</sup> Para 68 of NLP, 2013

<sup>20</sup> Para 74 of NLP, 2013

<sup>21</sup> Para 73 of NLP, 2013

<sup>22</sup> Customary tenure means a system regulated by customary rules which are limited in their operation to particular description or class of persons and owned in perpetuity.

<sup>23</sup> Freehold means the holding of land in perpetuity, enables the holder to exercise full powers of ownership on land and disposing of land to any person by will.

<sup>24</sup> Leasehold means the holding of land for a given period from a specified date commencement, such terms and conditions as may be agreed upon by the lessor and the lessee.

<sup>25</sup> Mailo tenure means the holding of registered land in perpetuity and having roots in the allotment of 1900 Uganda Agreement. A person holding mailo land has the following rights; holding of registered land in perpetuity and permits the separation of ownership of land from ownership of developments on land.

<sup>26</sup> Lawful and bonafide occupants have the following rights under Section 34 of Land Act ; right to occupy and use land, sell, buy, mortgage , rent and sub-divide with the consent of the registered owner,

<sup>27</sup> The 1900 Uganda Agreement is the agreement which allotted mailo land to different tribes, notables and Kings in Uganda.

Government of Uganda through the National Land Policy (NLP) 2013 put in place four options to address the land use impasse between lawful and bonafide occupants. The first option is *Promoting the principle of land sharing and land re-adjustment through negotiations between the registered land owner and the lawful or bonafide occupants*. Under this option, the Landlord goes into a sharing arrangement with the tenant where a tenant may give-up interest in part of the tenanted portion to the Landlord in pursuit of full, unencumbered registered interest over a reduced portion. The second option is *Leasing /renting*. This is an arrangement where the Landlord leases his/her land to the tenant for exclusive possession, for a specific period of time usually 49 or 99 years, and the tenant will in return pay premium and ground rent. Under the NLP, the third option involves the *Purchase of the interest of the registered landowner in the land occupied by the lawful or bonafide occupant, using the land fund or selling the interest to the said occupants based on social justice and equitable considerations*. Under this option government purchases the interests of the tenant from the landlord and gives the tenant a registrable interest using the land Fund<sup>28</sup>. And lastly, the fourth option is to *facilitate tenants on registered land to access the land fund to purchase or acquire a registrable interest*. In this option, the tenant acquires a registrable interest from the landlord through a Certificate of Occupancy (COO's) and it is registered on the title of the landlord as an encumbrance hence protecting the interests of the tenant.

## **IMPLEMENTATION OF THE RESPONSIBLE LAND POLICY IN UGANDA (RELAPU) PROJECT**

The Responsible Land Policy in Uganda (RELAPU) project is founded on those options described above in the NLP and its objective is to *“Contribute to improved food security, improved livelihoods and poverty alleviation for small-scale farmers and other users of natural resources, in particular for women and marginalized groups in Central Uganda.”* The specific intervention is in three districts of central Uganda (Mityana, Mubende and Kasanda) which are rural districts and predominately with mailo tenure. The project targets improving land governance and productivity for small-scale -farmers on Mailo land, and the implementing partners who include ; GIZ Uganda, Ministry Of Lands, Housing and Urban Development , Makerere University and Civil Society Organizations.

The focus of the project is on three action areas namely; Improving the institutional framework and procedures to secure tenure rights in central Uganda; Increasing the engagement of the civil society in the formalization and implementation of a responsible land policy; And raising awareness of private agriculture investors and

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<sup>28</sup> Under section 41 land Fund is the derived from monies appropriated by parliament, loans obtained by government, grants from any donor and any monies paid into the fund utilized to give loans to lawful and bonafide occupants to enable them register their rights, resettle persons who have been rendered landless by government action, natural disaster and any other cause and assist other persons acquire title.

financial institutions about responsible land policy along internationally agreed guidelines and the National Land Policy (NLP). The project targets that a total number of 75,000 households of smallholder farmer (tenants and landlords), including marginalized groups are mapped. This should in the long run contribute to improved food security, improved livelihoods and poverty alleviation for small-scale farmers and other users of natural resources, in particular for women and marginalized groups.

## **THE PROCESS OF IMPLEMENTATION OF THE PROJECT.**

### **A. The process**

The process of implementing the project has four components namely; capacity development, awareness raising and mobilization, dispute resolution, mapping and data storage.

This process was informed by a baseline survey which had the following indicators (i) That 44% of the households preferred the property be divided among children, and mainly male children. (ii) That (39%) of male children inherit the property upon death of the husband. (iii) 31% of households were in favour of the wife to inherit the property. (iv) In addition 64% of the male respondents and 38% of the female respondents thought that only the husband's name should be included on the official land certificates. (v) Further 34% of the male respondents thought that both the husband and wife's name should appear on the Certificate of Occupancy or Land Inventory Protocols.

