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CONTENTS

CONTENTS	ii
LIST OF TABLES.....	iv
ACRONYMS AND ABBREVIATIONS.....	v
ACKNOWLEDGEMENT	1
ABSTRACT.....	2
1. BACKGROUND.....	4
1.1 Uganda’s Experience with Systematic Demarcation.....	5
1.2 Renewed Impetus for Systematic Demarcation.....	9
1.2.1 Policy Framework.....	10
1.2.2 Legislative Framework	12
1.2.3 The Systematic Demarcation Operational Framework.....	13
2. SYSTEMATIC DEMARCATIION AND POVERTY REDUCTION	17
2.1 THEORETICAL FRAMEWORK	17
2.1.1 The Evolutionary Theory	17
2.1.1 Capitalism and Property Rights	18
2.1.3 The Benefits Theory	19
2.2 CONCEPTUAL FRAMEWORK.....	21
2.3 METHODOLOGY	22
2.3.1 Study Design.....	22
2.3.2 Study Objectives	23
2.3.3 Data Collection Methods.....	24
2.3.4 Profile of Survey Respondents.....	25
2.3.5 Profile of Consensus Panel Respondents.....	26
3. OUTCOMES OF SYSTEMATIC DEMARCATIION	27
3.1 THE DEMARCATIION PROCESS	27
3.2 TRANSFORMATIONS IN LAND RIGHTS.....	29
3.2.1 Readjustment of Parcels.....	30
3.2.2 Inheritance Rights for Children.....	31
3.2.3 Status of Women’s Land Rights	32
3.3 ASSET ENHANCEMENT.....	38
3.4 ACCESS TO CAPITAL	40
3.5 FARM INVESTMENT AND PRODUCTION.....	44
3.6 THE LAND MARKET	46
3.7 LAND DISPUTES.....	46

3.8 AREA LAND COMMITTEE OPERATIONS.....	49
3.9 LOCAL PARCEL REGISTRATION DATA BANK.....	50
4.0 CONCLUSIONS AND RECOMMENDATIONS.....	52
Asset Enhancement.....	52
Land Disputes.....	53
Transformation of Land Rights	53
Gender	54
Capacity of Area Committee	54
Tenure Security and Land Values.....	55
REFERENCES.....	56

LIST OF TABLES

<i>Table 1.1: Systematic Demarcation Team</i>	16
<i>Figure 2.1: Conceptual Framework</i>	21
<i>Figure 2.2: Electronic Sketch Showing the Study Area</i>	23
<i>Figure 2.3: Categorisation of Respondents by Marital Status</i>	25
<i>Table 2.2: Education levels of Survey Respondents</i>	25
<i>Table 2.3: Summary of Consensus Panel Participant Attributes</i>	26
<i>Table 3.1: Sensitisation on Systematic Demarcation</i>	27
<i>Figure 3.1: Whether the Process was fair and transparent</i>	28
<i>Table 3.2: Reasons for Opinion on Fairness and Transparency</i>	29
<i>Figure 3.2: Negative Effects of Readjustment</i>	31
<i>Table 3.3: Parcel Registration Pattern</i>	33
<i>Figure 3.3: Pattern of Parcel Registration amongst Spouses</i>	33
<i>Table 3.4: Reasons for Registering in Both Spouses' Names</i>	34
<i>Figure 3.3: Perceived Clarity of Women's Land Rights</i>	35
<i>Table 3.5: Reasons for Opinion on Women's Land Rights</i>	36
<i>Figure 3.4: Perceived Security on Land for Women</i>	37
<i>Table 3.6: Reasons for Opinion on Women's Security on Land</i>	37
<i>Table 3.7: Respondents' Understanding of Valuable Land</i>	38
<i>Figure 3.5: Whether Land is More Valuable after Systematic Demarcation</i>	39
<i>Table 3.8: Perception of Enhanced Value of Land</i>	39
<i>Figure 3.6: Envisaged Use of Credit</i>	41
<i>Table 3.9: Loan Requirements using land as Collateral</i>	42
<i>Figure 3.8: Use of Certificates for Poverty Eradication</i>	42
<i>Table 3.10: Use of the Certificates to secure Credit</i>	43
<i>Table 3.11: Contribution to Increased Productivity</i>	44
<i>Figure 3.9: Systematic Demarcation and Increased Production</i>	45
<i>Table 3.12: Occurrence of Land Conflicts by Gender</i>	47
<i>Figure 3.10: Occurrence of Land Conflicts by Household Category</i>	47
<i>Table 3.13: Reasons for the Resurgence of Land Conflicts</i>	48
<i>Table 3.14: Use of Knowledge of Land Size and Boundaries</i>	48
<i>Figure 3.11: Local Data Bank Validity Test Result</i>	51

ACRONYMS AND ABBREVIATIONS

AfD	Associates for Development
DCI	Development Cooperation Ireland
LTRP	Land Tenure Reform Project
MWLE	Ministry of Water, Lands and Environment
MISR	Makerere Institute of Social Research
LIS	Land Information System

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It has been a challenge to extend our understanding of the nexus of poverty and property rights in land to the societies in which we live in the face of various socio–economic dynamics. It is our belief that empowering farmers and poor households through enhanced asset values results in feasible production, investment decisions and endeavours that can help households get out of poverty. Land reforms in Uganda, have not been sufficiently informed by a poverty focused discourse backed by adequate empirical clarification and hence, the need for studies of this nature.

We, the authors and Associates for Development are grateful to the Land Tenure Reform Project of the Ministry of Water, Lands and Environment for their support in the conception of this study and in expressing the need to evaluate government lead interventions and public investment in land tenure reform from an external perspective as a means of checks and balances and mechanism for learning and monitoring of sector reforms.

In the same line, we extend our sincere gratitude to the Embassy of Ireland (Development Cooperation Ireland) for joining hands with us and partially funding this study. With this report and the recommendations therein, we assure the Embassy of Ireland (DCI) that your resources were put to wise use. We look forward to continued collaboration with you and further support in other areas that Associates for Development is tirelessly working on to help the poor seize opportunities for poverty reduction in the land reform process.

For the district contact persons: Medi Tumwesigye (Surveyor/Land Officer-Ntungamo), Perez Besigye (CM LCII-Rukarango) and Miire Omuhereze (CM ALC-Rukarango) and all the households involved in the study we thank you for the time accorded to us and the stay in the area. For the data collection team, it was great working with you and for the data clerks' thank you for processing the information.

Herbert Kamusiime
Margaret Rugadya and
Esther Obaikol

ABSTRACT

Uganda is currently experiencing neo-liberal policies, emphasizing market-based land reforms that effectively put pressure on customary tenure. One of the characteristic undertakings is systematic demarcation, which will eventually result in certification of customary land. The presumption is that this will increase land access and transfer through the market, increase investment opportunities, improve access to financial services and encourage more sustainable investment in land management. Land reforms pursued under the Land Sector Strategic Plan¹ (LSSP) prioritise cross-referencing of macro and micro-level measures and impacts, and stress the need to pay attention to social protection. This involves, at the very minimum, protection of the land rights of the poor, ensuring improved land access, equitable distribution of land and tenure security. The LSSP considers secure land rights as a basis for investments in pro-poor economic growth.

In addition, the extent to which poverty will be reduced by more secure access to land is one component of diverse livelihoods. This emanates from the premise that limitations imposed by the land sector on agricultural production hamper efforts to eradicate poverty among farm households by narrowing economic and production choices² at household level. The transformation of customary tenure embodied in Systematic Demarcation, is expected to respond to these issues and provide an opportunity for farm households to rid themselves of poverty.

The main objects of systematic demarcation and adjudication, to protect property rights, to facilitate transactions in land, and to enable land to be used as collateral for loans. It is important that any system of land registration should be simple, reliable, prompt, affordable and well suited to the society it serves, for a system to be successful, appropriate legislation and institutions, and sufficient financial and human resources for its implementation and maintenance must support it. This is backed by a land information system (LIS) that should identify each individual land parcel and provide confirmation that the person named in the register has specified property rights in that parcel.

