



THE REPUBLIC OF UGANDA



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The Customary Tenure System

A case of Soroti and Katakwi districts

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Responsible Land Policy in Uganda (RELAPU)





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The Customary Tenure System

Introduction

Land in Uganda is a delicate topic. About 80% of pending court cases in the country today are land related. The reasons range from local up to the national level: from undocumented and unmapped land to the plural, sometimes overlapping legislations of land tenure. One of Uganda's tenure systems is the management of land according to **customary tenure**, especially in Northern Uganda, including the *Teso sub-region*. With its violent history, a rising population and increasing impact of climate change on agriculture productivity, land rights in Teso are contested to this day.



Customary:
communally, family or individually owned land which is managed through norms and traditions of a specific community and administered mostly by traditional leaders

What is customary tenure?

'*Customary tenure*' is one of the 4 tenure systems enshrined in the Ugandan Constitution of 1995:

- **Freehold:** grants full rights of land to an individual forever
- **Leasehold:** grants rights of land with agreed terms and conditions for a limited period (min. 3 years) to an individual
- **Mailo:** land is owned in eternity by a landowner with tenants living on the land and paying an annual rent to the landlord/-lady



Customary law is unwritten law, that does not develop via a legislation process but through long-lasting usage of certain norms and traditions which are socially accepted in the community. It is categorized as positive law and ranked equally with written law.

Definition of customary tenure

It is a tenure system, where land is owned by an individual, community/clan or family and managed by traditional authorities who play a social governance role, e.g. a clan leader or elders. It has its origin in tradition and custom,

often established over centuries in specific communities. Due to its historic roots, there is not just one customary tenure system in Uganda but different systems in different regions. Land held under customary tenure is called customary land.

While current laws promote **individual** land rights, in customary tenure it is traditionally the **family head** or **clan leaders** who hold the right to manage and administer the land. Even though the **Ugandan constitution** recognizes customary tenure, traditional local customary regulations

and state legislation are often overlapping or sometimes even contradicting. Today, approximately 70-80% of Ugandan land is customary land, in Teso sub-region it reaches up to over 90%. However, less than 1% of customary land is officially registered.

Extract from Ugandan constitution (1995)

(a) all Uganda citizens owning land under customary tenure may acquire certificates of customary ownership in a manner prescribed by Parliament; and

(b) land under customary tenure may be converted to freehold land ownership by registration.

(Art. 237 (4))



When was the customary tenure system introduced?

