

Implementing land tenure reform in Uganda:

A complex task ahead

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BACKGROUND

Uganda recently enacted a new land law to put into effect the land reforms agreed in the 1995 Constitution. The new Constitution brought about fundamental reforms in the ownership, tenure, management and control of land in Uganda. The Land Act became operational on 2nd July, 1998. The country has now embarked on the exercise of implementing this new land law which is both ambitious and challenging . It is ambitious because it comes at a time when government is already overwhelmed by other nation-wide programmes which are being implemented: the Universal Primary Education (UPE) programme; the Decentralisation Programme; the Poverty Eradication Action Plan; and the Plan for the Modernisation of Agriculture and Food Security. Implementation of the new Land Act is also ambitious because of its high resource implications.

Its challenge lies in the many contentious issues contained within the new law. From the outset, the Land Bill was received with suspicion, apathy, fear and outright rejection from some people. Unrealistic expectations from national and local government as well as the land users will also challenge the implementation process. The new law has introduced many new concepts and innovative ideas. For example, the Land Act requires the establishment of new institutions for land management and dispute resolution. The tasks ahead are many and heavy.

This paper will examine the complex task the country faces to implement successfully this new legislation.

OBJECTIVES OF THE LAND ACT

The main objectives of the Land Act can be summarised as follows:

- To provide security of tenure to all land users. The majority of land users in Uganda are either customary land holders (referred to as customary tenants on public land) or lawful (*bonafide*) occupants on registered land.

- To resolve the land use impasse between the registered owners (*mailo*¹, freehold and leasehold land) and the lawful occupants of this land. Prior to the new law, substantial areas of potentially productive rural land have remained idle or under-utilised due to lack of incentives for either registered owners or tenants to invest. Registered owners have had difficulty in evicting tenants in order to develop the land although the old law permitted this under certain conditions. Tenants have lacked sufficient security to invest in land improvement. This has also inhibited the development of land markets in urban areas as purchasers have difficulty in acquiring secure property holdings.
- To recognise customary tenure as legal and equal to other forms of tenure.
- To provide an institutional framework for the control and management of land under a decentralised system. This will enable the devolution of authority over land management and administration as provided in the 1995 Constitution.
- To ensure proper planning and well co-ordinated development of urban areas.
- To ensure sustainable land use and development throughout the country and to conserve the environment.
- To redress historical imbalances and injustices in the ownership and control of land.
- To provide for compulsory acquisition of land by the state or local government in the public interest.

THE PLANNING PROCESS

In implementing the Land Act, the Ministry of Water, Lands and Environment (MWLE) which is the line ministry, has adopted a participatory and consultative approach to the planning as well as implementation by involving all key stakeholders.

¹ Under the Uganda Agreement of 1900, land in square mile blocks (termed *mailo*) was allocated to various political notables. About 9000 sq.mls were given to political officials, including a small amount to the king, churches and some non-Africans. *Mailo* land has been acquired by others through inheritance and sale.

A national workshop held in September 1998 sought to achieve the following outputs:

- A refined Action Plan to implement the Land Act.
- Agreement among stakeholders on their roles and relationships in the implementation to avoid unnecessary bureaucracy, duplication of responsibility and conflict.
- Awareness of the implementation plan within the donor community; the support of the donor community is vital to its success.

ACTION PLAN FOR IMPLEMENTATION

The action plan has been developed with full consultation through planning workshops involving key stakeholders from central government, local governments, professional bodies, the private sector, local NGOs and other pressure and interest groups.

Implementation Strategy

This strategy is a creative “bottom up” approach to implementation by involving a range of stakeholders from the outset, and by building capacity at the centre, in local institutions, and at the grass-roots.

This will not be easy given Uganda’s tradition of top-down administration and corruption. Uganda has, however, already made several strides in its decentralisation programme. The main challenge is to balance the need for strong co-ordination at the centre with effective mobilisation of district based institutions to use the powers devolved to them by the Land Act. There is a danger that the centre will attempt to take on too much, or that local governments and other local institutions will not be empowered enough to fulfil their roles effectively.