Systematic demarcation creates an opportunity for a uniform, integrated land information system, which culminates into land title registration, which confers several benefits. For the individual, it offers security of tenure, a reduced likelihood of ownership or boundary disputes, simpler and less costly land

¹ Land Sector Strategic Plan of 2001

² Economic and Production choices made by farmers but heavily influenced by tenure security among others include: whether to bring in more land for production, to invest in capital production developments like soil erosion controls or adopt new technologies and access to credit. All these are determined by whether a farmer is certain of his/her land holding.

transactions, greater access to credit, and increased market value. For a government, it represents a major component of a land information system, assists land use planning and development, improves the land market, stimulates investment, and creates a basis for land taxation. For a society, it can help to promote the peaceful, orderly and wise utilization of the national land resources. This study blends three lines of enquiry; literature review, a household survey and consensus panels to meet the required qualitative and quantitative results in the pilot areas where systematic demarcation has been carried out to establish the resultant outcomes in communities and households.

1. BACKGROUND

Recent developments in public policy towards land in Uganda have focused on two key areas: resolving historical tenure problems by defining and entrenching land rights of all Ugandans and increasing the efficiency of use of land for economic growth while addressing environmental concerns. The current distribution of land rights, together with the system of land administration and management are rooted in the past and any attempt to resolve Uganda's land problems requires an appreciation of past policies and their impacts. Common to most colonial regimes, the Uganda Protectorate Government implemented a dualist system of land tenure, through which parts of the country were brought under a system of statutory controls, whilst in the remainder traditional customary systems were maintained³.

Discussions on customary tenure in Uganda often revolve around whether or not it facilitates or impedes development⁴. This tenure is perceived as an impediment to modernization and development because of the multiple and often conflicting rights embedded therein. In spite of this, it was observed by the Land Act Implementation Study, 1999 that over the years, attempts to individualize customary tenure have not translated into greater investment and resource mobilization for development at household level through using land as security or collateral. Customary rights are typically of many different kinds, specific to particular activities (such as gardening or hunting) and contingent on membership of particular groups of people, mostly defined in terms of kinship. Transfers of customary land were traditionally limited to particular categories of people for specific purposes, and the land often reverted to the landowning group after use.

Systematic demarcation aims to fix, and give legal effect to these customary rights and relationships. It involves investigation, adjudication, survey and demarcation as well as the creation of cadastral maps. It is partly a process of extending the reach of legislation to include new places, and new objects. It is also a process of discovery and recognition of the extralegal arrangements already existing, not to be superseded, or ripped off. Traditional landowners are assumed – rightly or wrongly – to know where their boundaries are. It is a matter of demarcating them, and issuing customary certificates of ownership, allowing them the freedom to pursue a title if they so wish. Countries can and do devise their own systems of recording customary land rights.

³ Joan Bosworth (2002), Country Case Study Uganda. A paper presented at the regional workshop on land issues in Africa, Kampala, Uganda: April 29-May 2, 2002

⁴ Geshberg, 1971; Obol-Ochola, 1971; Chango Machyo, 1984; World Bank, 1962; Brock, 1968

Some recent studies⁵ have argued that transformation of customary tenure does not necessarily create incentives to invest in land. Even when registration of customary rights takes place as a means of providing greater tenure security, this cannot be guaranteed for all rights-holders because of the simplifications which registration inevitably introduces into a complex and dynamic set of practices⁶. Thus, rights to land under customary tenure are being modified under market and political pressures, and inequalities are developing⁷; considering that land is the most important asset for many Ugandan households owing to the fact that close to 85% of the population live in rural areas and an equally big proportion has an agro-based livelihood. Land therefore, is an extremely important resource and the manner in which it is accessed and/or the rights various social categories have in it, has a bearing on whether or not poverty can be reduced.

Land is the primary means for generating a livelihood for most of the poor in rural areas and a key asset and resource for those living in peri-urban areas. As an Important asset, it constitutes a main vehicle for investment, wealth accumulation and transfer between generations. The distribution of land and other productive assets will not only affect productive outcomes in rural areas but also the ability of the poor to access credit markets, make investments and benefit from the rule of law.

At the household level, asset ownership has a clear impact on subsequent economic success. Equal distribution of land ownership is shown to have made a significant contribution to human development indicators⁸. It has been argued that the way in which land ownership is assigned and secured determines:

- A household's ability to produce its subsistence and generate market surplus
- A households' social economic status
- The household's incentive to exert non-observable efforts, make investments, use resources sustainably; and
- Its ability to self-insure against adversity.

1.1 Uganda's Experience with Systematic Demarcation

Within customary tenure in pre-colonial Uganda, regional and local variations existed relative to ethnicity, farming systems and agro-climatic conditions. Upon declaration as a British Protectorate, customary rights to land were

⁵ Toulmin and Quan, 2000, Muhereza, 1998; Berry, 1993

⁶ Camilla Toulmin and Julian Quan, 2000

⁷ Bazaara, 1994; Ssenkumba, 1993; Muhereza, 1998; 1994; Kafureeka 1992; Ddungu 1994

⁸ Klaus Deininger, World Bank Research Group 2003

subsumed by crown lands regulations under the colonial administration. Customary users become tenants of the Crown. The crown lands could only be alienated in freehold and leasehold whereupon customary occupiers had either to leave the land or stay as tenants at sufferance of the freeholder or leaseholder. Measures for certification of customary land holdings often prompted significant opposition on two issues; the potential negative effect of individualisation of customary land on tenure security through the adjudication process or increased market transactions and the need to provide for recognition of group rights to allow for communal certification of land.

An early attempt to individualise customary tenure during the 1950's was prompted by the East Africa Royal Commission's recommendations concerning the modernisation of peasant agriculture and the desirability of creating a middle class in the run up to independence. Some of the recommendations of the Royal Commission were:

- Policy concerning the tenure and disposition of land should aim at the individualization of land ownership and mobility in the transfer of land which, without ignoring existing property rights, will enable access to land for economic use;
- Land tenure law cannot be simply left to evolve under the impact of modern influences. A lead must be given to governments to meet the requirements of the progressive elements of society by applying a more satisfactory land tenure law;
- Existing property rights must not be arbitrarily disturbed, exclusive individual ownership of land must be registered, and government must not dispose of land without an established legal process of adjudication and registration of all interests in the land; and
- Local land Boards should be established to assist in interpreting and guiding local; views and actions concerning land tenure.

The Uganda Government embraced the above recommendations, and published its land tenure proposals⁹, with the following objectives:

- Redefine the status of land in Uganda and to afford greater local control over land administration subject to general directions of the then central government;
- Redefine the process of law by which land may be disposed of by central and local governments,
- Encourage individual land ownership in such a manner as not to annihilate the good will of traditional authorities; nor to prejudice good husbandry; nor to abandon such safeguards as are essential for future progress of the

⁹ Land Tenure Proposals, Government Printer, Entebbe, 1955

people. This will involve the provisions of machinery for the registration of individual title when described, but on a district basis and in so far as is possible in accordance with local customs affecting tenure.

Sites

The land tenure proposals were met with hostility as it was assumed that the British Protectorate at the time had a hidden agenda to colonize and grab land. However, in 1958, the first pilot scheme was undertaken in Ruzhumbura County, Nyakaina Parish, after Kigezi District Council embraced the land tenure proposals followed by Ankole and Bugisu. After the Nyakaina-Ruzhumbura pilot, three other pilots were undertaken respectively; the Sheema Pilot Scheme (1959) in Ankole District in which Kagango and Shuku sub counties were adjudicated; the Bubirabi Pilot Scheme (1960) in Bugisu District; and the Bufumbira Pilot Consolidation Scheme (1959) in Kigezi District. The major reasons advanced by these districts for embracing the proposals were population pressure and the multiplicity of boundary litigations and disputes.

Procedure

Adjudication was by application. However, upon completion, there was difficulty in correlating the various applications, adjudication certificates and surveyed plots. This was overcome by assiduous office work coping with up to 700 applications against 800 adjudications and 750 surveyed plots. Some plots were adjudicated in duplicate, others not at all, and with names all mixed up.

The educational standard and administrative ability of the adjudication committee members was grossly over-estimated. Because of their failings, subsequent administrative paper work was kept at absolute minimum by getting them to sign and write YES or NO LAND only on certificates already made out in the Land Office as to claimant's name and details bearing a number, which was used through out the whole process.

Institutional arrangements

The adjudication committees needed careful guidance to keep them on track. Because these committees worked voluntarily, turning up four times a week, this burden increased as more and more people applied for adjudication since it was a free service. This challenge was overcome by varying the adjudication rules in 1959 to allow for the election of committee members for a parish or part of a parish, and by increasing the membership of the adjudication committee from 10 - 20 members to 15 - 25 members. The quorum was also decreased from 2/3 of the members to 8 members. However, the Parish Chief, who was a Public Servant, was retained as the chairperson to any one-committee undertaking adjudication.