Ateso:
Language of the
Iteso

**Ejumula and/
or Eligoi:** A
special kind
of tree which
is used as a
traditional
boundary mark
of a land parcel

Iteso: People
living in Teso
sub-region

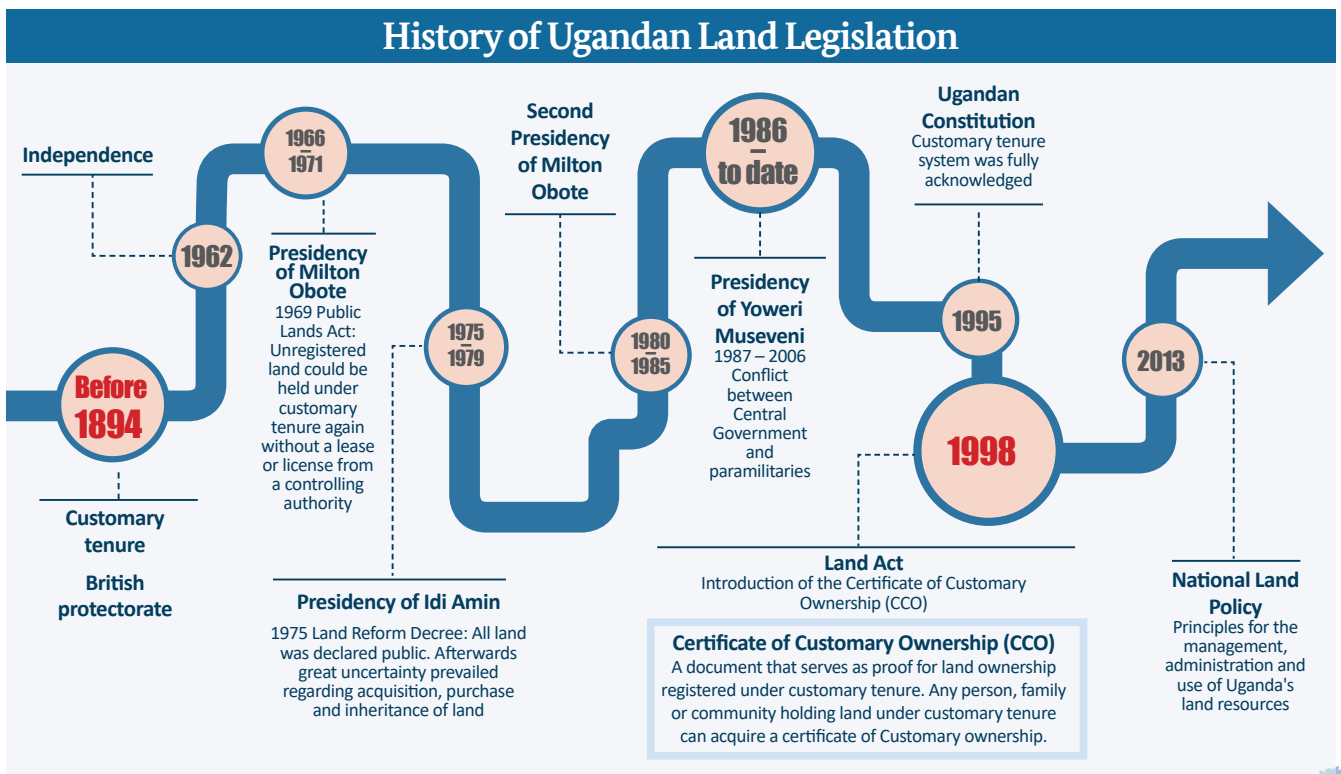
Kumam: Ethnic
group living
mainly in the
western areas of
Teso sub-region

Before colonialists arrived in Uganda, all land was held under customary tenure and managed in accordance with norms and customs of specific communities. In Teso, land was managed by clans who allocated land to their families. Every person and household had the right to use land as they wanted: plant crops, build a house, keep livestock or rent the land temporarily. Yet, in order to sell land an individual needed the family or clan's approval. Typically, fathers transmitted the land to their sons or unmarried daughters.

In **1894**, Uganda was declared a British protectorate. Six years later Customary tenure was abolished, and Ugandan land was

divided into Mailo tenure (mainly in Central Uganda) and crown land. From now on crown land belonged to the British monarch. Some land was given to individuals of the colonial government and became *freehold land*. The remaining land could be leased by persons, hence *leasehold land*. At that moment all land users on customary land became tenants. However, most land in Teso remained unregistered and held by the people according to their traditions.

After independence in **1962**, land ownership and tenure systems continued to change over the years under *different political regimes*, leaving many people uncertain about their rights.



■ The Customary Tenure System in Teso

In **1987** Northern and Northeastern Uganda became the scene of a 20-year conflict where Joseph Kony's Lord's Resistance Army terrorized the population in Northern Uganda. During that conflict a myriad of atrocities were committed against the civilian population which led to millions being evicted or fleeing from their ancestral land. Additionally, the people in Teso suffered from armed cattle raiding by the neighboring tribe of Karamajong.

In **1995**, the current Ugandan constitution came into force and acknowledged

customary tenure. In this connection the *Iteso Cultural Union (ICU)* was founded, an institution governing Iteso clans. In 2009 with the support of *The Land and Equity Movement in Uganda (LEMU)* and the *Kumam Elders Forum (KEF)*, the ICU developed the "**Principles, Practices, Rights and Responsibilities**" (PPRR) for the Teso sub-region. With the **Land Act of 1998** a policy was provided to implement the **Certificate of Customary Ownership (CCO)** and hence to officially register land rights on customary land.

Where is Customary tenure present in Uganda today?

The customary tenure system is present all over Uganda (see grey area in Figure 1) with exception in Central Uganda where the Mailo tenure system is prevailing. Freehold and leasehold tenure is mainly found in urban areas. Of all the land in Uganda, approximately only

20%

is formally registered.

