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The Private Mailo Tenure System

A case of Mityana, Mubende and
Kassanda districts

2

Responsible Land
Policy in Uganda
(RELAPU)





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The Private Mailo Tenure System

A case of Mityana, Mubende and Kassanda districts

Introduction

Land rights in Uganda are a highly sensitive topic, influenced by political, social and economic interests. About 80% of pending court cases in the country today are land related. The reasons for this range from local up to the national level: from undocumented and unmapped land to the progressive, but not well implemented legislation which considers traditional as well as modern tenure systems. In central Uganda the land tenure system is one of a kind: It is called 'Mailo'. Not only does the Ugandan constitution distinguish Mailo from other tenure systems in Uganda, it is also quite unique compared to other countries. That makes its understanding and implementation on the ground even more challenging.



Mailo

registered land is owned in eternity by a native landowner with often tenants living on the land and are obligated to pay an annual rent to the landowner; there are three types of Mailo: private Mailo, official Mailo and Kabaka's (King's) Mailo

What is private Mailo?

Mailo is one of the 4 tenure systems enshrined in the 1995 constitution of Uganda:

- **Freehold:** grants full rights to land without a time limitation
- **Leasehold:** grants rights of land with agreed terms and conditions for a limited period (min. 3 years) to an individual
- **Customary:** individually, communally or family owned land which is managed through customs and traditions of a specific community and administered mostly by traditional leaders



Extract from the constitution of

Uganda:

'...the lawful or bonafide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.'

(Art. 237 (8))

Lugandan-English Dictionary

- 1** **Busuulu:** Annual ground rent paid by a tenant to the landowner
- 2** **Envujjo:** payment by the tenant to the landowner in the form of a product from the Kibanja land
- 3** **Kabaka:** King of Buganda Kingdom
- 4** **Kibanja:** Piece of private Mailo land occupied by a peasant
- 5** **Bibanja:** Plural of a Kibanja
- 6** **Muganda:** subject of Buganda Kingdom
- 7** **Baganda:** Plural of Muganda

Definition of Mailo:

Mailo is a tenure system introduced during colonial times that originated from an agreement between the British protectorate government and Buganda Kingdom in 1900. Land was given back to Baganda individuals and the King of Buganda, who became so-called landlords/ladies, in exchange for political cooperation with the British. However, these pieces of land were not vacant as the land was already occupied and used by peasants. Over time many tenants have also occupied previously unoccupied Mailo land due to government settlement programs, civil strife, voluntary migration and so on. Often those tenants have no recognized or formalized tenure agreements.

A piece of land which is

occupied by a peasant is locally called a 'Kibanja' (plural: Bibanja). Even though the **constitution of Uganda (1995)** recognizes the occupancy by peasants on Mailo land, the ownership of the land remains completely with the landowner, including all Bibanja on the land. On the one hand, this leaves the peasants – especially women and children – vulnerable to forceful eviction by the Mailo landowner. For the landowners on the other hand the fragmentation of their land by occupants limits the opportunities for agricultural investments including perennial crops like coffee, agro-forestry, soil conservation measures or irrigation systems installations. This is exacerbated by the fact that the existing laws and regulations are barely known at local level and therefore not well implemented.

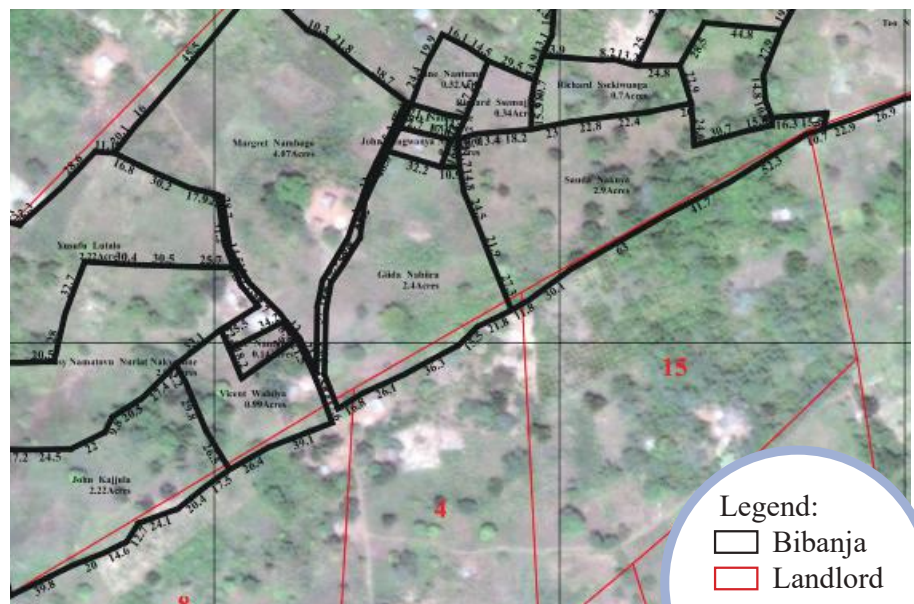
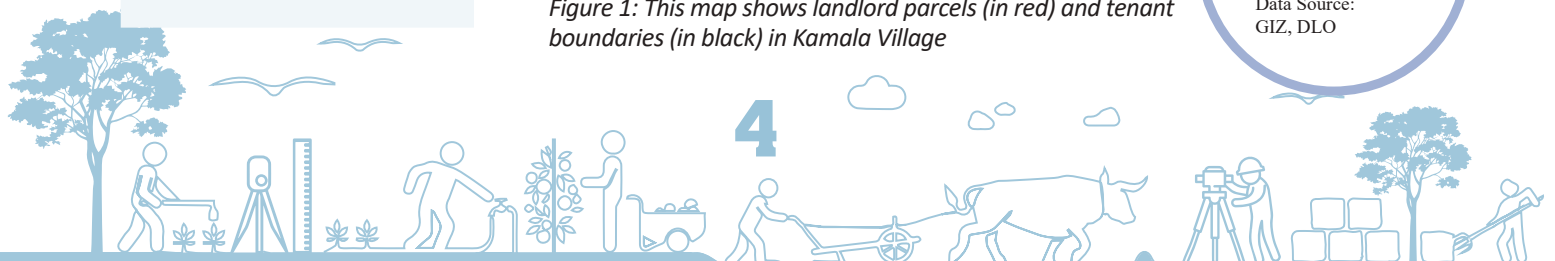