Certification

Despite the preparation of certificates of title for issue, the registered proprietors collected less than 30%. This was attributed to lack of knowledge on the importance of a certificate of title. The systematic adjudication required more follow up explanations on the advantages of having a certificate of title. Having got their boundaries adjudicated and surveyed leading to a drastic reduction in boundary disputes, most people felt that their land rights were secured enough. There was therefore, little incentive for them to pay for a sheet of paper giving details of what they already knew.

For some time, the certificates were held at Rujumbura camp where they were expediently issued out. However, because of security reasons, they had to be moved to Kabale Land Office, which was too far for many owners to bother to travel. Although the cost of certification was low, it was found to be high for ordinary people depending on subsistence farming to afford. Most of the titles that were unsold were for small plots of land or belonged to poorer landowners, who if they had to pay fees in advance, would never, have applied for adjudication in the first place. Some plots were too small to enable a worthwhile mortgage to be obtained.

Legislative Framework

The pilot systematic demarcation schemes were guided by the Crown Lands (Adjudication) Rules of 1958 as the legislative framework for their establishment. These rules (in summary) prescribed the following key principles and procedures:

- The formation of adjudication committees chosen by a meeting of adult males of the parish concerned and consisting of between ten- twenty taxpayers, with the parish or village chief as the chairman.
- Right to apply to be adjudged and registered the proprietor of a freehold estate where a person occupied any land by virtue of any customary right recognized by native custom.
- The application for adjudication would after due notice be considered by the adjudication committee of the area where the land was situated.
- The committee was to hold it's hearing in public and anyone who wished could make presentations to it.
- At the conclusion of the hearings, the committee would determine whether or not the applicant was the person recognized as the owner of the land by native custom and would forward a certificate embodying their findings to the District Commissioner.
- The decision would then be published, and any person aggrieved by the decision could within thirty days appeal to the District African Court which

would then confirm the names of the persons adjudged to be the owners by native custom.

- The decision of the court was then forwarded to the district Commissioner, who would then forward it to the Director of Lands and Surveys.
- Any person whose name appeared in the notice could then apply to the Director Lands and surveys to be registered as the proprietor of an estate of freehold in respect of the land of which he had been adjudged the owner by native custom
- On payment of a prescribed fee, he would be entitled to the issue of a certificate of title to the land under the Registration of Titles Act.

These rules were amended in 1967¹⁰ to take into consideration the Constitutional changes and the integration of Courts in Uganda. Changes significant to land adjudication; which were integrated into the 1967 rules, were: the chairperson of the Land Board superseded the District Commissioner and was vested with power to declare any parish or part thereof an adjudication area. Appeals now lay from the Magistrate Grade II court instead of the District African Court.

The pilots undertaken in the 1950s were all mired by hostile political interference, which affected the rate and number of applications received¹¹. All other attempts fell foul of farmers' fears of alienation of land to non-Africans and were never extended.

1.2 Renewed Impetus for Systematic Demarcation

The renewed efforts to carry out systematic demarcation gained strength and momentum from the Constitution of the Republic of Uganda, 1995. Among other things, it ushered in fundamental reforms in ownership, tenure and management of land; the most significant being land belongs to the citizens of Uganda who own it in accordance with the four types of tenure namely, customary, freehold, mailo and leasehold.

Secondly, it is envisaged that systematic demarcation will deliver tenure security, as well as land information, where the aggregated land information is developed from individual forms or records of 'who' holds 'what' land 'where'. This land information does not only contribute directly and indirectly to poverty eradication, gender balance and agricultural modernization, but is in fact necessary in enabling cost-effective policies to be put in place. An important component of tenure security is the confidence with which one can transact (lend, sell, lease) in land. With population growth, specialization and

¹⁰ Public Lands (Adjudication) Rules 1967

¹¹ 1959, East African Law Review, Pg 552

incorporation of rural areas into market economies, and the importance of being able to transact in property rights rises. There is already a thriving informal land market in some areas. Recording of land ownership should reduce the costs associated with transactions¹².

There is evidence from research¹³ that the most occurring types of land disputes with potential to erupt into social strife are either boundary related (30%) and/or encroachment based (26%). Whereas these disputes may not necessarily limit household production and investment, they are a recipe for social tensions, the provision of documentary evidence to a parcel of land, is necessary to curtail disputes and deter conflict.

Lastly, production benefits are more likely to accrue from tenure reform of which Systematic Demarcation is part and better land management where farm support services are made available. There is a strong case for focusing the implementation of the Land Act in areas where infrastructure and services are being made available and where returns are likely to be greatest in the short run.

In summary, a land information management system based on systematic demarcation will enable more efficient physical and economic planning at district and national levels for the provision of social and economic services', provide additional funding' and help to strengthen the local tax base so as to finance sustainable development for poverty eradication.

1.2.1 Policy Framework

Uganda's macroeconomic policy since 1986 has focused on market development and export-led growth. Under this policy, there has been a shift away from subsistence agriculture (around 35% of GDP to around 20% since 1985-99) towards marketable agriculture. Uganda was one of the first low-income countries to prepare a Poverty Reduction Action Plan (PEAP) in 1996-97 (eventually revised in 2001 and recently in 2004) in an effort to combine several policies into a coherent national development strategy, redirecting government efforts to eradication of poverty.

Access to land and sustainable use of land were recognised in the first PEAP as critical issues for enabling the poor to increase their incomes. This was in line with the 1995, Uganda Constitution, which recognised tenure security

¹² Richard Oput; Piloting of Systematic Adjudication, Demarcation and Registration for delivery of Land Administration Services in Uganda, a paper presented at the FIG Expert Group Meeting 10th -11th November, 2004 Nairobi-Kenya.

¹³ Abby Sebina-Zziwa, Richard Kibombo and Herbert Kamusiime (2003) pg. 30, Land Dispute Resolution Mechanisms: What works in the rural settings? MISR, Kampala.

particularly that of smallholder farmers, women and tenant farmers, as key objectives for policies on land. The premise of this prioritisation was that tenure insecurity was a barrier to increased production by smallholders who are potentially more efficient than large-scale producers. In addition, lack of acceptability of rural land as collateral by the banking system was believed to be a problem.

To assist the Government of Uganda to determine appropriate and affordable implementation priorities in the land reform process, the Land Act Implementation Study (LAIS, 1999) was carried out to examine institutional, financial and technical needs for implementation of reforms in the Constitution and the Land Act; as well as assess the social, economic and environmental implications of these reforms. The recommendations from the Land Act Implementation Study necessitated the formulation of a Strategic Action Plan to direct implementation of sector wide reforms, thus the Land Sector Strategic Plan (LSSP).

The LSSP is designed to provide the operational, institutional and financial framework for the implementation of sector wide reforms and land management including the implementation of reforms in the Constitution and the Land Act 1998. It was intended to guide government, the private sector and civil society in the management and use of Uganda's land resources¹⁴ and ensure maximum contribution of the Land Sector to government programmes of poverty eradication, mainly the Poverty Eradication Action Plan (PEAP) and the Plan for Modernization of Agriculture (PMA). One of the core activities in the LSSP that is central to poverty reduction at the micro level is Systematic Demarcation.

For systematic demarcation to be effectively and satisfactorily implemented, land administration institutions need to be in place. The Constitution provides for decentralised land administration institutions operationalised by the Land Act and the subsequent amendments. The LSSP is therefore designed to remove barriers to increased land utilization, to broaden land services to rural areas and customary land, to address inequality, tenure insecurity and inequitable systems and processes, to strengthen the land rights of the vulnerable specifically women; to empower local governments and communities to make and implement their own policies and plans for land management and administration and, to provide an appropriate and supportive framework for sound environmental and natural resource management.

¹⁴ Richard Oput (2004)

All these aspects are taken care of when Systematic Demarcation is undertaken, releasing the household to more secure land rights; more time that is productive and options to enable them get out of poverty.

