



LAND MANAGEMENT AND GOVERNANCE IN LOCAL GOVERNMENT

Opportunities and Challenges for District Land Boards in Uganda

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1. INTRODUCTION

This policy brief originates from the training for members of statutory boards and commissions in 34 district local governments in the country undertaken by ACODE between August and October 2020. The design of the training of the Local Government Public Accounts Committee (LGPAC), District Service Commission (DSC) and the District Land Board (DLB) was a response to a series of ACODE's scorecard findings which revealed that statutory boards and commissions were not functioning efficiently and effectively and therefore affecting the general performance of local governments. The training unearthed several issues both impeding and facilitating the functioning of statutory boards and commissions. These findings from the training are the bedrock of this policy briefing paper with a particular focus on the District Land Board

2. BACKGROUND

Land is the most basic resource in terms of the space it provides, the environmental resources it contains and supports, and the capital it represents and generates. It also influences the

spirituality and aesthetic values of all human societies. Land is perhaps the most essential pillar of human existence and national development and is usually a political issue with the potential to be volatile.¹ The rate of urbanization and global demand for food is escalating, and so is the pressure on natural resources.² To guarantee security for long-held land rights and facilitate land access and use, a well-designed land policy and governance structure are of utmost importance. Without such policies and adequately resourced, efficient and effective structures in place, the possibilities of addressing key land challenges are significantly reduced.³

Land governance concerns the rules, processes and structures through which decisions are made about access to land and its use, how those decisions are implemented and enforced, and how competing interests in land are managed.⁴ Decentralisation of land governance has become popular with many African Countries with the assumption that doing so would empower local resource users and harness the potential gains and positive attributes of local structures with land management mandates. In addition to reducing the cost involved in land transactions, it is also assumed that decentralizing land governance would bring services related to land administration closer to the people.⁵ In Uganda, the land is vested in the citizens and the Constitution recognizes that; the land shall belong to the people.⁶ The Land Act 1998 decentralized land administration to District Land Boards and other district and sub-county structures, namely the District Land Office and Land Registry, the District Land Tribunal and the Sub-County Land Committee.⁷

3. POLICY AND LEGAL FRAMEWORK FOR LAND GOVERNANCE IN UGANDA

In Uganda, the legal and policy framework guiding land governance is enshrined in several laws and regulations governing Land. The key ones are as follows:

Constitution, 1995 (Article 240): Article 237 provides that land shall be vested in the citizens under the four land tenure systems, namely, freehold, leasehold, mailo and customary. Article 238 establishes the Uganda Land Commission to hold and manage any land in Uganda vested in or acquired by the Government of Uganda. Article 242 provides that Government may, under laws made by Parliament and policies made from time to time, regulate the use of land.

The Land Act, 1998: Section 56 of the Land Act provides for District Land Boards. Under

1 MoLHUD, 2013

2 See (Feras, Sally, & Eddy, 2017)

3 See. (Klaus, Harris, & Anthony, 2012)

4 FAO, 2017

5 Leeuwen, 2017

6 Constitution of Uganda (1995) Article 237

7 See Sections 56-57 of the Land Act 1998, CAP 227

the Land Act, the major role of District Land Boards is to hold and allocate land in the district which is not owned by any person or authority. Under section 57, the Act the District Land Boards; facilitate the registration and transfer of interests in land; take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority; cause surveys, plans, maps, drawings and estimates to be made by or through its officers or agents; compile and maintain a list of rates of compensation payable in respect of crops, buildings of a nonpermanent nature and any other thing that may be prescribed; review every year the list of rates of compensation; deal with any matter which is incidental or connected to the other functions referred to in this subsection.

The Registration of Titles Act, 1924: The act relates to the transfer of land and registration of titles. Under the Act, the function of facilitating the registration and transfer of interests in land is vested in the District Land Boards.

The National Land Policy, 2013: The National Land Policy provides a framework for articulating the role of land in national development, land ownership, distribution, utilization, alienability, management and control of the land. This is intended to ensure that the country transforms from a peasant society to a modern, industrialized and urbanized society. The Policy has two major objectives: (1) to re-orient the land sector in national development by articulating management coordination between the land sector and other productive sectors in the economy; and (2) enhancing the contribution of the land sector to the social and economic development of the country.