Figure 1: This map shows landlord parcels (in red) and tenant boundaries (in black) in Kamala Village



Ugandan Kingdoms

There are four kingdoms acknowledged under the central government: The biggest kingdom is Buganda, followed by Ankole, Bunyoro and Toro kingdom. Today, their kings mainly play a cultural and representative role instead of having actual political power.

What is a dual right status?

The dual right status reflects the unique situation on private Mailo: the owner as well as the tenant have overlapping rights to use and decide over the Kibanja. For example: the landowner can sell his private Mailo land, but first he must inform the tenants about his intentions. That means both sides have rights to the land

When was the Mailo tenure system introduced?

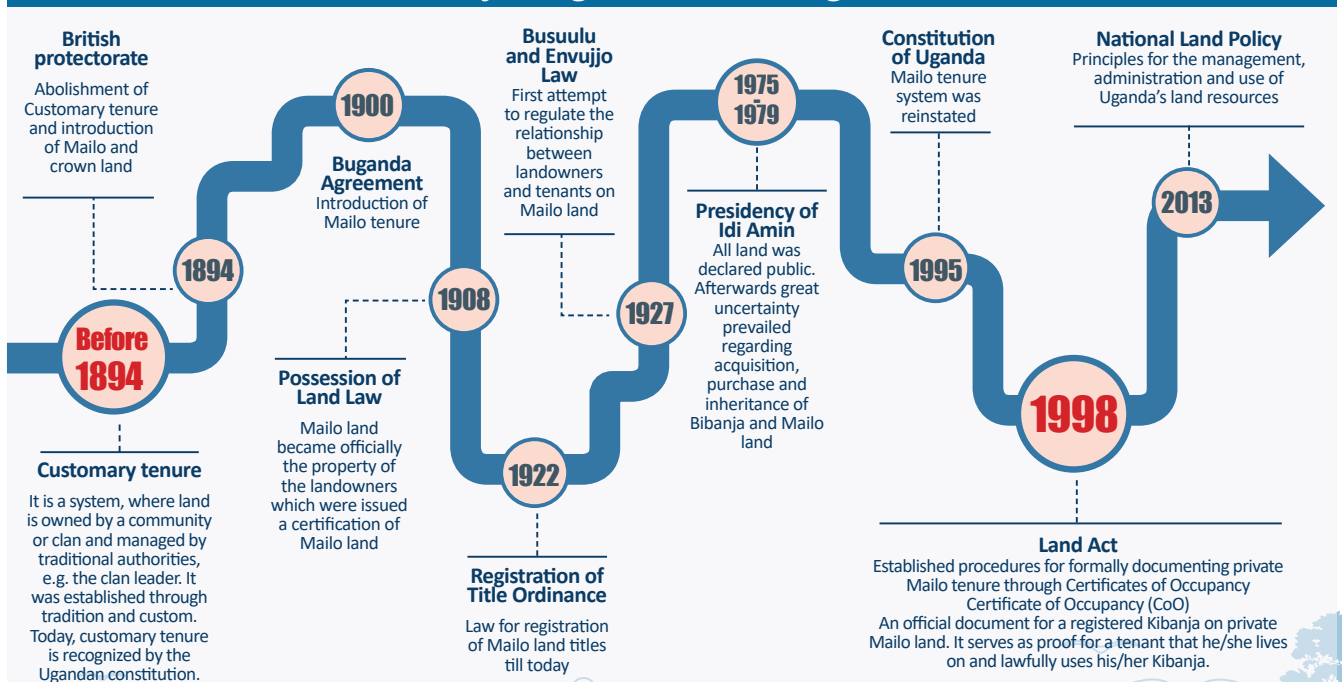
Before British colonialists arrived in Uganda all the land was held under customary tenure. In 1894, Uganda was declared a British protectorate. Six years later, the British reached an agreement with the Buganda Kingdom, culminating into the signing of the 1900 Buganda Agreement. Accordingly, land was divided into two: *crown land* remained under the control of the British protectorate (and became *public land* after independence in 1962), *Mailo land* was given back to the Buganda kingdom in exchange for political cooperation.