1.2.2 Legislative Framework

Uganda's constitution-making exercise of the early 1990s marked the first top-level attempt to address land issues in the country since the Land Reform Decree of 1975. In Chapter 15, the Constitution explicitly and elaborately provides for land administration and management and gives Parliament the authority to make enabling legislation to put into effect its provisions. The key provisions embedded in the Constitution are:

- Land in Uganda belongs to the citizens of Uganda who own it under the following customary, mailo, freehold or leasehold tenure.
- Government may acquire land in public interest.
- Government or a local government shall hold in trust and protect natural lakes, rivers, wetlands, forest reserves, national parks and land reserved for ecological and tourist purposes.
- Non-citizens may acquire leases.
- Parliament is to make a law regulating the relationship between lawful or bonafide occupiers of land and registered owners of land
- Parliament is also to make a law providing for the acquisition of registered interest by lawful or bona fide occupants
- The Uganda Land Commission is to manage Government land
- District Land Boards and District Land Tribunals are to be established.

The Land Act, 1998 operationalised the above Constitutional provisions. The Salient provisions of the Land Act, 1998 are:

- Definition of the land tenure systems (customary, mailo, freehold, leasehold)
- Customary land owners may acquire a certificate of customary ownership for their land as conclusive evidence of their rights
- A person may apply for a freehold, or may convert their customary ownership to freehold
- Communities may form Communal Land Associations and manage common land under a Common Property Management Scheme
- Tenants on registered land have security of occupancy and can apply for a certificate of occupancy for the land they occupy.

- Spouses and children must consent to transactions in land on which the live, occupy and derive sustenance. For orphans, the Land Committee must give consent.
- A Land Fund is to be established to assist people to acquire registrable interests in land, and to facilitate Government to resettle landless people.
- Operationalizes Uganda Land Commission, District Land Boards, and District Land Tribunals
- Requires establishment of District Land Offices, Sub-county Land Tribunals, and Parish Land Committees.

However, several challenges arose when the process of implementing the Land Act 1998 commenced which necessitated amendments. The Land (Amendment) Act, 2001 was enacted to enable Magistrates' Courts and Local Council Courts to continue handling land disputes until the dispute resolution institutions were established. The Land (Amendment) Act 2004 was enacted to streamline the administrative structures of the land administration system. The salient issues in this Amendment Act are:

- The Local Council II courts are the courts of first instance to replace the sub county Land Tribunals
- Area Land Committees replace the Parish/ ward Land Committees
- Security of Occupancy of spouses on Family land
- Ground Rent for tenants on registered land

1.2.3 The Systematic Demarcation Operational Framework

Principles

The operational framework for systematic demarcation incorporates a number of principles to ensure that the process does not undermine the land rights of those affected and the participation of the entire area including the politicians to ensure the desired outcomes are achieved. The principles include:

- The decision to demarcate is based on local demand, not on central dictate
- Where demand exceeds the capacity to deliver, areas are selected according to agreed criteria of environmental, social or economic benefit
- The level and nature of rights to be demarcated are determined at local level by affected communities in order to reflect local circumstances
- All those affected have the right to equal protection throughout the adjudication and demarcation process

- The process is transparent and accountable. Communities and individuals have the right to contest decisions of the adjudication team
- The Systematic Demarcation approach is being piloted during Phase One and outcomes monitored carefully. Where appropriate, the approach is broadened to incorporate other techniques including land readjustment, participatory land use planning, valuation, or market based land consolidation.

Procedure

- Baseline Studies are conducted under the supervision of the Systematic Demarcation Technical Committee (SDTC), which is a multi-disciplinary and multi-sectoral committee), for gauging community expectations, gleaning the nature of the social-cultural dynamics that may have impact on the program, assessing the existing land conflicts and assessing the impact of the program at a later date. Highlights of the baseline shall be used to design strategies for smooth implementation.
- Mobilisation and Sensitisation was undertaken for confidence and consensus building as major elements for the effectiveness and success of the program. These two elements were given top priority in the execution of the program.
- In order to conduct training, manual was developed to ensure training of the members of the Systematic Demarcation Team. Knowledge was largely imparted through training sessions that involved fieldwork as well. This training is part of a wider process required to impart the relevant skills for the successful implementation of systematic demarcation. It is the expectation that those trained, acquired the required knowledge about the Land Act and other Land Issues.
- Communities are notified for conduct of adjudication and demarcation two weeks before the commencement of the exercise. Notices are posted in public venues including community, health, trading centres, as well as in market places.
- The adjudication team, which includes the Area Land Committees, is directly responsible for carrying out adjudication in the pilot area. They are also responsible for identification of land disputes and as much as possible amicably settle them. Where they fail, the unsettled disputes are forwarded to LC courts, Land Tribunals or High Court depending on the subject value of the dispute. It is expected that most of the land disputes are resolved before or during demarcation.
- As a general principle, land disputes are resolved using customary rules in the area, which should not be contrary to the principles of natural justice

and equity. The customary rules that deny the rights of women, children, and the disabled and other marginalized groups are not applied, as this is a Constitutional bar to the application of customary rules and regulations.

- Adjudication and dispute resolution only takes place in the presence of all affected parties. All proceedings are conducted in a transparent manner. It is the responsibility of the Area Land Committee to record the proceedings and the final resolution of disputes. These records are kept safely with the Recorder (who is the Sub-County Chief in the area) and are accessible to the public on request.
- Communities are encouraged to clear their land parcel boundaries at least a week before demarcation begins. Successful marking of boundaries revolves around two major aspects namely; the team composition and the equipment utilized.
- The success of systematic demarcation is determined partly by the speed at which field data can be captured, processed, plotted, and incorporated into the National Land Information System. The aspect user friendly equipment both in data collection and post processing is very important., specifically, the need for equipment simplicity due to the fact that ultimately when demarcation rolls out, the staff at the district need to be able to carry on effectively with systematic demarcation activities. Suitable equipment is that which does not require inter-visibility. This is a mandatory requirement since the scale of the surveys is so massive, at the same time requiring as little damage as possible to the crops (if the local people's good will is to be sustained). The mode of operation of the equipment has no recurrent costs attached for the data correction. Single frequency GPS were found most ideal for systematic demarcation
- The Systematic Demarcation team together with the owners, neighbours and other interested parties carries out the marking of boundaries. By signing an appropriate form, owners certify the marked boundaries.
- Boundaries for tenants on registered land are certified by the registered owner or his/her duly appointed representative (proxy), the tenant and 2 witnesses. In the absence of the registered owner, the representative must produce evidence of representation by presenting a legal document (for example powers of attorney or a will). In case there is no legal document to identify the dully appointed and rightful representative, the responsibility of identifying the rightful representative is with the Area Land Committee, Local Councils and elders of the area. All these must append their signatures to the form as key witnesses to evidence of ownership.
- In carrying out measurements, one of the key elements is to ascertain size and shape of the land parcels. It is therefore important that the teams collect

uniform data using a uniform unit of measurement for ascertaining the size and shape of the land parcels.

- Where there are irregular pieces of land, the team encourages the parties to agree on land readjustment, using the principle of 'give and take' to eliminate irregular corners.
- Other activities that were carried out to ensure success and completeness of the exercise included; topographic survey of trading centres for physical planning purposes; editing of information and public display after drawing of cadastral maps

Composition of the Systematic Demarcation Team

The teams are composed of various stakeholders from each of the 5 levels of land administration as depicted in Table 1.1 below.

Table 1.1: Systematic Demarcation Team

Personnel	N0.	Duration of involvement
Area Land Committees (ALC)	5	Full time
Local Council (LC) 1 Representative	1	Full time (in area village)
SDTC	2	Full time
Parish Women Council Rep.	1	Full time
Assistant Land Technician	1	Full time
DL Officer	1	Full- time
District Land Surveyor	1	1 week during the exercise
Lands & Survey Department MWLE	1	3 days during the exercise.

Source: Systematic Demarcation Technical Committee, MWLE

To ensure that the exercise is complete it is necessary to co-opt experts from various fields including: Wetlands officials, Physical Planners, Road Engineers, Legal Officers from Administrator General's office.

2. SYSTEMATIC DEMARCATION AND POVERTY REDUCTION

The basic argument of this study is that massive public investment in systematic adjudication and demarcation ought to result into or have a direct bearing on poverty reduction opportunities at household level. This is based on three theories: Capitalism and Property Rights whose main proponent is De Soto in his book “the Mystery of Capital” (2000); the Evolutionary Theory advanced by Platteau (1999) and the Benefits Theory largely discussed by McEwen (2001). The conceptual framework draws on the suggested outcomes of adjudication and demarcation advanced in the three theories to raise the variables that influence the opportunities for poverty reduction at household level, this then forms the premise for presentation of study results in the subsequent chapter.