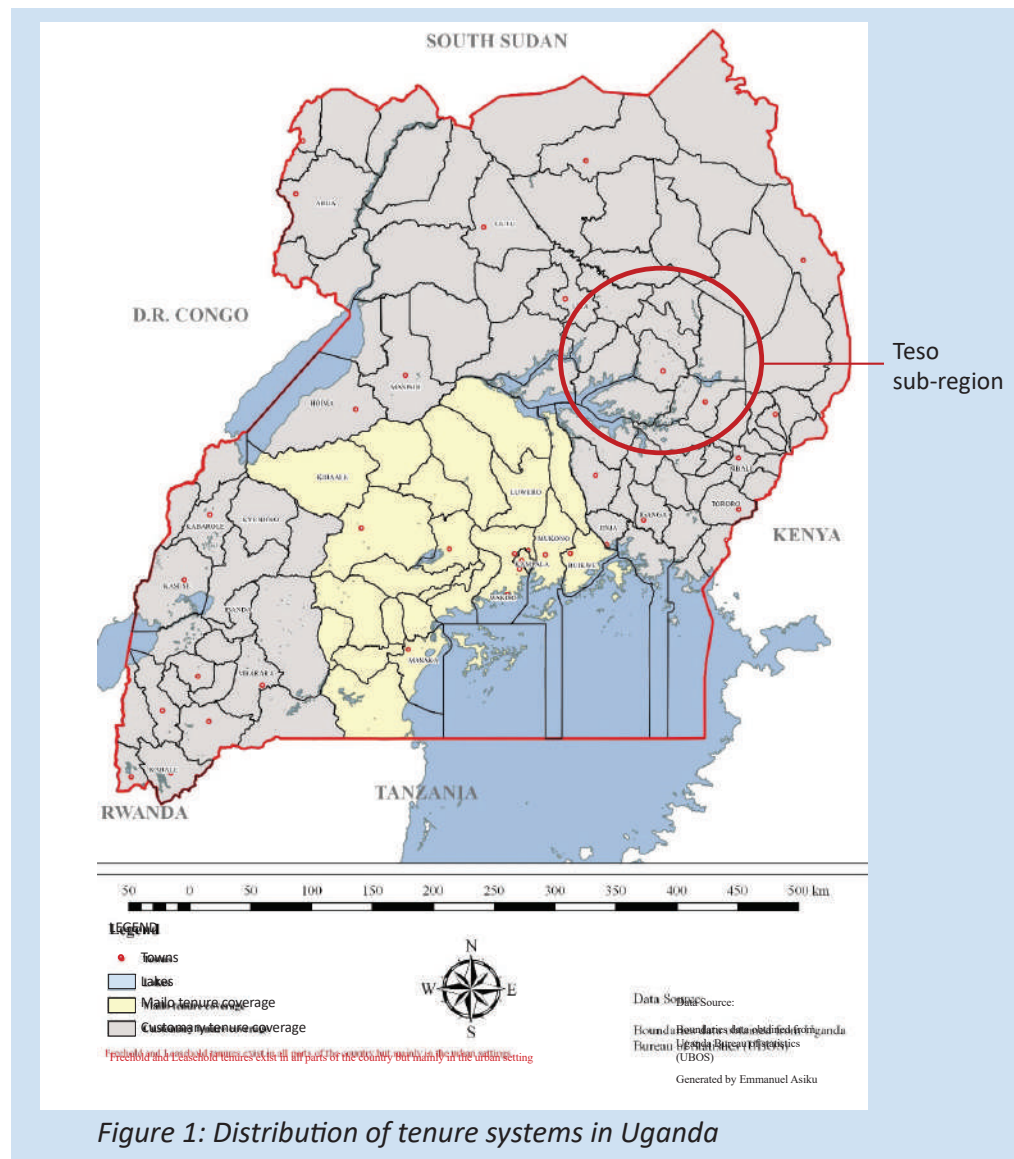