- **Kabaka's Mailo** was given as private property to the Buganda king ('Kabaka'). Today Kabaka's Mailo is managed by the *Buganda Land Board* which is the

King's land administration structure. Kabaka's land can be leased or even gifted by the king but not bought by individuals.

- **Official Mailo** was assigned to office bearers, e.g. chiefs at the county and sub-county level. Hence, the land was assigned to the office, not the person. Today this land is also administered by the *Buganda Land Board*.
- **Private Mailo** is the land that was given to about 1,300 Baganda individuals as well as institutions, e.g. churches, between 1900 and 1908. The landowners considered this land from now on as their private property, especially since it was registered with titles in a cadastral system.

History of Ugandan Land Legislation



Today there are no ‘new’ private Mailo land titles, only the original titles from 1900 until 1908. However, with tenants living and working on the land without official documentation of their rights, the **dual rights** status on *private Mailo* became a root for land related conflicts in Uganda.

Where is Mailo tenure present in Uganda today?

The Mailo tenure system is present in Central Uganda in the sub-regions of Buganda, with some parts in Ankole, Toro and Bunyoro. Freehold and leasehold tenure is mainly found in urban areas. Of all the land in Uganda, approximately only 20% is formally registered.

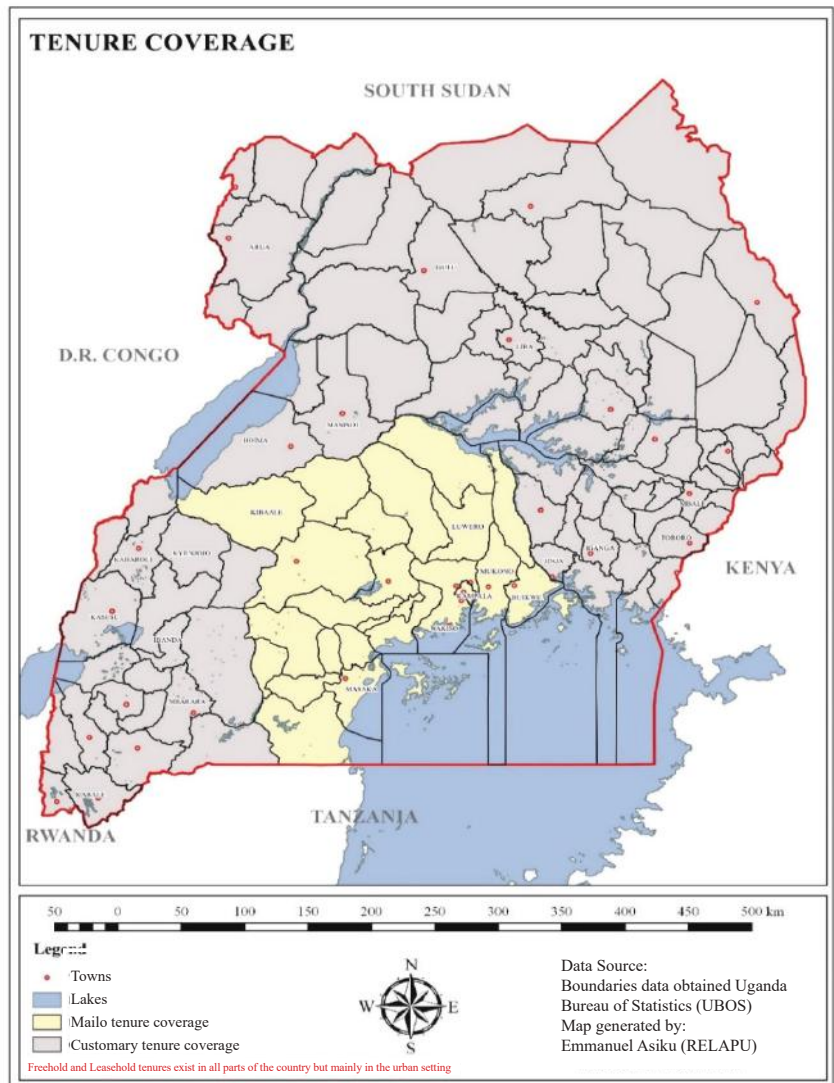


Figure 2: Distribution of tenure systems in Uganda

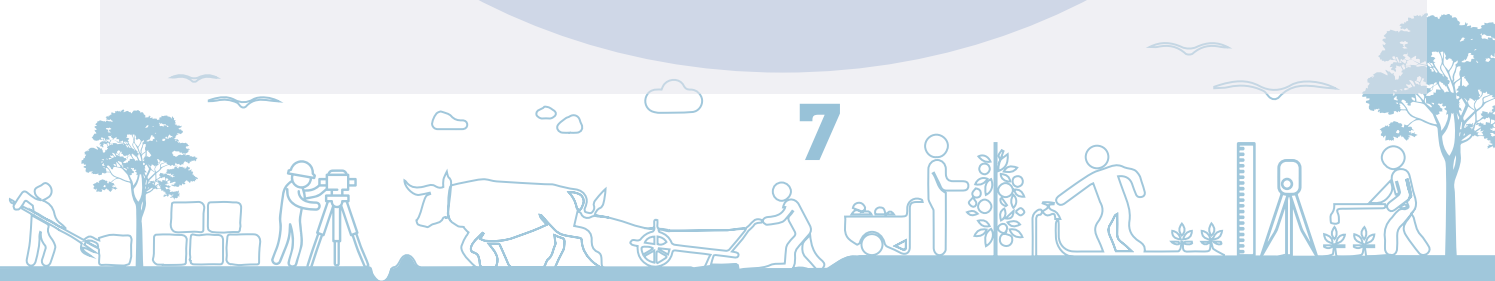
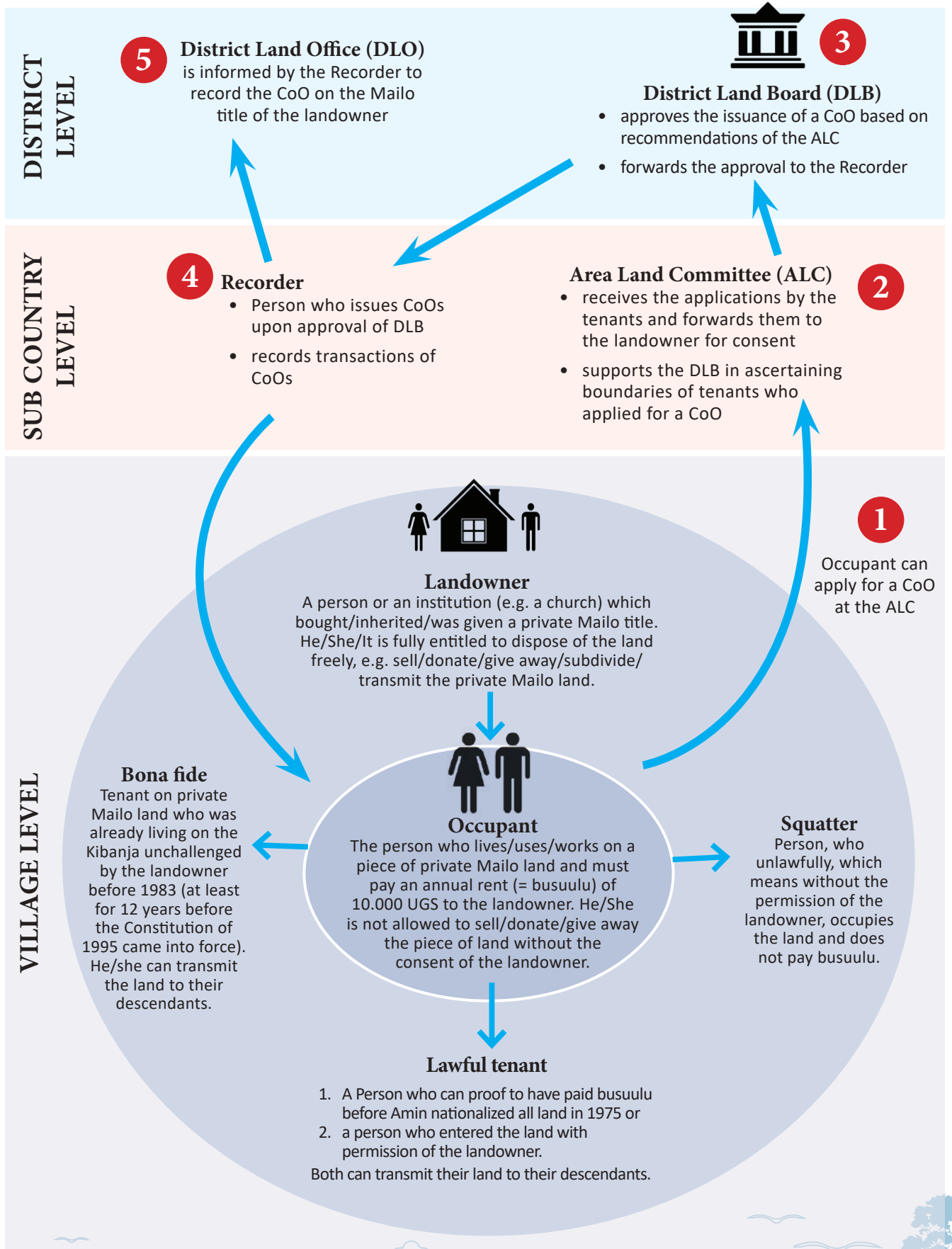
Who is who on private Mailo?