2.1 THEORETICAL FRAMEWORK

All the three theories advanced in this section attest to the fact that property (land) rights are a social construct, not merely as assets themselves, but as consensus between people about how these assets should be held, used and exchanged¹⁵. Besides, property rights to land even in customary tenure are not static, but evolve in response to changes in the economic and social environment, and are a critical determinant of investment. The combination of nature and characteristics or rights and enforcement institutions, define perceived security of property rights to land, this security affects decisions about land use, land-related investment and willingness to engage in land transfers and/or transactions.

2.1.1 The Evolutionary Theory

Some recent studies¹⁶ have argued that transformation of customary tenure does not necessarily create incentives to invest in land. Even when adjudication and demarcation of customary rights takes place as a means of providing greater tenure security, this cannot be guaranteed for all rights-holders because of the simplifications which demarcation inevitably introduces into a complex and dynamic set of practices¹⁷.

This discussion is based on what Platteau (1996, 1999) characterizes as the ‘evolutionary theory’ of land rights, which he decomposed into two elements. First, indigenous land tenure arrangements were evolving in the face of population pressure and commercialization (as he says, the ‘flexibility’ of custom is ‘tirelessly emphasized’ by scholars (Platteau, 1999, p. 3). This

¹⁵ De Soto H. (2000), *The Mystery of Capital: Why Capitalism triumphs in the West and fails everywhere else*. Basic Books: New York

¹⁶ Toulmin and Quan, 2000, Muhereza, 1998; Berry, 1993

¹⁷ Camilla Toulmin and Julian Quan, 2000

evolution tends towards individualization and formalization. The second element is a public sector response to this spontaneous evolution.

By demarcating, governments can reduce the disputes that result from the changes and induce other economic benefits. However, it should be noted that 'individualization' challenges local values that influence ones willingness and ability to invest, or perhaps mortgage or sell their land. These arguments are plausible, and often have less resonance among people who see government intervention as a source of insecurity rather than security. The theory also depended on a number of other circumstances being in place – banks willing to lend, farmers willing to borrow, and the existence of projects that were worth lending for.

From this theory, this study draws the context within which, systematic demarcation is being undertaken. Customary tenure is tenure under dynamic evolution in terms of customs and practices, which is influenced by both internal factors that are endemic to a specific community and external factors that are on the horizon.

2.1.1 Capitalism and Property Rights

This theory explains, the environment within which the evolution of customary tenure is taking place, and constitutes the external factors that influence trends and practices within customs arising from contemporary circles. The basic argument is the likely failing that may arise in a capitalistic context, when registration of customary tenure takes place. The first question to respond to is; why did capitalism seem to work in the West, but fail elsewhere? De Soto's answer was, in short, 'property'¹⁸. Legal systems in developing countries were unable to convert assets held by the poor, including their land rights, into capital, which they could use to grow rich.

De Soto asserts that the entrepreneurial abilities of the poor and the informal institutions of loans and rents created outside the formal legal system are not only a show of ingenuity but also a marvel in themselves. The problem lay between the West and developing countries, but also between the privileged enclaves in developing countries, and the poor that surrounded them. He used Braudel's image of capitalism in the past, confined to particular places and sectors, as if in a 'bell jar'¹⁹. Though the underlying question is how did it, break out, to conquer the whole society?

De Soto's insight that legal recognition could unlock assets immobilized in social relationships has a history, and modern expression, in debates about

¹⁸ De Soto, 2000 pp 66-69

¹⁹ De Soto, 2000, pp. 66-67.

'customary land tenure'. This consists of unwritten rights and obligations that precede the introduction of colonial land legislation, and continue to exist in parallel with it. In many parts of the developing world, particularly sub-Saharan Africa traditional and informal systems of land tenure coexist and sometimes conflict with land legislation promulgated by a central government. Custom may be recognized as an alternative, in some places or circumstances, or for indigenous people. Alternatively, the introduced legislation may simply be ignored, unknown or irrelevant outside the big cities, or in the shantytowns and squatter settlements that surround them.

2.1.3 The Benefits Theory²⁰

The benefit theory ascribes to the thinking that systematic demarcation and registration is a worthwhile investment both for public and private enterprises because of the benefits that accrue to; the individual in the form of increased tenure security, increased land value and perhaps an enhanced ability to transfer or mortgage the property²¹. Any resulting increase in agricultural investment or productivity, or reduction in the incidence of land disputes, will generate national level benefits. The major national level benefits, therefore, occur through aggregation of benefits that accrue first at the individual level.

It also argues that, among the most important benefits of adjudication and demarcation for the individual person is the security that it gives to the owner of a parcel, as well as to the holders of lesser interests in that parcel. The desire for an official documentary confirmation of ownership is strong, because it is based on a reliable cadastral framework, demarcation can be expected to reduce, perhaps even eliminate, disputes concerning parcel ownership and boundaries.

Lastly, if at individual level, demarcation aids and results into incentive for title registration, then the holder's prospect of access to credit, raises development capital that would otherwise have been difficult, if not impossible, to obtain. A demarcated parcel of land is more easily marketable, greater ease of marketability means that a parcel is more valuable and should command a higher selling price than a parcel with identical or similar characteristics that is not surveyed.

In terms of public administration, because of the expense involved in systematic demarcation, it should be designed to benefit the maximum number

²⁰ Alec McEwen (Dr.) 2001, the significance of land title registration: a global perspective. Colombo Sri Lanka

²¹ Elizabeth Troutt, Mark Marquardt, W. Kisamba-Mugerwa and Edward Barrows (1993): The dynamics of the Land Market and the issue of compensation in Uganda, Research Paper 5, MISR and Land tenure Centre.

of potential users. Indeed, it may be difficult to justify the cost if its only purpose is to facilitate land transactions, it is part of a national land information system that stores and maintains land-related data. Governments require current, reliable land information for a variety of administrative purposes. The maintenance of reliable census records and the collection of payment for public utility services are just two among many examples of a need to know geographical location that a Land Information system can provide,

- Urban and rural planning, and the management and conservation of natural resources will be undertaken more effectively if accurate information concerning land ownership is readily available.
- The availability of demarcated land is an incentive to foreign investors who might otherwise be deterred by the uncertain ownership of land they wish to acquire, and whose injection of capital can stimulate the local economy.

Secondly, the cadastral index that supports a land information system identifies and portrays individual parcels. It can be conveniently employed as the geographic framework for a fiscal cadastre. This type of cadastre provides a system by which the economic value of land and buildings is assessed and recorded for property taxation by a municipal or other authority. Fiscal cadastral maps are kept up to date to depict new buildings or additions to existing buildings. Different government departments share an interest in maintaining an accurate record of property ownership and location.

In demarcation, where a land inventory or multipurpose cadastre is undertaken, information such as land utilization, soil classification, agricultural or other potential, environmental factors, the number of occupants, and the location of water supply and other municipal services are recorded. This information may be displayed textually or graphically, as attributes of the legal cadastral base, for a particular region, parcel or group of parcels. Each piece of information in a land inventory is arranged according to its category, and each category can be displayed as a separate layer on the cadastral framework.

For the community as a whole, the benefits of systematic demarcation are seen in terms of the promise of an orderly, peaceful approach to the wise utilization of the land resources. Any society suffers if it experiences pervasive disputes or uncertainties concerning the ownership and extent of its land parcels. The resolution of such problems by litigation is an expensive, time-consuming process that many land claimants cannot afford to pursue.