The Physical Planning, Act: Under this act, district and urban physical planning committees are required to provide for the making and approval of physical development plans and the applications for development permission; and for related matters. The Act provides for a Local Physical Planning Committee whose reports are submitted to the DLB to aid in making its decisions in respect of land applications

The Surveys Act, 1939 Cap 232: The Surveys Act provide for and regulate the survey of lands. Under this Act, DLBs are vested with the powers to cause and facilitate the processes of land surveys.

The National Environment Management Act: This Act provides for sustainable management of the environment to establish an Authority as a coordinating, monitoring and supervisory body for that purpose. Under this Act, the DLB is recognized as an agency in the sustainable management of the environment.

The Land Acquisition Act, Cap 226: The Land Acquisition Act makes provision for the compulsory acquisition of land for public purposes and matters incidental thereto and connected. Under this Act, the processes of identifying, assessing, surveying and determining compensation on lands to be acquired by the government are to be done by the Minister in consultation with the District Land Board.

The Mining Act, 2003: The Mining Act vests the ownership and control of all minerals in Uganda in the government and provides for the acquisition of mineral rights. The Act enjoins specifically the prospectors to work with the DLB. Under section 21 (1) b of the Mining Act, holders of prospecting license cannot prospect an area unless they have given notice to and obtained permission from authorities in that area and complied with the conditions issued by such authority.

The Petroleum (Exploration, Development and Production) Act, 2013: This Act regulates petroleum exploration, development and production; establishes the Petroleum Authority of Uganda; provides for the establishment of the National Oil Company, and regulates the licensing and participation of commercial entities in petroleum activities among others. Under this Act, the role of DLB is recognized under section 138 and is related to offering lease or facilitating the acquisition of land by holders of petroleum license. Section 138 (1) *Subject to section 135 and any law relating to the acquisition of land, a holder of a petroleum production license may, if he or she requires the exclusive use of the whole or any part of a block in a development area, obtain a lease of the land or other rights to use it upon such terms as to the rent to be paid for the land, the duration and extent or area of the land to which the lease or other right of the lease shall relate as may be agreed upon between the holder of a license and the landowner.*

4. EMERGING ISSUES FOR DISTRICT LAND BOARDS

4.1 Documentation and record-keeping

Feedback from the training held across the 34 local governments revealed a gap in documentation and record-keeping something that became a hiccup for the effective functioning of District Land Boards. The gap in documentation and record-keeping was manifested in two major ways;

a) Lack of inventory of public land

It was revealed from the training that many local governments did not have a registry or an inventory of public land within their areas of jurisdiction. The lack of information on public land was reported by members of the District Land Boards as a major challenge. Most of the public land documentation was either archived or deliberately destroyed. In the majority of the land boards trained, members were not given any record of public land upon assumption of office. In the very few cases where this was done, it was the effort of non-governmental agencies that spearheaded the documentation of public land. It was also revealed that the process requires resources which the land Boards do not have. This creates a challenge in managing public lands. In addition to the lack of land registers, it was also revealed that most public institutions did not have titles; institutions like schools, health centres, sub-counties and parishes had no titles and this rendered them vulnerable to being encroached on.

b) Lack of lease registers

Section 60(1) (c) of the Land Act, 1998 as amended empowers the District Land Board to take over the role and exercise the powers of the lessor in the case of a lease granted by a former controlling authority. However, it was established during the training that most local governments and District Land Boards did not maintain a lease register showing the lease period, the status of present land usage or occupancy and others. This makes it difficult to ascertain the current status of the leased properties causing failure to track the expiry of leases, revenue accruing from lease renewals and annual ground rent. In some cases, the absence of a lease register led to the issuance of titles on leased land, erroneous transfer of lease offers into freeholds among others.

4.2 Inadequate funding for activities of District Land Boards

Funding for District Land Boards have been shrinking over time and subsequently affecting the performance of the board. Previously, the board would be allocated UGX 24 million every financial year but this has since been reduced to UGX 8million according to feedback from members of the DLB in Kamuli, Apac, Nakapiripirit, Moroto among others.