- (i)** *Creating Awareness amongst stakeholders.* This involves the creation of awareness by GIZ staff, Ministry staff and other experienced Civil Society Organizations in close partnership with the local government. The communities are sensitized about the project, their land rights and their responsibilities at different levels to promote full participation and ownership. IEC materials are developed and translated into local languages for better understanding of the project and processes.
- (ii)** *Capacity development for land management institutions.* The project trains key stakeholders including; District Land Office staff, District Land Boards, Area Land Committees, and Civil Society Organizations who are trained in land related disciplines, including land administration, QGIS, Fit-For- Purpose techniques and conflict mediation. The training also enhances their skills in conducting their roles at work and providing support to the community in line with national laws and regulations.
- (iii)** *Dispute Resolution / Alternative Dispute Resolution (ADR).* This component is carried out by local Civil Society Organizations. ADR as a method is preferred because, the formal court systems are not only very expensive and bureaucratic,

but are distant and not beneficial to the under privileged members of the society mostly especially women.

In addition ADR as an alternative has an added advantage of being less costly, faster and is grounded at the local levels, promoting harmony among members of the community. The project therefore trains potential ADR person including elders, members of civil society organizations, academic institutions, government officials and paralegals from the project districts of Mityana, Mubende and Kasanda.

- (iv) *Re-tooling of Land Administration Offices at District and Sub-county level.* This involves supply of furniture, computers and mapping equipments to ensure sustainability of further mapping activities..

## **B. Mapping Using Fit -For -Purpose Approach. (FFP)**

The project uses fit- for – purpose approach to map the land rights of the occupants. This approach is relatively new for Uganda and emphasizes on minimizing costs, bureaucracy and complexity while at the same time achieving the ultimate purpose of land administration. FFP approaches discourage the use of very high standards in the spatial, legal and the institutional frameworks unless the purpose justifies their use. The mapping of occupancy rights is done using the Cadastre Register Inventory Saving Paper (CRISP) software. The process starts from identification and ascertainment of land rights of occupants by the land inventory team, which is comprised of a member of the Area Land Committee (ALC) based at the sub-county level<sup>29</sup>.

The team also includes a member of the village Local Council Executive.<sup>30</sup> In addition the Land Inventory Assistant, whose qualification is an O level Secondary Education, is trained to provide technical assistance to the ALC in the use of tablets and GNSS equipment and is a resident of the district to ensure the buy in of the local population. The Assistant provides back-up to the ALC given that sometimes ALC members are illiterate, of advanced age and may not withstand harsh field conditions. The volunteers also train the ALC on use of tablets. The volunteers are recruited from within the project area to specifically ensure that the new processes could continue after the project. The Land Inventory team is supported by a graduate surveyor and a cartographer who conducts checks on the work submitted to ensure that it meets the required standards.

## **C. Data entry and Storage**

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<sup>29</sup> ALCs is based at sub-county and are mandated by the Land Act to adjudicate land in their respective sub-counties)

<sup>30</sup> represents the local authorities in the area

The process of capturing and management of land rights data relies on freeware software namely Cadastre Register Inventory Saving Paper (CRISP) and QGIS. CRISP has been developed based on the Land Administration Domain Model (party, right, and parcel).

The software has been adjusted to fit to the specific context and needs of private Mailo land in Uganda. The attributes related to the users as required under the Land Regulations 2004 are captured in CRISP using simple tablets.

The tablets are enabled with biometric fingerprint readers and in-built cameras that allow for photographic documentation of additional evidence to the claim to land rights in CRISP namely: thumb print, national identification card photo, pictures of available sales agreements or allocation documents, photo of the claimant, group photos of neighbors and witnesses as well as existing infrastructure developments on the land. These elements are not required under the regulations but serve as additional social evidence and thus increase the credibility of the data

The parcels are generated automatically in CRISP, eliminating the errors from post cartographic or map development processes since the traverses between captured boundary points are drawn automatically.

#### **D. Land Inventory Protocol**

The project issues a *Land Inventory Protocol* (LIP) as a first step for the tenants, which is a non-legal social evidence of the right to land. Captured user rights data will form the basis to increase transparency over private Mailo land and as a basis upon which the NLP options will be amicably negotiated.