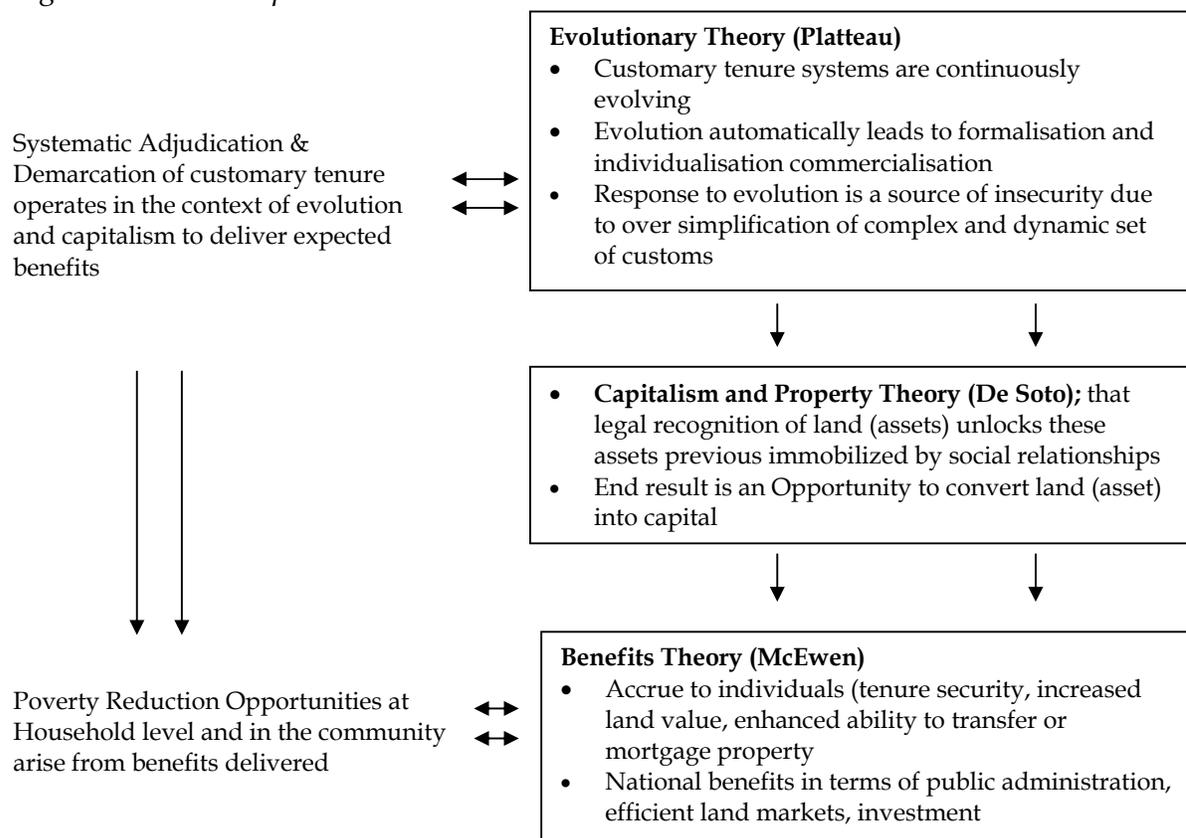
An important benefit of systematic demarcation is that it can provide an integrated system of recording land rights that applies uniformly throughout the jurisdiction. Its use of standard forms and procedures avoids confusion and

inspires public confidence in the system that has ability to accommodate other special types of interest. For example, In Zanzibar, economic trees such as clove and coconut can be owned separately from the soil in which they are planted.

2.2 CONCEPTUAL FRAMEWORK

The three theories come together in this conceptual framework. On the substantive side, the evidence about the effectiveness of customary land adjudication and demarcation does not negate De Soto's general argument for the mobilization of resources through law, though it does give pause for thought about how and when. De Soto himself cites evidence of the demobilizing effect of complicated procedures (De Soto, 2000, Figures 2.2 and 2.3)²². Platteau concludes that African governments should only intervene if and after local and informal methods are no longer reliable (Platteau, 1996, p. 76)²³. In some cases demarcation may be more efficient than self-management, but in other cases not, and the result is likely to be a mixture.

Figure 2.1: Conceptual Framework



Source: Margaret Rugadya, 2005

²² Lamour Peter (2002): Policy transfer and reversal: Customary land registration from Africa to Melanesia, National Centre for Development Studies, Canberra Australia.

²³ Ibid

The benefits theory advances numerous advantages that would be missed out if systematic demarcation were not undertaken. This study is about the promise made in each theory and to what extent; such deliveries are made on ground in the areas where pilot systematic demarcation has taken place in Uganda.

A land survey and cadastre system is one part of the overall legal and cultural framework that a society uses to govern land transactions and use. By helping to specify the rights and obligations of the owners and investors in land, survey and registration systems provide security for land tenure and enable efficient markets for land transfer. This combination of security and efficiency enables the protection of environmentally and culturally sensitive areas, and enables investment in resource exploitation and real estate development in other areas. The ultimate impacts are economic growth, social and cultural preservation, and environmental protection. The specific impacts depend on the viewpoint of those involved.

2.3 METHODOLOGY

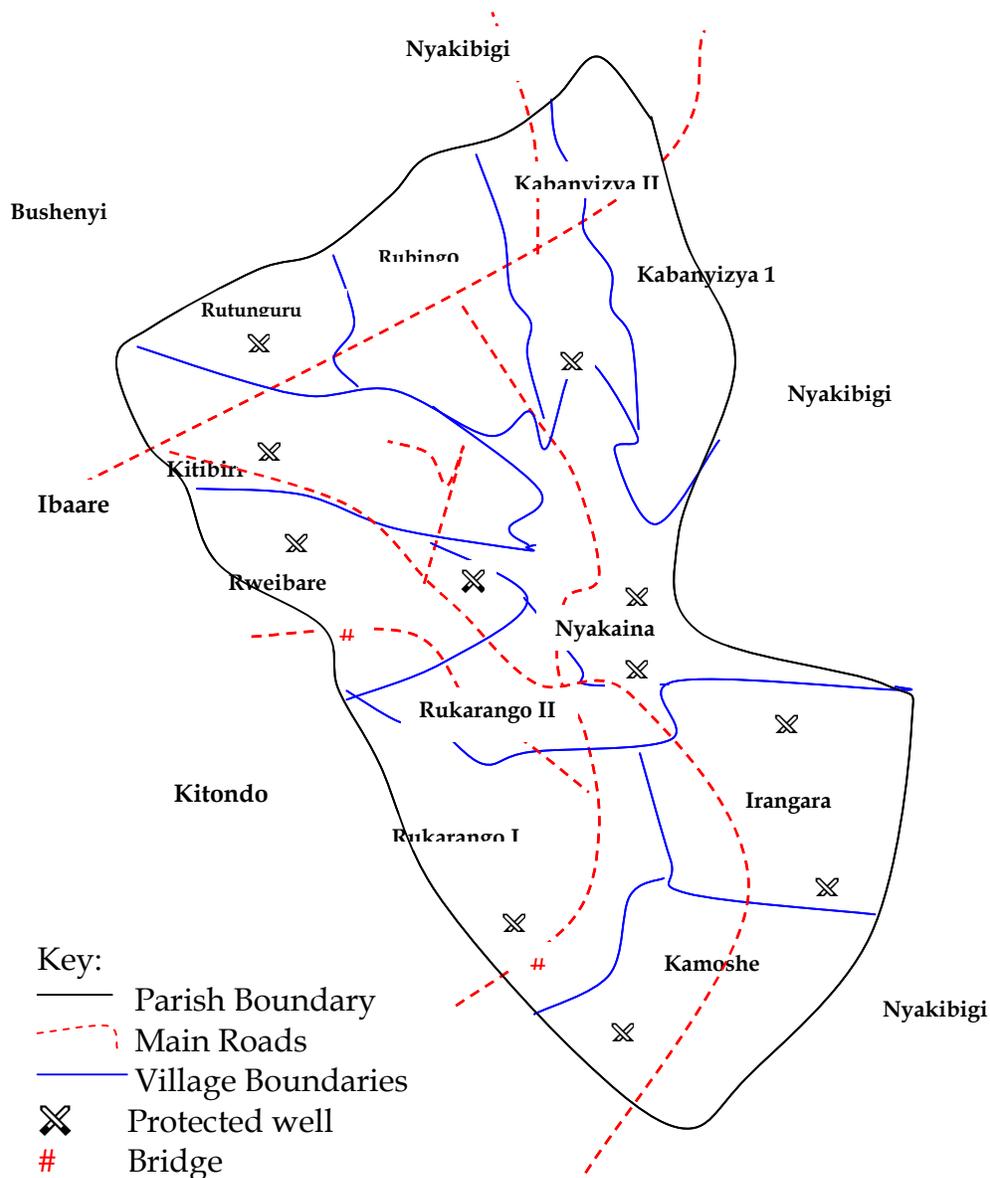
The overall objective of this initiative is to demonstrate empirically the perceived outcomes of systematic demarcation of customary tenure at household level. The outcomes are drawn from the benefits arising and the substantive end products of the process; their use or perceived value additions, within a household. At a higher level, substantive public resources are devoted to this reform process, an assessment of household initiatives, plans and objectives from the systematic demarcation and ability to launch households into a position of ability, where they can reap from existing government development frameworks such as the plan for modernization of agriculture and the poverty eradication action plan, using the leverage of systematic demarcation is analysed in this study.