Prioritising and Sequencing of Activities

A number of priority activities have been established by the planning workshops. Hard choices had to be made, given the unrealistic statutory deadlines in the Act, and the limited resources available to Government.

The immediate needs are:

- Urgent provision of information for the public as the content of the Act and its implications have not been widely publicised. District administrations and NGOs have reported a clear demand for information.
- The establishment of District Land Boards by 2nd January 1999, and the Land Fund by 2nd July 1999, are requirements under the Act. By 18th January 1999, only 18 District Land Boards out of a total of 45 had been appointed. The procedure as laid down by the Act is complex, as these boards are appointed with the approval of the Minister.
- Under the Land Act, with effect from 2nd July 1998, jurisdiction over land disputes passed from Local Council and Magistrate's Courts to a new system of Land Tribunals. Until these tribunals are appointed and rendered operational, there is a serious vacuum in land dispute settlement. These institutions are unlikely to be operational before July 1999 at the earliest.

The guiding principles in prioritising the implementation activities have been:

- that the population must be made aware of, and accept, the content of the Act and their own rights under it, so that they can take advantage of the opportunities provided;
- that a new and complex institutional framework for land management administration and dispute resolution must be effectively established and maintained to ensure delivery of the services provided in the Act to the people;
- the capacity to face the challenge must be developed quickly both at the centre, and also within local government.

SENSITISATION PROGRAMME

The provision and maintenance of grassroots support for land tenure reform is a critical element in the success of implementation. Government has therefore given high priority to sensitisation i.e. letting everyone know what the new land law says, what it does not say, what role it plays in land reform, what is going to change and how, what kind of timeframe may be expected, and what the law means for the different stakeholders. To this end, a Sensitisation Focus Group has been established, comprising representatives of government, non-

government and private media. The group will oversee the production and dissemination of information to the local people.

The Sensitisation programme faces various challenges and constraints. Key among these are:

- Ethnic problems. Uganda is a multi-ethnic society with a multitude of vernacular languages. It is difficult to decide which local languages to use to simplify and translate the Land Act.
- Widespread misconceptions of the law amongst the public.
- Pressure to move forward with the programme without due regard to adequate planning.
- Which key issues in the Land Act should be identified for the various stakeholders and which channels of communication to use.
- The existence of insecurity in some parts of the country.
- Possible misunderstanding and misuse of the programme for political reasons (e.g. as a referendum barometer).
- Budgetary constraints - lack of adequate funding.

RULES AND REGULATIONS UNDER THE LAND ACT

Production of rules and regulations is one of the first practical steps of implementing the Land Act. Section 94(1) of the Land Act provides that *“the Minister may, by statutory instrument with approval of Parliament, make regulations generally for the better carrying into effect the provisions of this Act”*.

The Regulations are currently being developed and many issues are unfolding:

- To what extent should regulations seek to curb or take away discretions which the Act vested in District Land Boards and Parish Land Committees in the name of “the better carrying into effect the provisions of the Act”? Regulations should provide some legal pointers to local institutions as to how they should exercise their discretions.
- The incidence of customary tenure as set out in the Act stress the local nature of tenure in relation to the geographical area and the people to whom it applies. In these circumstances, to what extent should regulations attempt to impose a uniform approach on Parish Land Committees, which may conflict with the way such matters are handled under customary law?

- The Act itself is long and involves complicated legal terminology. This is inevitable given that it is providing for complicated legal, social and economic matters. Regulations should be user friendly, use simple language, and should be kept to the minimum.
- An alternative to regulations could be guidelines which should be considered in some aspects of the law.
- Given the time constraints, what issues are most urgent? It has been generally agreed that priority should be given to regulations which will address the land rights management institutions and ensure that the appropriate legal framework is in place for them to exercise their functions thus enabling citizens to realise their constitutional rights.