“Facilitation of the Land Board is charged on Local Revenue which is very meagre yet they have a lot of work to do. In the current budget, the land board was allocated UGX 8million for the Financial Year.” Member of the District Land Board Apac.

This inadequate funding meant that the District Land Boards could not undertake activities that would ensure their effectiveness like regular meetings and onsite visits.

a) Irregular meeting of the District Land Boards

The inadequate funding means that the boards cannot sit regularly to consider the land application or perform other functions. This often results in applications for land titles taking long to be verified and boards have a work backlog. In other cases, members of the Area Land Committees have shifted the burden to potential land applicants and subsequently charge exorbitant fees. In Mbale, a participant noted that the Area Land Committees charge between UGX 1 million and UGX 2 million on land applications.

b) Failure to conduct field visits

As a result of inadequate funding, members of the District Land Boards cannot do due diligence for instance by visiting the locus even in cases where there are disputes or multiple claims of rights over land. This has helped to exacerbate land conflicts.

c) Failure to submit reports to council

As a result of the irregular manner in which the District Land Boards held meetings, many local governments have not received reports of activities of the board. The inadequate funding meant that many District Land Boards lacked basic facilities like printers, tonners and

papers to print reports to submit in council. In many local governments like Amuru, Kamuli, Kaliro, Nakapiripirit and Moroto, it was established that the district councils had not received reports from District Land Boards. The Chairman of Amuru District Land Board said; we lack a printing machine to be able to print these reports. This keeps the local governments in the dark and unable to track the performance of the DLB.

4.3 Coordination challenges

Challenge in coordination with the different stakeholders in the chain of land governance was identified as a major concern for District Land Boards. There were concerns that key stakeholders, and in this case, the Area Land Committees, Municipal Councils, and Ministerial Zonal Offices were not operating in tandem with the District Land Boards and therefore incapacitating the boards from functioning effectively.

a) Municipalities and District Land Board

The strained relationship between Municipalities and District Councils in the management of public lands within the municipalities also came out strongly as a major challenge for district land boards. Municipalities were undermining district land boards in the process of issuing leases and sub-leases on their properties. It was noted in some districts like Soroti, Mbale and Jinja that Municipal Councils were leasing out land and disposing of assets without the knowledge of the district land boards. This had caused some serious challenges and litigation for the district land boards. Ironically, Municipal councils rely on DLBs in case of litigation thereby casting the DLBs in bad lights and putting them in awkward situations. It was also noted that while the Municipal councils have their representatives on the District Land Boards, municipalities do not contribute financially to support the activities of the DLB. This has put a strain on the DLB who have to carry out activities within the Municipalities using the meagre resources provided by the district councils.

b) Delays in processing land titles

While the District Land Boards facilitate the process of land registration, they are not the endpoint of issuance of land titles. However, it was noted from the training that there are coordination and communication gaps between the district land boards and Ministerial Zonal Offices resulting in delays in processing titles. It was reported that titles take between two to three years to be processed and in some extreme cases, over five years. In districts like Soroti and Jinja, some applications for land titles have taken 10 years without being processed. Members of District Land Boards pointed accusing fingers to the Ministry of Lands Zonal Offices(MZO) for the delay while other members noted that the use of private surveyors delays the processing of land titles.

c) Interference by Uganda Land Commission

There were also reported cases of interference by Uganda Land Commission in the functions

of DLB. It was noted that, in some districts, Uganda Land Commission was issuing lease offers on lands that have since reverted to the Local Governments and without the knowledge of the District Land Boards. Such cases were noted in Mbale, Jinja, Lira and Apac districts.

d) Conflicting roles in DLB

Under the Lands Act, the role of the Secretary DLB is specified as the custodian of documents and files of the Board. However, there was concern about the conflicting role of the Senior Lands Officer and the secretary land board in terms of who communicates the decisions of the DLB to the MLHUD. It was noted that this has always caused role conflict between the two offices.