According to Ugandan legislation it is recommended to the occupant to either...

- become a **lawful tenant** by paying the annual Busuulu to the landowner and applying for a **CoO**
- **lease** the land for a limited time and obtain a leasehold certificate of title
- **buy-out** the Kibanja from the landowner and become the owner with a registered title over the tenanted portion (given the tenant has enough money and landowner agrees to the amount as well as to buy-out).
- or **share** the Kibanja with the landowner, buy-out the remaining land and become its registered owner



The following chart shows key land administrative institutions in Uganda and their role in the acquisition of a Certificate of Occupancy (CoO).



Why are there land conflicts on private Mailo land?

In general, one can distinguish between direct and indirect causes for land conflicts on private Mailo land.

Indirect causes for land conflicts:

Population growth: The annual population growth in Uganda is estimated at 3.3 %. Hence, land in Uganda becomes rare.



Growing demand for agricultural products: With an increasing and structurally developing population the demand for food and other resources such as energy and other consumer goods is rising. To meet these demands, land is needed.



Decline in Soil fertility: Due to population growth, soil is largely overused and has rarely the chance to regenerate. The consequence is increasing competition for the remaining fertile land.



Infrastructural development: With proceeding urbanization land is not just needed for agricultural, but also for social facilities, e.g. hospitals, schools, streets, trading centers etc. Public and private interests are competing at times.



Economic interests: Some land is of value for domestic and foreign investors because it either contains minerals or oil or because of its location (e.g. in the city center or close to water bodies). Some companies are willing to pay more money for a particular piece of land than the local population can afford, coupled with government efforts to support Foreign Direct Investment (FDI) through identification, allocation or acquisition of land.



Direct causes for conflicts on private Mailo land:

Although Uganda's legal and regulatory framework offers clear guidance on how to deal with the impasse over private Mailo land, they are only partly implemented and remain largely ineffective. This constitutes numerous problems due to various reasons:

Some tenants and landowners do not know their **rights, duties** and **obligations** regarding their land.

- The **boundaries** of the Bibanja are often unclear.
- The **ownership** of a private Mailo title or a Kibanja is unclear.

Some tenants and landowners do not know their rights, duties and obligations:

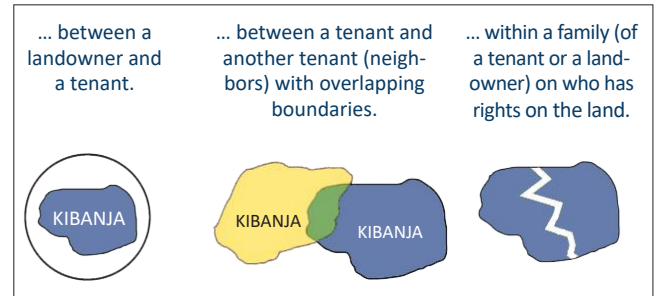
A lot of conflicts can be traced back to ignorance about the laws, misunderstandings, lack of transparency and misinformation. There has been very limited awareness raising to the local level land administration and as such the local offices are not in a position to advice tenants and landowner on their rights, duties and obligations.





The boundaries of the Kibanja are often unclear:

While the landowner’s titles had been registered since the Buganda Agreement in 1900, the occupied land by the tenants has never been officially registered. Even though some of them have lived and worked on their “Kibanja” for years and passed it on to their descendants. Therefore, overlapping claims may occur...



Sometimes the tenant does not know...	Sometimes the landowner is not informed...
<ul style="list-style-type: none"> that Busuulu must be paid to the landowner and how much who the owner of the land is that consent of the landowner is needed to stay on their land that consent of the landowner is required to sell or donate the Kibanja that there are legal options to become a lawful tenant and to secure the Kibanja 	<ul style="list-style-type: none"> that the tenants living on his/her land have rights about the status of the tenant: which tenant is a lawful tenant, a bona fide or a squatter that tenants must be protected if they are bona fide or lawful tenants that before selling the Mailo land to another owner, tenants need to be given the opportunity to buy their Kibanja

The ownership of a private Mailo title or a Kibanja is unclear:

In the past decades most parts of central Uganda were mainly rural areas. Hence, the value of the land was low and the land owners, or tenants, did not take much interest in it. With improved infrastructure and rising pressure on land, there is increasing need to clarify the ownership status of the land. On the one hand, some landowners do not know that they are owners of private Mailo land or simply are not motivated in updating the ownership status, e.g. they left the country during regime changes or they inherited it without being informed. For many years these private Mailo lands were occupied and used by tenants who were not informed on who and where the **official owner** of the land is. The same applies to the landowners, who often do not know who is settling on their land. At worst, he/she **forcefully evicts** the tenants from the land. On the other hand, there are also disputes within a family of a tenant on who is the rightful **owner of a Kibanja** and with whom the land must be shared. Especially marginalized groups such as women, adolescents, orphans, elders, migrants, Persons with Disabilities (PWD) and the poor struggle to receive their rights in such conflicts.