INSTITUTIONAL FRAMEWORKS

The biggest challenge in implementing the Land Act is the establishment and operationalisation of the many new institutions which are created by the Act. Equally challenging is how to co-ordinate the large number of institutions which are involved in land matters. Good co-ordination is essential for effective implementation of the Act.

In terms of existing institutions, there are three groups of statutory agencies, each having key responsibilities to implement various aspects of the Land Act. MWLE is responsible for the creation of procedural frameworks, guidance and methodologies, and for capacity building and inspection functions. Local governments are mandated to establish and support the local level management structures. For example, the District Land Boards are appointed by the District council with the approval of the Minister responsible for lands. The judiciary is responsible for the establishment and support of land tribunals. But existing institutions lack the capacity to carry out all these tasks.

The Directorate of Lands and Environment has the overall responsibility to oversee the implementation of the Land Act. The Directorate comprises the key departments of Surveys and Mapping, Physical Planning, Registration, Valuation Division and the Land Inspectorate (responsible for monitoring and training). The Ministry has a number of experienced, well-trained professional staff but its overall capacity to handle the demands of the new land law is low. Under a current civil service recruitment freeze, there is very little chance of increasing staffing levels. While staff are strongly committed to successful

implementation, civil service salaries are very low and are likely to detract from individuals' motivation to perform. The Ministry also has a very low level of financial resources and lacks vehicles and technical equipment.

Local Governments

Local government in Uganda is based on a five-tier structure of elected local councils (LCs), running down from district to parish level. The roles of each tier differ, but the major responsibility for executive powers and functions, annual budgeting and passing of bills for ordinances lies at the district level, while increasingly the sub-county level is becoming the operational focus for service delivery. In relation to the implementation of the Land Act, these are the two key tiers of local government. The biggest question is whether the existing institutions and agencies have adequate capacity to undertake implementation activities and to produce the expected results.

New Institutions

The legislation requires the creation of a large number of new institutions for land management/administration and land dispute resolution. These have been designed to shift the focus of land management to the local level, and provide for effective community involvement in land management decisions.

The Land Act provides for a District Land Board for each district, a Land Committee for each parish, a Land Committee for each gazetted urban area, and a Land Committee in each division of Kampala City.

The Land Act has also established a District Land Tribunal for each district, a Land Tribunal for each sub-county and a Land Tribunal for each gazetted urban area, and in the case of Kampala City, a Land Committee for each division. At one of the planning workshops, a rough count was taken and the following figures reflect the number of officers and the amount of manpower needed to make the Act operational:

| Institution | No. of Offices | Officials | Total |
|---------------------------|-----------------------|------------------|--------------|
| District Land Boards | 45 | 5 | 225 |
| Land Committees | 7000 | 4 | 28000 |
| Recorders | 917 | 1 | 917 |
| District Land Offices | 45 | 5 | 225 |
| District Land Tribunals | 45 | 3 | 135 |
| Sub-county Land Tribunals | 917 | 3 | 2751 |

Much of this has to be put in place almost immediately. These institutions must be created from scratch. Overall there are major constraints in resourcing and staffing these new institutions.

MANAGEMENT STRUCTURE FOR IMPLEMENTATION

There is, therefore, a risk that implementation will be piecemeal, as individual institutions (and individual donors) address their priorities without reference to the wider co-ordination which is essential for effective implementation of the Act.

Experience with implementing land tenure reform elsewhere in Africa demonstrates the importance of adopting a careful and properly managed approach which permits flexibility over time. There is always a danger of going too fast, or permitting the unco-ordinated proliferation of new institutional structures. It is vital that any process of implementation is carefully thought out and sustainable, and that all institutional stakeholders are fully consulted and involved.

The implementation management structure will be headed by a high level Multi-institutional Steering Committee, chaired by the Permanent Secretary, MWLE, and serviced by a Co-ordinating Secretariat within the MWLE. A Technical Advisory Panel, drawn from across stakeholder institutions and representing the key professional disciplines, will provide operational and professional supervision of implementation activities.