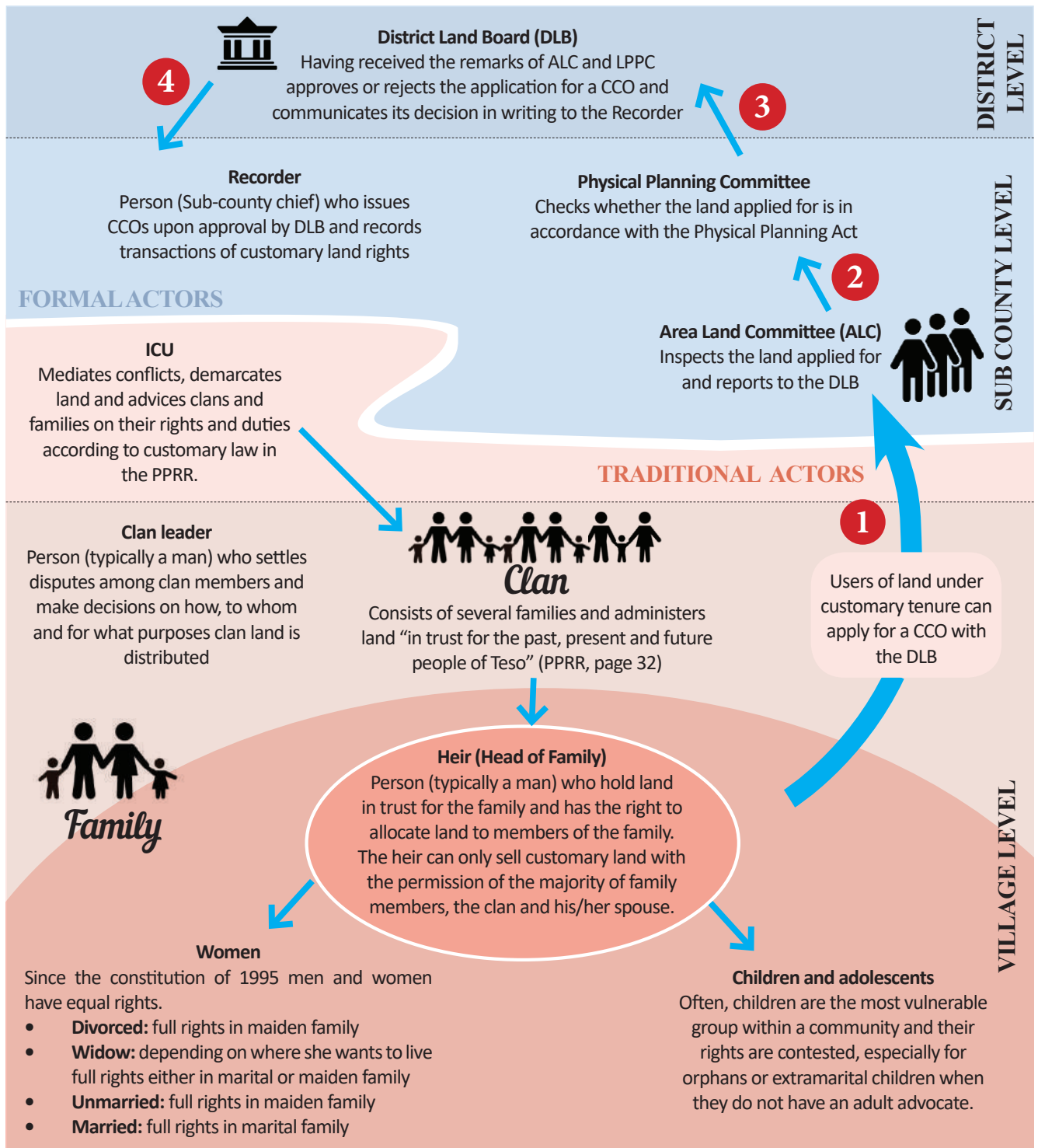