Many conflicts explained above have their origin in the absence of: transparency, knowledge of the legislation and officially documented Kibanja land.



What are the challenges on private Mailo?

Even though the **Certificates of Occupancy (CoO)** exists on paper in the Land Act since 1998 to document tenants' rights, none had ever been issued to the tenants up to 2019. Partly due to the complexity of the issue, but also due to the continuing violence on the ground, most officials did not want to burn their fingers in the conflict. Hence, the procedure of issuing CoOs has for the first time been tested in 2019 by the GIZ project.

Challenges on the ground

1. Inadequately trained personnel: there are not enough knowledgeable people either at district and/or sub-county level to advise the tenants and landowners on the existing legislation and on the procedures to strengthen land rights including the pursuance of a CoO. In

general, the administration is often understaffed.

2. Limited tools: The ministry, the district as well as the sub-county offices do not have the necessary equipment to enable mapping and collection of *Bibanja* related data.

3. Limited knowledge of the law: even if the equipment is provided and relevant office holders trained, the people e.g. landowners and tenants need to be sensitized about their rights, restrictions and deities regarding private Mailo land.

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



Figure 3: Mechanical typewriter in a District Land Office (DLO)



How does the ILGU project respond to the challenges of private Mailo?

Project name	Improvement of Land Governance in Uganda to increase the productivity of small-scale farmers on private Mailo land (ILGU)
Commissioned by	European Commission's Directorate-General for International Cooperation and Development (DG DEVCO) and German Federal Ministry of Economic Cooperation and Development (BMZ)
Lead executing agency	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
Project region	Mityana, Mubende and Kassanda Districts in Central Uganda
Duration	01.01.2017-30.06.2020
Political Partner	Ministry of Lands, Housing and Urban Development (MLHUD), Uganda



The ILGU project is the first initiative on private Mailo that works with local communities, the MLHUD, the Local Governments and civil society organizations to start documenting the Bibanja through CoO. After mapping a Kibanja a Land Inventory Protocol (LIP) is issued to the tenant. This is not a legal document, but it is a social document intended to serve as evidence to guide the tenants on possible options to secure their land which are: applying for a CoO and paying Busuulu, leasing the land, share

the land with the landowner or buy-out to become an owner on your own.

Our main goal

Together with local partners the project aims to secure land rights for the tenants with a specific focus on marginalized groups such as women, unmarried youth, orphans, elders, PWDs 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.

Land Inventory Protocol

A non-official social document which entails information on: the tenant and his/her family, the boundaries of the Kibanja mapped with geographic coordinates, names of neighbors and the landowner, the usage of the Kibanja etc. It serves as a claim evidence for the tenant for subsequent land security transactions.





Figure 4: Mapping exercise by the field team

What we do

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

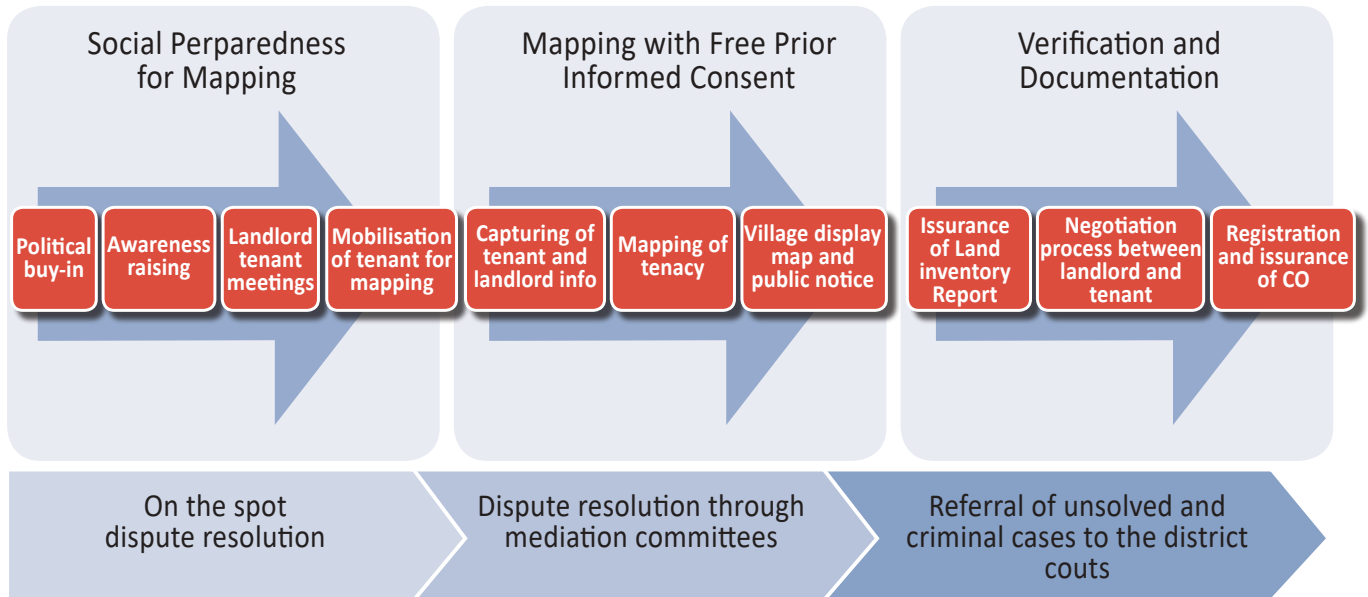
- support the ALC, DLO and DLB with equipment and training,
- raise awareness through civil society partners in the villages about private Mailo tenure system,
- informing the people on their rights, roles and responsibilities on private Mailo land,
- inform tenants on opportunities to document their land rights and become a lawful tenant,
- solving emerging conflicts by mediation and information,
- mapping and registering the Bibanja to improve transparency on private Mailo land.