4.4 Administrative weaknesses

The training also revealed that there is a general weakness in the administration of the District Land Boards which is affecting their effective functioning. These administrative weaknesses manifest in the form of delay by the council in constituting new boards, shortage of human resources in the District Lands Office, corrupt tendencies in the DLB, the high cost of surveys and absence of a tribunal to handle land-related conflicts.

a) Delays by district councils in replacing members of DLB whose terms expire

Another coordination challenge that affected the effective functioning of District Land Boards was the delay in replacing members of the DLB whose terms have expired. In many local governments where DLB's terms have expired, district councils took too long to reconstitute the board. In Lira, Kabarole, Tororo, Jinja, Kaliro districts, the district councils took long to constitute DLBs after the expiry of the previous boards' terms thereby causing a backlog. In Lira, the Deputy Chief Administrative Officer noted that due to the expiry of the term of the previous land board, there is a lot of case backlog.

b) Shortage of human resources in the district land office

Shortage of human resource was another challenge said to be affecting the performance of district land boards. Most districts were found to be operating without key personnel in Lands offices like Surveyors, Valuers and Cartographers. This has affected the performance of functions like determining rates for compensations, surveys and causing maps and subsequently delaying the processing of land titles and issuing compensations to landowners. As a result of the human resource challenges in district land offices, most of the technical work is done by the lands zonal offices (MZOs).

c) Corrupt tendencies in the District Land Board

Concerns of corruption within the District Land Boards were raised. It was noted that sometimes, processes like land inspection by DLB and Area Land Committees were marred

with corruption. The ALC is usually the watchdogs of the DLB. But in most cases, they are bribed by people who have an interest in land and they end up submitting wrong information thus making the DLB give away land erroneously or making wrong information. Such corrupt tendencies within the DLB have led to issues like double issuance of land titles, issuance of titles on road reserves, public utilities and easements among others.

d) Privatization of surveys

District Land Boards are legally mandated to facilitate the processes of land registration under the registration of title acts. However, during the training, it became apparent that there were issues with the high cost of surveys. This is because the survey functions were privatized, it was reported that the private surveyors were charging exorbitant fees. The high cost of surveys had made it difficult for many average citizens to process titles for their land. Failure to secure land titles exposes the district to the risks of encroachment, land grabbing and conflicts among others leading to encroachment and conflicts.

e) The absence of district land tribunals

While the Land Act provides for a District Land Tribunal to handle land-related cases, these tribunals have largely remained inactive for over five years on account of inadequate financing. The non-functionality of land tribunals has effectively shrunk the available space for addressing land disputes. Many land-related cases are being taken to the regular courts that are highly bureaucratic. Because of the bureaucratic nature of the regular courts, land cases take long to be disposed of; some times as long as 20years. This has been largely responsible for the increasing cases of land conflict within the community.

4.5 Capacity gap for members of the Board

Another challenge identified that is inhibiting the effective performance of the District Land Board is the capacities of members appointed to the DLB. It was revealed that the members of DLB in many local governments were not inducted and did not have access to crucial documents to aid their work, others lacked relevant qualifications, the capacities of Area Land Committees and Local Physical Planning Committees who are crucial in the work of DLB are lacking.

a) Inadequate induction of members of DLB and access to legal instruments

Members of the District Land Board in some districts had not been inducted or trained on their roles since assuming office and therefore lacked the basic knowledge of the task ahead of them. In some cases, the members do not have access to copies of legal documents necessary for the performance of their functions like the Land Act, National Land Policy and the Local Government Act. This adversely impacts the capacities of members of the DLB to perform their duties. Appointments of the ALC are influenced by political motives. Some

cannot read and write but because they are allies of the local politicians, they are appointed to the ALC. Besides lack of induction, there was concern that there is no minimum education qualification for members of the land board as well as no specified disciplines to qualify one to be a member of the DLB. This meant that most members of DLB lacked technical competence on matters of land.

b) Lack of relevant qualification for members of DLB

While the Lands Act requires members of the District Land Board to have a minimum of A level qualification, it doesn't specify whether the members should possess any technical qualification in land-related matters. This lack of minimum education qualification for members of the land board affects their ability to internalize technical information like survey reports that are necessary for their performance. In many districts, it was revealed that members of the DLB lacked technical knowledge on land matters.

c) Weak Area Land Committees (ALC)