In keeping with the highly participative approach, a Central/Local Government Planning Forum and different issue focus groups will also be established. These membership bodies draw from the various government agencies, the private sector, NGOs and interest groups, and will be charged with the detailed planning and management of specific activities and interventions.

The implementation management structure is designed in such a way that it will be able to integrate the mandates and implementation activities of all actors. The constitutional and legislative framework within which key institutions must operate is somewhat ambiguous, especially in terms of the limits of their various mandates.

Under the circumstances, it is imperative that the key statutory bodies and other stakeholders co-operate to formulate a unified approach to implementing the Land Act. In this way duplication of effort, conflicting priorities and confused information can be avoided, and the effective implementation of the legislation secured.

CHALLENGES AND CONSTRAINTS

Absence of a comprehensive national land policy

Uganda lacks a comprehensive national land policy which is vital in guiding implementation of the land law. What does exist are scattered policy guidelines which can be pieced together from the 1995 Constitution, presidential public pronouncements and government statements. A clear and comprehensive national land policy is necessary to guide the provisions in the land law, streamline the objectives and guard against contradictions and inconsistencies. A national land policy is also necessary to guide institutional implementers on how to exercise the discretionary powers which the new law bestows on them. The policy would also guide the prioritisation of objectives as well as the implementation activities.

Legitimacy/acceptance of the new law

The Land Bill was received with suspicion, apathy, fear and outright rejection in some quarters. The Report of the Parliamentary Sessional Committee on the Land Bill stated:

“From our own experiences during the public consultations we held, it was apparent that people’s indignation with the Bill was because of their ignorance of its contents and what it aims to achieve.... . It is therefore important that the government should, before introducing any law, make widespread consultations with the people and get their trust. As one eminent lawyer said, if you don’t trust the messenger why should you trust the message.”

The position of the Buganda Government was that the Land Bill was not given adequate time to be considered, scrutinised and debated as the Bill was first published only four months before the target enactment date of 1st July, 1998.

The Buganda Government also made serious and concerted demands for the 9000 square miles (*mailo* land) which the protectorate Government returned to

Buganda in 1962 before independence should be returned to the Kabaka (the king) to hold in trust for the people of Buganda. A motion was subsequently moved in Parliament but it failed.

The majority of *mailo* owners in Buganda are also not happy about the new status given to the *bonafide* occupants by the law. There has already been protest against the new law with regard to the land referred to above. Some groups of primary stakeholders whose interests are threatened by the legislation may try to overturn the legislation or parts of it, by making representations to the Constitutional Court, or by causing civil disturbances.

Women are not happy because the clause on co-ownership of land by spouses for which they lobbied strongly was missing from the Act, although the clause was accepted in principle by Parliament. The activists have threatened action if an amendment is not made to include this clause.

Political pressure

Partly as a counterweight to the vocal opposition in the country, and as a response to popular expectations, there is a lot of political pressure to be seen to be implementing the Land Act. There is already a danger that the Government will be tempted into hasty and ill-advised actions which will undermine the success of the implementation process.

At the national planning workshop held in September 1998, the Minister of State responsible for lands spoke forcefully of political demands that the law be implemented immediately. He directed that the names of all the District Land Boards throughout the country be submitted to his office by 8th October 1998 - the eve of the country's independence anniversary. The directive was given on the 2nd September.

State capacity and resource implications

As mentioned above, one of the serious weaknesses in the reform programme is that there was no strategic plan at the inception of the Land Bill to work out the required resources, the financial implications, and the availability of human and financial resources. As of early 1999 this is still a problem. It has been suggested that implementation studies will be carried out around June-July 1999 to cure this shortcoming. The implementation programme also lacks a cost-benefit analysis.