Figure 1: Distribution of tenure systems in Uganda

Who is who on customary tenure in Teso?

The following chart shows key actors of customary land rights in Uganda and their role in the acquisition of a Certificate of Customary Ownership (CCO):



Please note: Customary tenure rules in Teso according to the PRR are highly complex (comprises 61 pages) and cannot be fully presented here. It is important to notice that women and children traditionally had quite significant rights to use, transmit and access customary land. However, the power of clan authorities to enforce those rules have eroded over time, mainly due to the long-lasting conflicts in the region whereby many of the elders had died during the conflict without being able to pass their knowledge to the next generation.

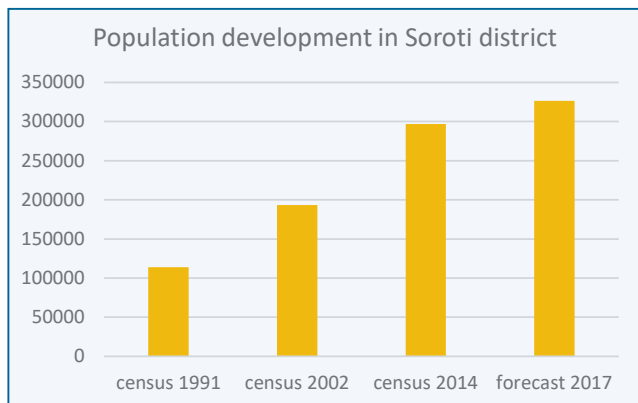


Why are there land conflicts in Teso?

In general, one can distinguish between direct and indirect causes for land conflicts on customary land in Teso sub-region.

Indirect causes for land conflicts:

Population growth: The annual population growth in Teso was estimated at 3.5% between 2002 and 2014. With an increasing and structurally developing population the demand for food and other resources such as energy and clothing is rising. Hence, land in the sub-region becomes scarce.



Soil fertility loss: Due to population growth, soil is largely overused and has rarely the chance to regenerate. In addition, climate change causes long-running droughts in Northeastern Uganda. This leads to domestic migration between regions and increasing competition for the remaining fertile land.



Social and economic interests: With proceeding urbanization land is not just needed for agricultural, but also for social and economic facilities, such as hospitals, schools, streets or trading centers. Public and private interests are competing at times.



Direct causes for land conflicts:

Historic conflicts:

With security improvement after 20 years of conflict, displaced people returned to their ancestral land to find natural demarcation marks destroyed and other families settling on the land. Other displaced families preferred to stay in their new created homes, causing land disputes with land owners who had offered the land during the time of insurgencies for temporal use.

Another reason is the long-lasting cattle raiding between **the tribes of Iteso and Karamajong**. The Karamajong, traditionally pastoralists in Northeastern Uganda, lost a considerable portion of their land due to land acquisition under colonial rule for government headquarters and later due to the creation of National Parks. With increasing concentration of their cattle herds on smaller land area, soil erosion threatened their survival. In search of new fertile land for their stock some Karamajong turned southwest to occupy land in Teso sub-region, especially during the dry season. Additionally, cattle raiding is a ritual for Karamajong boys to become men. These cattle were usually stolen from their neighboring tribe of the Iteso. During regime changes in Uganda, arms reached the Karamajong sub-region and cattle raids became extremely violent against the Iteso, taking advantage of the conflict in Teso with the central government.

Dual Land Management:

The attribute 'dual' refers to the two land management systems that are in place for land under customary tenure: The Ugandan



Overlapping norms:

Women's rights

Traditionally women had access and user rights on their father's or husband's land, but they could not own land. With the Constitution of 1995 women gained equal rights also in land ownership. However, due to ignorance or unwillingness, the implementation of those rights remains sometimes challenging.

constitution recognizes both (1) traditional customary land norms as well as (2) state land laws. In fact, Ugandan legislation encourages people to convert customary land to freehold land. But to convert customary to freehold tenure, the respective land must be individually (privately) owned which is often not the case in the sub-region.

The two land management systems and the responsibilities of their actors overlap and even contradict each other from time to time. Although it

is regulated that in case of contradiction *formal* prevails over *customary norms*, the existence of two land management systems which both have a legal basis in Ugandan law bears the risk of **forum shopping**. The aim is to bring the two systems together, acknowledge their differences and find a satisfactory consensus according to the law for all interested parties. However, this process needs transparency, financial support, time and the willingness of the involved parties to cooperate.

Forum Shopping

A practice to systematically take advantage of the existence of multiple legal systems to get a favorable outcome. Since in Teso sub-region two land norms apply (customary and formal) some people may try to make use of it by 'choosing' the legislation which guarantees them the (most) land. It is sometimes based on special access to legal authorities. Hence, it discriminates against already marginalized groups who often have only limited access to persons in charge as well as to information on their rights.