According to the Land Act, 1998, the Area land committees are supposed to assist the board in an advisory capacity on matters relating to land, including ascertaining rights on the land. They are supposed to recommend to the district land board, upon doing due diligence over land anyone who needs to acquire land. However, there were concerns about the competence of these committees in many districts. It was noted that most times, members nominated to the ALCs lack competence and that most times, their appointments are politically influenced. It was also noted that the ALC was poorly facilitated and lacked supervision from the local government leaders. This has resulted in corruption and over-exploitation of land applicants.

d) Weak physical planning committees in LGs

Section 13 of the Physical Planning Act (2010) empowers a sub-county council to constitute the local physical planning committee? Section 14 provides for the functions of the committee which include ensuring that natural resources, easements (e.g. road reserves or utility way leaves) and common property resources (dams, public water sources and public open spaces) are protected; and subjecting all land applications to National Environmental Management guidelines and standards for the protection of natural resources. However, the act doesn't provide for the composition and membership of the committee. During the training, it was revealed that these committees are non-existent in many local governments. Lack of funds to facilitate the activities of local physical planning committees and the recent amendment in the Physical Planning Act were identified as the main causes for either the absence or weakness of the committee. In some local governments, the issuance of land titles on wetlands and other natural resources was blamed on the absence of local physical planning committees.

e) Lack of Independence of the Board

In performing its duties, the District Land Boards are expected to be independent of any

person or authority. They should not be controlled, directed, used or influenced. However, during the training, it was revealed that District Land Boards operate in an atmosphere of threat and lack of independence.

f) External threats

Some members of district land boards in districts like Apac, Moroto, Jinja reported that they have received threats from “powerful people” who encroached on wetlands. In Moroto, members of the District Land Board said that Uganda Land Board operates without consulting DLB, especially when dealing with prospectors.

g) Interference from members of the council

There were also reports that members of the council exert influence on the DLB especially when offering leases on public lands. In Amuru for instance, members of the DLB noted that there is a lot of interference from the military and political leaders in their work.

5. RECOMMENDATIONS

To Local Governments

- Local Governments should create an inventory/register of all the public land within their areas of jurisdiction and furnish the District Land Boards with such information.
- District land boards should expeditiously formalize/register all the public land and land belonging to institutions like schools, health centres and administrative unit headquarters. In many cases, people give land to these public institutions but the process of acquisition is not formalized leading to increased encroachment on public land.
- District Councils should consider regulating the activities of Area Land Committees. Other than leaving it to the ALCs to determine how much applicants pay, district councils should consider regulating the amounts of applicants should pay to reduce the manipulations by ALCs.
- There is a need for sensitization of the people on matters of land to ensure that people understand and protect their land rights. Local Governments should make deliberate plans to sensitize the citizens on land issues like land registration, Land conflict resolution mechanisms and sustainable land use.

To Ministry of Local Government

- Ministry of Local Government should streamline the relationship between Municipalities and District Local Governments. MoLG should formulate deliberate guidelines to regulate how Municipalities relate with the District Land Board.

To Ministry of Finance Planning and Economic Development

- Ministry of Finance should consider revising the allocation for DLB and restore it to the previous amount of UGX 24million in a Financial Year.

To Ministry of Lands, Housing and Urban Development

- There is a need for the MoLHUD to streamline the activities of regional land offices to synchronize their activities with the District Lands Office.
- It would also be appropriate for MoLHUD to revise the policy on the land survey to regulate the activities of private land surveyors. The practice of land surveyors charging exorbitant fees for surveying was noted as a major cause of the non-registration of land. It would therefore be prudent to regulate private land surveys.
- MoLHUD should avail copies of legal documents to members of the district land boards and also make attempts to induct the board members as soon as they are approved to build their capacities.
- MoLHUD should revitalize the operations of the District Land Tribunals to address the increasing cases of land conflict.

6. CONCLUSION

The findings in this brief have underscored the importance of a well-streamlined land governance structure. The land boards as provided for under various legal and policy frameworks play a vital role in land governance at the local government. The inhibiting aspects of limited resources and capacity notwithstanding, Land Boards have been able to manage land aspects within their areas of jurisdiction. It is incumbent upon the various entities at the district (Council) and national level (MoLHUD, MoLG, MoFPED) to ensure that these Land Boards are facilitated to function optimally. The functionality of these Land Boards, therefore, has a great implication on the management of land across the country.

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