### **SUCSESSES OF THE PROJECT**

#### **1. Bridging the Gap between Land Lords and Tenants.**

Before the inception of the project many Landlords could not see eye to eye with their tenant, in some cases some Landlords would be threatened with violence while in other instances they would be killed. The project has helped bridge the gap between Landlords and tenants. Firstly ,the project has built confidence amongst the communities ,both Landlords and tenants can negotiate for the various options under the NLP which include option to buy, option to lease/rent, land sharing and option to acquire a Certificate of Occupancy (COO's). Secondly under the Land Act a tenant by occupancy must pay nominal ground rent to a registered land owner, as part of recognition of the tenant's occupancy. Failure to pay ground rent is the only ground under this law for evicting a tenant by occupancy. This project requires that tenants by occupancy pay ground rent to landlords before the entire process of mapping starts there by reviving the landlord - tenant relationship.



## **2. Building a Strong ADR Mechanism.**

The project has also made success in building a comprehensive ADR system where most disputes are resolved contrarily to referring them to formal Courts. The advantage of ADR is that it has proven to be faster, less costly and is within reach for the vulnerable groups especially women.

The nature of land disputes referred to ADR committees include; disputes relating to absentee landlords, land grabbing, deprivation of land rights, disagreement on the amount of ground rent, forced buy out or / and land sharing, fraudulent /wrongful sale, squatters on Mailo land, inheritance /succession conflicts, land boundary disputes, sale of land without landlord consent, tenants refusal to pay ground rent and uncertainty about the land lord. So far 452 disputes have been reported, 192 disputes have been resolved and 12 have been differed.

## **3. Including the Women's Name on the COO.**

One of the successes of this project has been the involvement of women in the recording of their land rights. Women are involved in the whole process of sensitization, mediation and mapping. A number of women names have also been included in the applications for certificates of occupancy either as individuals or families. Women's confidence in decision making has been introduced and enhanced in all other areas.

## **4. Creation of a Land Inventory on Mailo Land in the Project Area.**

Before the project commenced the Landlords did not have an account of the tenants and sizes of their parcels. In the alternative, the tenants did not know the size of their parcels and who their Landlords were. This project has put in place a *land inventory* on mailo land in the project area and issued tenants with a *land inventory protocol* (LIP). This information on LIP captures the name of the landlord, name of the tenants, size of parcel for each tenant, location of the land and photographs of tenants.

The creation of the LIP is useful in negotiations between landlords and tenants to reach consensus on the options available to them under the NLP namely; the option to buy, option to lease/ rent, Land sharing and the option to acquire a Certificate of Occupancy. So far 25,718 people have been mapped and issued with the Land Inventory Protocol, out of which 8,189 are women, 16,699 are men and 145 are people with disability.

In the project area where the LIP have been issued, both Landlords and tenants can effectively use their land because there's no more land disputes hence

increasing productivity and security of tenure and there by *unlocking the Mailo land impasse*.

## **CHALLENGES OF THE PROJECT**

Despite of the success deliberated above the project faced a few challenges namely;

### **1. Resistance by the Landlords.**

Not all landlords have fully embraced the project, because in Uganda land is a political asset and very emotive. Most landlords prefer to continue negotiating for the *option of buy out* and *land sharing* well as most tenants have preferred the option of Certificates of Occupancy (COO's) because it is cheap and maintains their status-quo.

### **2. Discriminatory Cultures and Customs on Inheritance by Women.**

Uganda is a patriarchal society, land is usually passed on through inheritance from father to son. If a man does not have any sons, his brother, nephew or another male relative in his lineage often inherit his property. Daughters do not inherit land from their fathers even though they come from the same lineage<sup>31</sup>, their expected to get property from their husbands upon marriage. Because of these discriminative customs fewer women have benefited from the project.

### **3. Land Disputes**

Land disputes take a longer time before they can be resolved while others are already in formal Court. This slows the project because any piece of land with a dispute cannot be mapped until it is resolved.

### **4. Inadequate Participation by Women**

Some women were not able to participate in the sensitization, training and mapping activities because of other core social responsibilities which include; farming and taking care of children and homes, while men were at the core front of discussions because land is considered an economic but not social recourse hence lack of women emancipation

## **Conclusion**

This project has shown opportunities and learning lessons for unlocking mailo tenure impasse in Uganda as it offers the required options under the NLP which include among others issuance certificates of occupancy on Mailo tenure. The success factors which have contributed to the achievement of the project objectives include: The political support from both the central Government and Local Governments; Existence of the clear legal and policy framework which guides the implementation of project activities; The financial support from development partners; Appreciation of the

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<sup>31</sup> Ibid page 8

project by the project beneficiaries and overwhelming demand for COO by the local people; Willingness of landlords to embrace the new changes.