Contested rights of marginalized groups:

With the Constitution of 1995 men and women were given the same rights in all matters, also in land ownership. Since then some changes can be observed and traditional leaders start to recognise women's rights. But it is a slow process. Up to date there is a **lack of knowledge**, partly due to the complexity of the legislation and high illiteracy rates among women (almost 15% higher compared to men in Soroti district), but also **persistent ignorance** of

some authorities regarding women's legal equality in the formal legislation. Other marginalized groups such as **children, persons with disabilities**, elderly or migrants face similar challenges. Often, they do not receive sufficient information on their rights and in case they are aware of them, they are not supported or even hindered in claiming those rights. This leaves those groups in unsecure positions and increases their risk for land loss and eviction.



Many challenges explained above have their origin in the absence of: transparency, knowledge of the legislation and strong institutions.



What are the challenges in Teso sub-region today?

Even though the **Certificates of Customary Ownership (CCO)** exists on paper in the Ugandan legislation since 1998 to document customary land, only a couple of thousands **CCOs** have been issued to households living on customary land country-wide. Due to the **dual land management system** and continuing **conflicts** on the ground, but also due to limited financial capacities **of the government** to popularize the implementation of CCOs, mapping and registering customary land remains a challenge to administrative bodies to this day.

“The Ugandan laws regarding land rights are almost perfect – what is lacking is their implementation.”

Challenges hindering documentation of customary land

- 1. Unsolved conflicts:** Until today there are conflicts emerging as results from the regional violent history, not properly demarcated land and loss of boundary marks. To solve these conflicts in the long term trained conflict mediation experts, patience and financial funds, are required, which are often lacking in government land institutions.
- 2. Inadequate trained personnel:** There are not enough knowledgeable people either at district and/or sub-county level to advice families and clans on

the procedure to acquire a CCO and to manage the mapping process itself. Until today approximately only 20% of Uganda’s land surface is surveyed. At this rate it would take the country 400 years to register all land areas.

- 3. Lack of equipment:** The Area Land Committees (ALC) as well as the sub-county offices do not have the necessary equipment to enable mapping and collect land related data, e.g. survey equipment or computers.
- 4. Limited knowledge of the law:** Even if the equipment is provided and relevant office holders trained, the people e.g. clan leaders, political leaders or head of households need to be sensitized about their rights, roles and responsibilities regarding customary land. This is especially important for marginalized groups and constitutes an even greater challenge for Soroti and Katakwi districts which have an average illiteracy rate of 30% - one of the highest rates in the whole country.



How does the RELAPU project respond to the challenges of customary tenure in Teso?

Project name	Responsible Land Policy in Uganda (RELAPU)
Commissioned by	Federal Ministry of Economic Cooperation and Development of Germany (BMZ)
Lead executing agency	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
Project region	Districts of Katakwi and Soroti, part of Teso sub-region in Northeastern Uganda
Duration	01.03.2016-31.10.2021
Political Partner	Ministry of Lands, Housing and Urban Development (MLHUD), Uganda

After mapping the land, so-called **Land Inventory Protocols (LIP)** are issued to the households. A LIP is quicker, cheaper and easier for the households to get than a CCO. Furthermore, it includes additional information e.g. a **family land rights and lineage tree**. Unlike the hand-drawn sketch map which is prescribed for a CCO, a LIP provides a map of the land in scale and **contains georeferenced coordinates of the boundary points**. Although a LIP is a social and not a legal document, it serves as support in case a household applies for an official CCO and it enables an easy restoration of border points.

Land Inventory Protocol

A non-official social document which entails information on: the household with a family land rights and lineage tree, the clan, the boundaries of the land mapped with GNSS, names of neighbors, the usage of the land and so on. It serves as social evidence of the land right claim for the household before a CCO is issued.

Until today, as always, there are differences between theory and practice to expect. The **RELAPU project** is one of the first initiatives in Teso that works with local communities, the Ministry of Lands, Housing and Urban Development (MLHUD), the Local Governments and Civil Society Organizations (CSOs) to start documenting land.



Our main goal

With local partners we try to secure land rights for households on customary land with a specific focus on marginalized groups such as women, adolescents, orphans, elders, migrants and the poor. For this purpose, we use a 'fit-for-purpose' approach and address land conflicts arising as a result of the land documentation process.