2.3.1 Study Design

This is an evaluative study, backed by survey results in a community that has benefited from systematic demarcation as a pilot scheme, it is to follow up and detail on the baseline conducted on commencement of the scheme, and employs “ex post facto” skills to analyze the outcomes of the pilot scheme and the subsequent changes within households and communities. Rukarango parish is located in south western Uganda in Ntungamo District, Kajara County, and Kibatsi Sub County, which has a population of 18,189 persons²⁴. This is mostly a sedentary mixed farming community of Runyankore speaking people called the Bahororo.

²⁴ Uganda Bureau of Statistics, 2002

Figure 2.2: *Electronic Sketch Showing the Study Area*²⁵



2.3.2 Study Objectives

Specifically the study sought to show:

- Whether there is perception of enhanced assets among poor households in the Systematic Demarcation areas.
- Whether Systematic Demarcation has removed production limitations borne on obscure land rights and land conflicts.

²⁵ Not drawn to scale, Replica of Map used by the Parish Development Committee, redrawn for the study by Herbert Kamusiime, one of the authors.

- What transformations in the land rights of individuals, groups' and/ or corporate entities have occurred in the pilot areas?
- Community perceptions on the linkages, opportunities and possible synergies in the contribution of Systematic Demarcation in the modernization of Agriculture and Poverty Eradication
- Whether demarcation and the eventual certification and/ or titling is understood as providing incentives to invest in sustainable land management and access to financial resources through using land for mortgages or as co-lateral?

2.3.3 Data Collection Methods

This study blended three lines of enquiry; literature review, a household survey and consensus panels to generate qualitative and quantitative results.

Literature review laid the foundation and basis of enquiry outlined in the Baseline Report which provides the parameters, within which the pilot scheme was designed and hence the projected outcomes that are either confirmed or disputed in the results of the study. Various scholars with a similar mind set as that of the designers of the pilot scheme was also reviewed. To set the context and experience of systematic demarcation, with arguments for and against, generated the theoretical and conceptual framework, for interpretation of results.

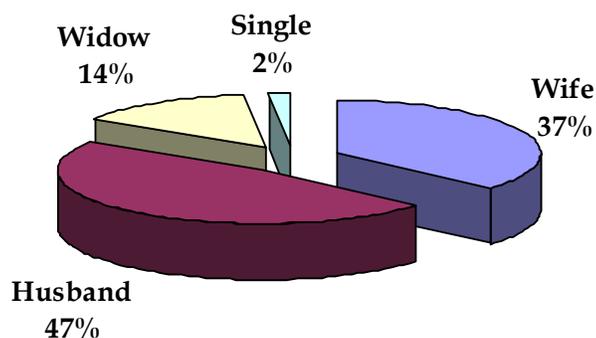
In the survey, 12 households from each village were randomly chosen from a list drawn with the help of Local Council one Officials. For purposes of obtaining a gender-disaggregated data set, 2 of each of the 12 households was female headed and in the male-headed households, both husband and wife would be interviewed. Using this approach, each village was to yield 22 field returns (12 female; 10 male), however the actual average field returns were 83% for the females and 90% for the males. Thus, the total number of field returns was 189 of the expected 220 in 10 villages (amounting to 86% as the overall average return).

In the parish, three consensus panels were held; one brought together various local officials (LCs and ALC members) who were involved in Systematic Demarcation, another brought together women and the third men. In every instance, one person was randomly mobilised from each village. The consensus panels were conducted over a space of 3 days each lasting close to two hours. For the survey, interpersonal interviews using a structured questionnaire (See Appendix 1) were conducted while for the consensus panels a structured discussion guide was used.

2.3.4 Profile of Survey Respondents

Out of the 189 respondents, 99 were female while 90 were male. By household category, of the 99 female respondents, 33 were from female-headed households. Majority of the male respondents (88%) indicated they were monogamous as attested to by 83% of the wives. Overall, categorisation of the respondents by marital status is shown in Figure 2.1.

Figure 2.3: Categorisation of Respondents by Marital Status



Source: Household Survey

The socio-demographic characteristics of the respondents indicated that 65% had attained primary education while 21% had never been to school as shown in Table 2.2 below. The average (median) age of female respondents was 35 while that of males was 41 years with a common maximum age of 80 and minimums of 18 and 20 respectively.

Table 2.2: Education levels of Survey Respondents

Level of Education	Respondent Sex				Total	
	Female		Male		n	%
	n	%	n	%		
Did not go to school	28	28	12	13	40	21
Lower Primary (p1-p4)	29	29	18	20	47	25
Upper Primary (p5-p7)	29	29	46	51	75	40
O-level (s1-s4)	7	7	10	11	17	9
A- level (s5-s6)	4	4	2	2	6	3
Other Tertiary Institutions	2	2	2	2	4	2
Total	99	100	90	100	189	100

Source: Household Survey

2.3.5 Profile of Consensus Panel Respondents

The consensus panels enlisted a total of 32 participants with an average age of 42 years; 24 claimed to be married, 4 widow (er) s, 4 were single while overall the average number of parcels privately owned was 2 and biological children 5. A summary of the attributes is depicted in Table 2.3 below.

Table 2.3: *Summary of Consensus Panel Participant Attributes*

Attribute/ Consensus Panels	<i>Women Only</i>	<i>Men Only</i>	ALC/LC	Totals
No. Of Participants	9	10	13	32
Average Age	35	46	44	42
Married	6	8	10	24
Widow/Widower	3	1	-	4
Single	-	1	3	4
Average No. Of Parcels Privately owned	1	3	3	2
Average No. Of Biological Children	4	6	6	5

Source: Consensus Panels

3. OUTCOMES OF SYSTEMATIC DEMARCATION

There is considerable anecdotal and empirical evidence on the deleterious social and economic impacts of unequal distribution of land and other economic assets. However, evidence for the effectiveness of registration as it emerges from sub-Saharan Africa is at best 'inconclusive'²⁶. Many African governments and international donors have attributed the problems of rural poverty, poor agricultural output and low levels of economic development to the persistence of farming systems based on customary tenure. Systematic demarcation in Uganda is being piloted for precisely this reason. This section explores outcomes triggered by such a process on selected socio-economic dimensions affected by systematic demarcation at household level. The findings are thematically presented to build the case for effectiveness of formal demarcation mechanisms adopted in various land reforms.

3.1 THE DEMARCATION PROCESS

In this study, the ability of a community and/or individual households to realise and seize an opportunity for poverty reduction based on the demarcation process was determined by among others, the level of awareness and/or knowledge about the opportunity. It was pertinent to establish whether the communities were sensitised on systematic demarcation before it was undertaken. It is acknowledged²⁷, that processes such as systematic demarcation especially of customary land require the active participation of the people affected, both in compiling the cadastre and its subsequent use.

Table 3.1: *Sensitisation on Systematic Demarcation*

(Respondents)		Respondent Sex				Total	
		Female		Male		n	%
		n	%	n	%		
Were you sensitised on Systematic Demarcation Before it was carried out	Yes	77	79	81	90	158	84
	No	19	19	6	7	25	13
	I don't know	3	2	3	3	5	3
Total		99	100	90	100	189	100

Source: Household Survey

The basic argument is that the outcomes of demarcation hinge on recognized legitimacy by the local people and the need to base the formalization of rights

²⁶ Plateau J-P. (1999): Does Africa need land reform? Paper presented to the Suningdale Workshop, p. 6

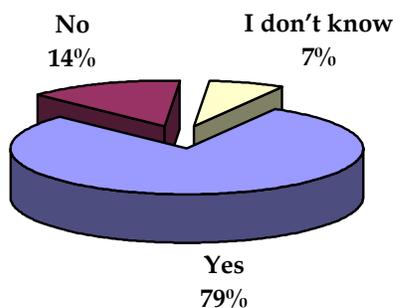
²⁷ Peter Larmour (2002) Policy transfer and Reversal: Customary land registration from Africa to Melanesia. National centre for Development Studies, Australian National University, Canberra Australia

on community-based procedures²⁸. Results show that eighty-four (84%) of the respondents attested to the fact that awareness raising was undertaken while 13% claimed not to have undergone any sensitisation before the exercise. Peculiar amongst these (13%) was the observation that there were three times more women (19%) than men (7%) as shown in Table 3.1.