Institutional co-ordination and the roles and relationships of the different actors

The success of implementation will depend on the effective co-ordination and contributions of a wide range of institutional stakeholders including non-government organisations, and the commitment of a large range of key actors. There is a risk that certain key legal requirements for the establishment of institutions will be delayed by bureaucratic inefficiencies. In particular, decisions will be required on points of law relating to the Land Fund before realistic plans can be made for its management and operations. Parliamentary assent will be required for the authorisation of regulations governing the operation of institutions.

The participatory approach is still relatively new in Uganda and commitment to it and to devolution of authority over land management needs strengthening. There is a risk that involvement of some actors in the implementation process may be neglected, thereby endangering the achievement of implementation.

Also, the constitutional and legislative framework within which the key institutions must operate is somewhat ambiguous, especially in terms of the limits of their various mandates. At the September 1998 planning workshop a political head of one of the districts complained that the spirit of decentralisation was being threatened by directives coming from the centre.

There is already a key issue on the implications of the autonomy/independence of District Land Boards. How much power do District Authorities have in determining land policy and effecting it through promulgation of by-laws? How does Uganda make devolution real on the ground when the 1995 Constitution identifies land as a national function? Section 94 of the Land Act empowers the Minister responsible for lands to make regulations with the approval of Parliament. Getting the balance right between helping the districts do the job well and prescribing how they do it, is one of the most important challenges facing government.

In addition, there is tension between the central government and local governments over ownership and management of forest reserves and the sharing of land fees.

In sum, it is imperative that the key statutory bodies and other stakeholders engage in serious dialogue to resolve some of these issues. Through this, effective implementation of legislation can be secured.

Inconsistency of other related laws

A number of other land-related laws need to be reviewed to harmonise them with the provisions of the Constitution and Land Act and to meet current needs.

The principal laws which are in need of revision are:

- the Survey Act (which dates from the 1920s and provides for detailed and high standard cadastral survey which is unnecessarily complicated for surveying of customary holdings);
- the Registration of Titles Act (which is currently based on the Torrens system of registration, setting out lengthy and difficult procedures for the acquisition of certificates of titles);
- the Land Acquisition Act (which is currently inconsistent with Constitutional requirements for compensation for land acquired by government and could cause difficulties in acquiring land for redistribution to tenants);
- the Mortgage Decree (which is at present virtually inoperable and would make the provision of loans from the Land Fund a long and difficult process, and also the use of certificates of customary ownership and certificates of customary occupancy as security for credit impossible); and
- the Town and Country Planning Act (which needs harmonisation with the current local government arrangements). In each of these areas failure to revise these laws will slow down the achievement of some of the benefits brought about by the Land Act.

Budgetary implications

Successful implementation will be dependent on the national priority accorded to the implementation plan. A high priority will be necessary to ensure capital and recurrent funding of institutions established. National financial planning will have to take account of the resource needs of local governments for the operation of institutions.

Capacity of local governments

The heaviest burden of implementation lies with local governments. These local governments have serious capacity shortfalls. Districts are likely to be unable to recruit qualified technical staff for District Land Offices, unable to

allocate resources to a District Land Office, and therefore will be unable to perform adequately the support services necessary for many aspects of implementation. The successful implementation requires a well paid, motivated and transparent civil service. Currently the personnel lack essential inputs which seriously erode their capacity to deliver.

The Land Act requires each district to have a District Land Office, with 5 professional officers: the District Land Officer, the District Surveyor, the District Registrar of Titles, the District Valuer, and the District Physical Planner. Only 16 districts out of a total of 45 currently have Land Offices; only one of these offices has a District Physical Planner, none has a District Valuer and only a few have District Registrars of Titles. It is possible that suitably qualified personnel may not be found in Uganda.

Over reliance on market-assisted approaches and demand-driven solutions

Throughout the Land Act market-assisted approaches and demand-driven strategies underpin the reform programme. The major question is therefore whether these approaches will deliver the objectives of the Land Act.