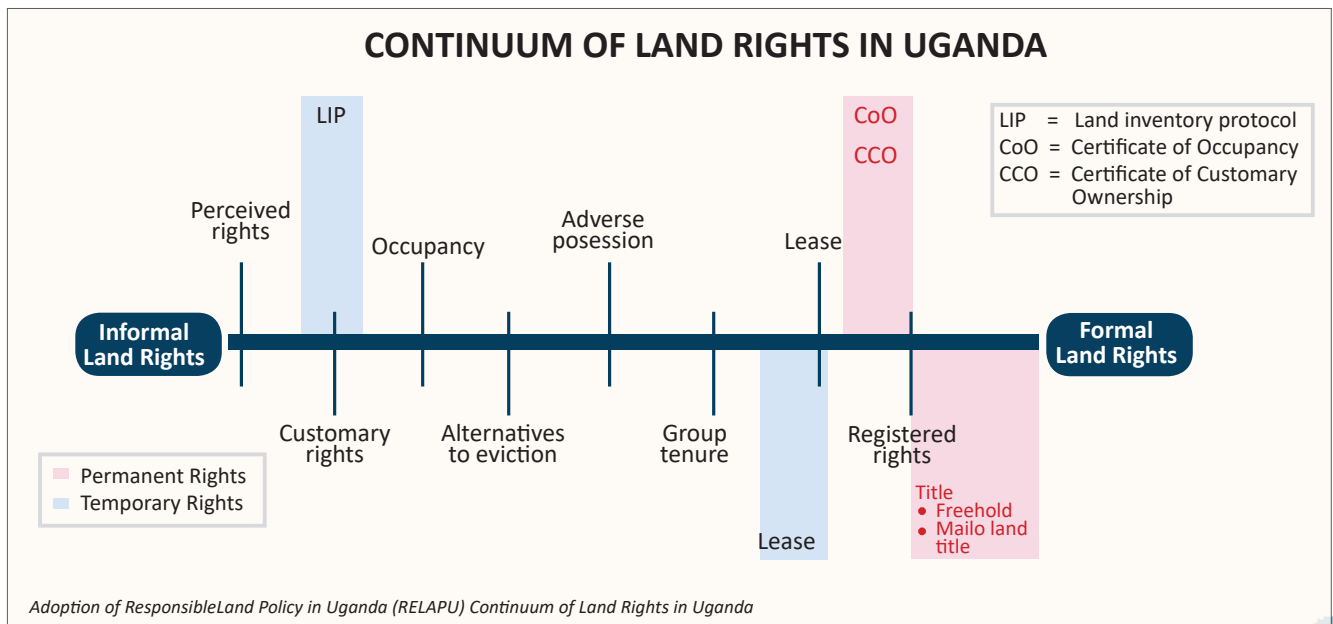
The 'fit-for-purpose' approach

A fit-for-purpose approach will ensure that appropriate land administration systems are built within a relatively short time frame and affordable costs. The systems allow for incremental updating and upgrading. It must be flexible, inclusive, participatory, affordable, reliable, attainable, and upgradeable (FIG/WB 2014).

What we do

The project works together with governmental and non-governmental partners to:

- support the sub-counties, the Area Land Committee (ALC) and the District Land Board (DLB) with equipment and training
- raise awareness in the villages about customary tenure together with Civil Society Organizations (CSO)
- inform families, clans and individuals on their rights, roles and responsibilities as well as opportunities to map and register their land and hence secure it for future generations
- support CSO in mediating and solving emerging conflicts
- support ALCs in mapping and registering land
- issue a LIP which later helps households and formal land institutions in the application procedure for a CCO
- support the process of issuing CCOs if requested by households.



Where we work

The **RELAPU project** is currently working in Teso sub-region in the Districts of Katakwi and Soroti

This project aims to map at least
5,000
 households by the end of 2021.