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).



Land Documentation Process on private Mailo



Where we work

The **ILGU project** is currently working in the districts Mityana, Mubende and Kassanda in more than twelve sub-counties.

The project aims to map in total

75,000

Bibanja on private Mailo land.

The project teams only map Bibanja where both the tenant and landowner want them to map.

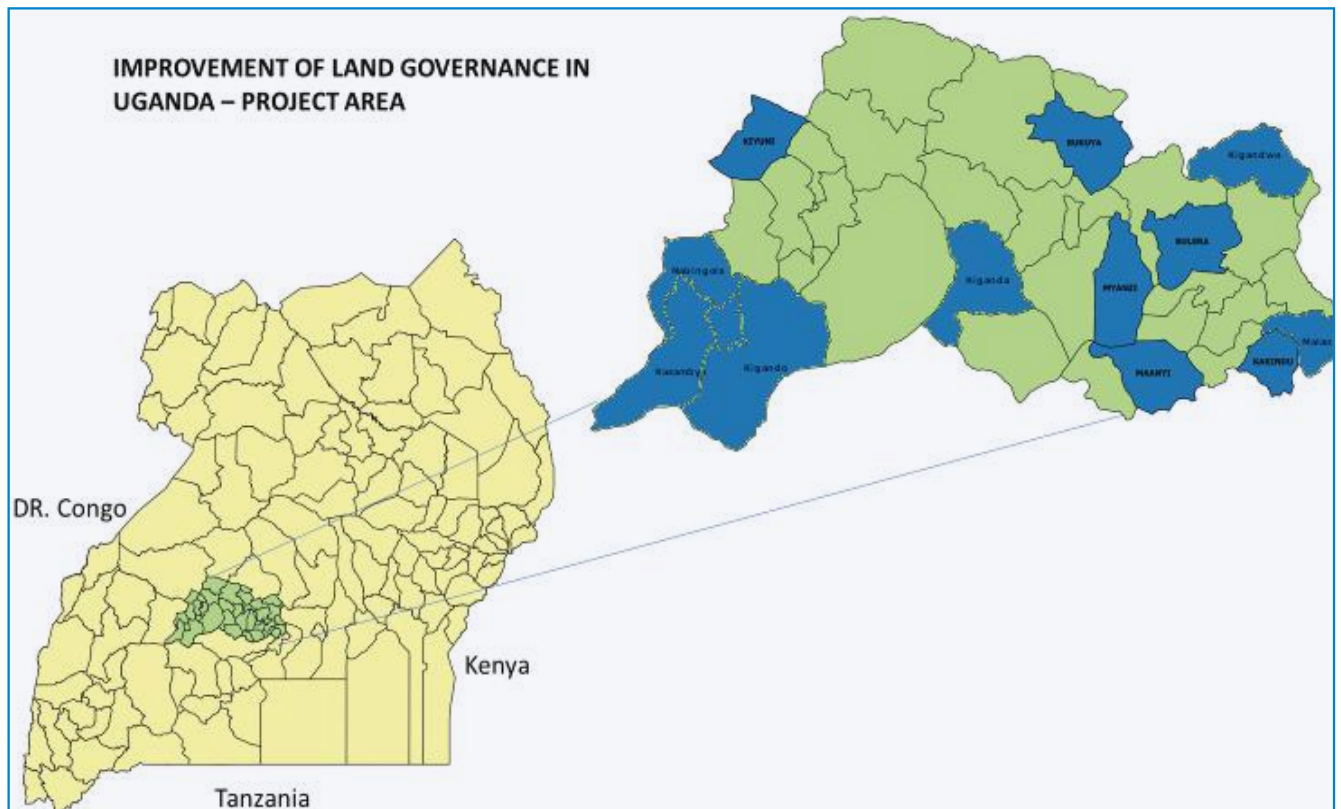
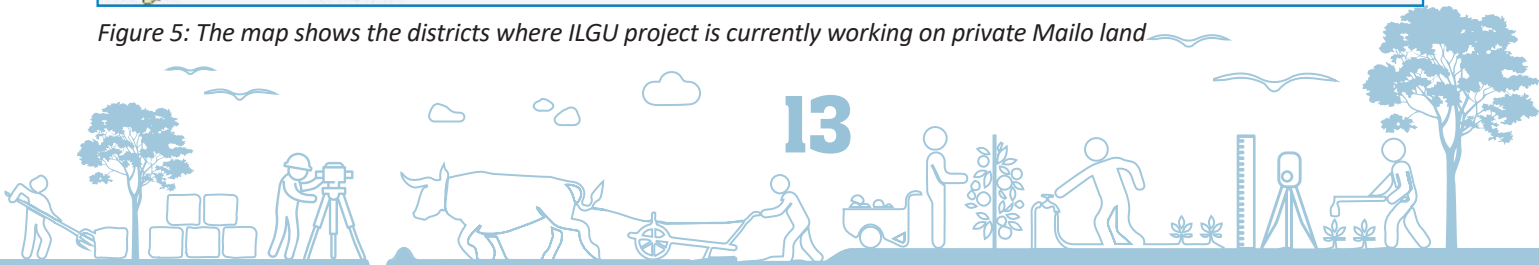