Poor inter-sectoral planning and consultations

Different line ministries and departments involved with land, other natural resources and agriculture have a long tradition of independent action and rarely consult among each other when formulating policies within their sectors.

Throughout the formulation of the National Policy on Modernisation of Agriculture and Food security, which depends on land for its success, no senior officer from the land sector was invited to participate. The Poverty Eradication Action Plan talks very little about land and the policy objectives and policy instruments in the plan covering land are unclear. The end result is a number of policies which are not properly harmonised.

There is need to revamp and rationalise the various bureaucracies that have jurisdictions in the land sector and the agrarian sector with the aim of eliminating overlaps, conflicts, contradictions and inertia.

OPPORTUNITIES FOR PARTNERSHIP IN IMPLEMENTING THE ACT

Local Non-governmental Organisations

The country has a number of committed NGOs with activities related to land and also to women's affairs. A number of these NGOs have already been important in lobbying on behalf of specific interest groups in relation to the land law. Many have also participated in the consultations and the planning workshops. The presence of these NGOs is a great asset particularly in the sensitisation programmes. These include:

- Uganda Land Alliance; a consortium of local and international NGOs set up as pressure group with the mission of ensuring that land policies and laws are reviewed to address the land rights of the poor and to protect access to land for the vulnerable and disadvantaged groups and individuals in Uganda. The Alliance played a significant role in publicising the contents of the draft Land Bill and in lobbying for amendments to the legislation on behalf of poor and vulnerable groups.
- Uganda Women's Network (UWONET). An independent indigenous NGO which undertook independent consultations of women regarding land rights in 6 districts during the drafting of the Land Bill and was an important voice lobbying on behalf of women during the consultative stage.
- Uganda Women's Lawyers Association (FIDA). An association of female lawyers providing free legal services to women and young people. FIDA has previously carried out legal education campaigns among rural women on land matters.
- Uganda Tenants Union. A lobbying group for tenants which has participated in the implementation planning workshops.
- Uganda National Farmers Association (UNFA). A national association of farmers with a network of field offices and the ability to deliver extension services and public information messages to a broad constituency. UNFA has participated in the implementation planning workshops.

The donor community

The donor community in Uganda is very interested in the Land Act and are ready to assist. DFID has sponsored the 2 implementation planning workshops and is planning to sponsor the initial implementation activities for the first 15 months. The UNDP Deputy Resident Representative expressed interest at the last implementation planning workshop in assisting in the implementing of the Land Act. Many other multi-lateral and bilateral donors are also waiting for the detailed implementation plan before confirming their assistance.

The decentralisation programme

The decentralisation programme which was started about 5 years ago has already developed administrative structures at grassroots level. The approach followed by the Land Act is strongly devolutionary and it locates authority over the management of land at grassroots level.

The presence of these structures is a great advantage to the implementation of the Land Act. It should be noted that the decentralisation programme has passed many of the planning and budgetary control functions previously held by central government to local administrations. Resource allocation for many government services and development activities is now at the district level and is soon to be further devolved to sub-county level.

CONCLUSIONS AND LESSONS LEARNED

Several lessons emerge from Uganda's experience with implementing comprehensive land reforms in the 1990s. The most important of these are:

- The most valuable lesson which Uganda has learnt since the passing of the new law is the importance of the use of the bottom-up approach to land matters. The Land Bill faced many problems because it was developed in a top-down fashion. The participatory and consultative approach is now permeating through all aspects of implementation and as a result, things are now moving well.
- Statutory deadlines for land legislation are problematic and the effective date must be chosen with care. The Ugandan land law was passed by Parliament on 30th June 1998, and came into force on the same day. The Parliamentary Sessional Committee has recommended a delay of 6 months in implementing the Land Act, to "help in raising people's awareness of the law and ease its implementation."

- A comprehensive national land policy is vital.
- Before any land bill is taken to Parliament a strategic plan should be drafted which should estimate the required resources, the financial implications, and outline the availability of human and financial resources.