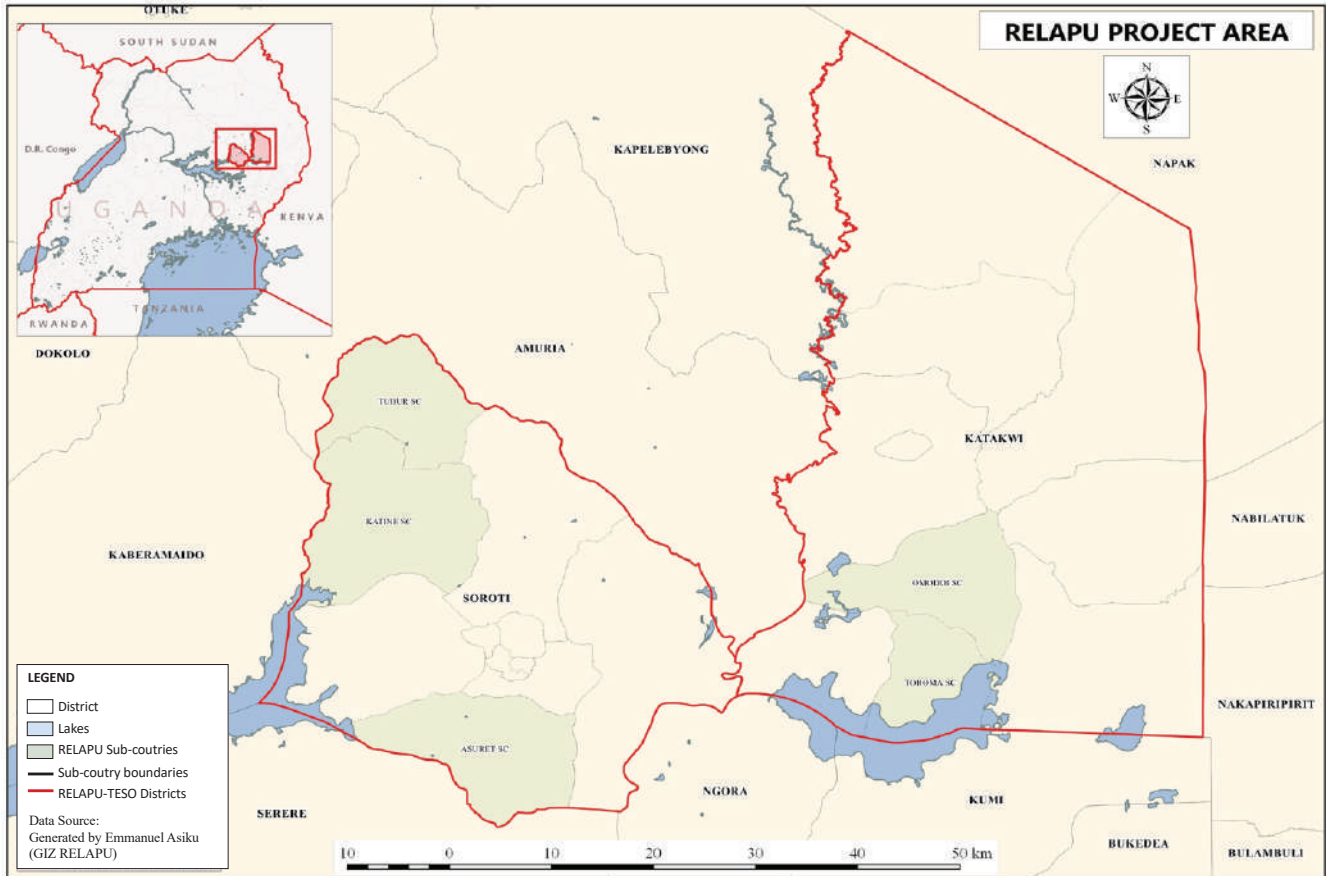


Figure 2: The map shows the districts where RELAPU project is currently working on customary land

Things to remember...

WHAT is at issue?

Customary tenure is a special tenure system which covers about 70-80% of Ugandan land area.

Customary tenure:

Land belongs to a community, family or clan and is managed by a traditional leader.

WHERE does it take place?

- Northeastern Uganda
- Among others, in Teso sub-region where over 90%

of the land is customary.

WHO is affected?

- Conflicts in Teso sub-region between
- Clans
 - Families
 - Family members
 - Neighbors
 - Clans/families and state authorities.

WHY is there a challenge?

Due to its violent history and socio-cultural changes, less

than 1% of customary land is officially registered. This leads to uncertainties in land rights and hence to land conflicts.

HOW to solve it?

RELAPU project and partners:

- raise awareness
- support the land administration in mapping and documenting customary land
- resolve conflicts.







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