Figure 5: The map shows the districts where ILGU project is currently working on private Mailo land



Experiences from the People

Janet Sepuuya: *"I am excited about the exercise. I now know the size and boundaries of my land. Transactions on Bibanja are now possible and legally recorded, because both the Bibanja holders and landlords have proven documents to show their rights to the land."*



Sepuuya Daniel: *"Residents were sensitized about their land rights and ownership that included women and children. During the mapping exercise families, neighbors and landlords were included in the exercise. This caused excitement among the people, because they become confident that soon they will get their Certificates of Occupancy. Many people (Bibanja holders) in the area have started regularizing their tenancy through paying Busuulu to landlords."*



Justine Nabacwa: *"I am happy and excited about the mapping exercise, because I now know the boundaries of my Kibanja. I reside together with my family on 3 acres of land that have already been mapped. I am waiting to receive my Certificate of Occupancy. I have never seen one before, but I know courts recognize it as a conclusive evidence of my Kibanja on registered Mailo land. My prayer is to own the land legally which I believe will reduce on land wrangles in the sub-county. People used to uproot boundary markers and this caused feuds, but with the GPS coordinates captured such instances have reduced."*



Getting ownership of the land is vital especially to the people of the area. I now know that my coffee plantation can never be destroyed."

Things to remember...

WHAT is at issue?

Mailo is a unique tenure system in central Uganda.

Private Mailo:

belongs to an individual, so-called landowner can be sold, subdivided or transmitted.

WHERE Mailo found?

Central Uganda mainly Buganda, but also in Toro, Ankole and Bunyoro.

WHO is affected?

Conflicts on private Mailo can occur between

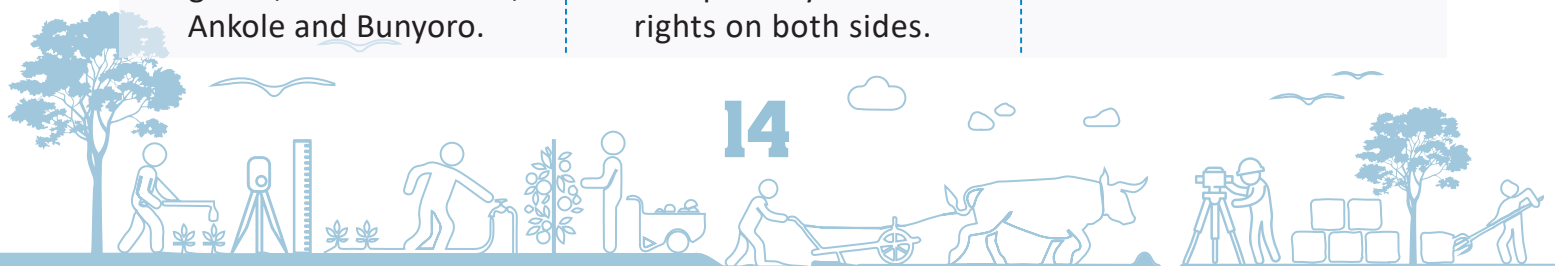
- landowners & tenants
- tenants & tenants
- landowners & landowners.

WHY is there a challenge?

There is a lack of knowledge and transparency on land rights on both sides.

HOW to solve the challenge?

ILGU project raises awareness, supports the land administration structure, resolves conflicts to enable mapping and in the end maps and documents Bibanja.







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