In the sensitization process, the advocate delivering information is as important as the message itself, study respondents rated the level of participation in the sensitization exercise of 'Officials from Kampala' at 80% while local efforts especially from the Area Land Committee were rated at only 18%. Whereas the job done was commendable, the result implies that the process was not cognizant of the need to build local capacity at lower levels, for sustained guidance on how best to utilise the outcomes of systematic demarcation. Despite this shortcoming, it is evident that both at national and local level, a deliberate process of awareness creation amongst the local populace to enlist their co-operation and understanding was initiated; the subsequent results ably elucidate the qualitative effects of this engagement.

In addition, results irrespective of gender show majority of the respondents (79%) attesting to the systematic demarcation process being fair and transparent as shown in Figure 3.1. Various reasons were given for the opinion expressed. Most outstanding was, the demarcation team followed the correct boundaries and all parties were consulted rated at 43% and 44% respectively as shown in Table 3.2.

Figure 3.1: Whether the Process was fair and transparent



Source: Household Survey

Overall, the process showed that it is possible to develop a viable systematic first registration process even with the barest minimum of resources. It requires

²⁸ De Soto H. (2000), *The Mystery of Capital: Why Capitalism triumphs in the West and fails everywhere else*. Basic Books: New York

commitment by the authorities and a high level of desire by the people. Prerequisites for success are; unified local administration and political will; and, legal recognition of both the tenure form and the process. Besides, the sensitization process, avails an opportunity for infusing cultural aspects into the understanding of land and the procedures for dealing with land, even when the concept of demarcation, is still relatively new to a community.

Table 3.2: *Reasons for Opinion on Fairness and Transparency*

(Responses)		Was Systematic Demarcation process fair and transparent?						Total	
		Yes		No		I don't know		n	%
		n	%	n	%	n	%		
Reasons for Opinion	They followed the correct boundaries	51	43	5	36	3	50	59	43
	All parties were consulted	56	47	2	14	3	50	61	44
	First sensitised people	7	6	1	7			8	6
	People were deprived of land (Wetlands)	3	3	6	43			9	7
	It was free of charge	1	1					1	1
Total		118	100	14	100	6	100	138	100

Source: Household Survey

3.2 TRANSFORMATIONS IN LAND RIGHTS

Land rights are social conventions that regulate the distribution of benefits that accrue from specific uses of a certain piece of land²⁹. Property rights to land need to be defined in a way that makes them easy to observe, enforce, and exchange. They need to be administered and enforced by institutions that have both legal backing and social legitimacy and are accessible by and accountable to the holders of property rights. The precision with which property rights are defined will generally increase in line with rising resource values; the institutions administering property rights need to be flexible enough to evolve over time in response to changing requirements. Property rights to land should be defined in a way that makes them easy to identify and exchange at a cost that is low compared with the value of the underlying land.

Clarifying the relations by which people gain access to land and other resources is, it takes a considerable amount of time to investigate the complex overlapping claims of different individuals and groups. It also takes time to establish the legitimacy of new institutions with the different parties concerned, so that people understand how they work and are willing to abide by the decisions made. Programmes such as Systematic Demarcation are often under pressure to work speedily to ensure they can meet targets, leading to hasty treatment of inevitably complex issues. This study investigated the key issue of rights transformations in land as a result of the systematic demarcation process.

²⁹ Klaus Deininger, 2000 Land Policies for Poverty Reduction

The investigation reveals changing patterns in inheritance and spousal rights on land as well as ownership, access and use of land.

3.2.1 Readjustment of Parcels

Despite the noble sentiment driving this goal, the mechanisms are not in place in almost all titling initiatives to achieve it. Fandino³⁰ notes that, the intention of the law is to discourage the existence and incidence of small uneconomical fragmented parcels. In Rukurango, two dimensions of land readjustments left a sense of loss amongst parcel holders and a potential for dispute. In part, this stems from the fact that the parish has a relatively high population with land use pressure on higher grounds comparatively intense. The two dimensions that effectively translated into land readjustment in the process of systematic demarcation were:

- In the first place, there were few mark stones used in demarcating irregular parcel boundaries, resulting in perceived boundary changes after the demarcation process. This was revealed from both consensus panels and the household survey, culminating into a general recognition in the local populace that there were boundary changes that affected both ownership of and access to land.
- Secondly, parcels at the bounds of wetlands were, at the end of the demarcation process inspected by the Wetlands Inspection Division, which marked off the buffer zones for the wetlands; although no physical markings were put in place, henceforth tracts of parcels adjacent to the wetland precincts were rendered inaccessible according to testimony from the community.

Out of 189 respondents, 20% indicated that they were negatively affected by the readjustments in the demarcation process as shown in the Figure 3.2. Among the effects stated was:

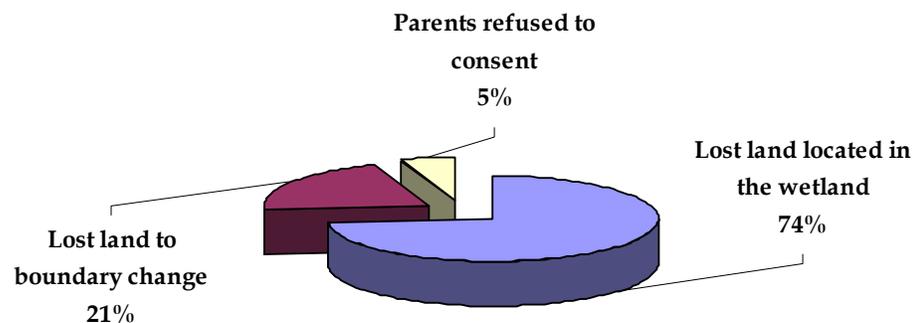
- The study found the perception amongst community members that between mark stones were straight lines. This was actually the root of the perceived boundary change and hence attendant loss of land. However, since it could not be verified in concrete terms or stated in terms of units the size of the parcel before demarcation; the actual loss after the process based on the surveyed units was not ascertained.
- Loss of land by virtue of location in a wetland, this presented the highest number of complainants. The harsh reality of this was physically

³⁰ In Peter Larmour (2002) *Policy transfer and Reversal: Customary land registration from Africa to Melanesia*. National centre for Development Studies, Australian National University, Canberra Australia, (1993: 50)

emphasized by the wetlands inspection division's visits to the parish and the landowners, with defined markings of land termed as "wetlands".

- In a small number of cases (5%), parents (who are current owners of land) failed to agree on parcels to swap for readjustment to be effective to the dismay of their children who had a different perception of outcomes from land readjustments.

Figure 3.2: *Negative Effects of Readjustment*



Source: Household Survey

Land readjustments and consolidation of parcels is often an unwelcome aspect of systematic demarcation, though administratively considered effective, nevertheless it can lead to conflict and resistance. The results above demonstrate the perceived losses by landholders, which presents a potential undoing of the process. Most land reform processes embrace readjustment for purposes of creating economically viable parcels, in Rukarango; however, this was not the case, readjustment already discussed did not occur for this reason brewing discontent and creating the need for remedial strategic actions.

3.2.2 Inheritance Rights for Children

In the figure 3.2, 5% of parents, were of the opinion that systematic demarcation was bent on altering the power relations within the family especially as regards land re-adjustments involving family members. Accepting a parcel of land or part of a parcel of land to be demarcated separately and registered in the children names was considered as relinquishing control overland. To understand, the dynamics of this norm, one has to look at cultural practice prior to the commencement of the demarcation process. In Rukarango, the practice has been that parents give rights of use, which was seen as restrictive in certain instances with the parent retaining the overall ownership rights. With systematic demarcation, this has changed. In many instances children successfully negotiated for parcels to be registered in

their names, though in other instances parents refused (5% from Figure 3.2). This was also reported to have occurred where siblings had inherited a common piece of land.

What is evident, in this study is that systematic demarcation is heralding a move from the customary system, where the responsibility of a parent to avail land for use by children is considered a socially legitimate role to individualized customary with more ascertained ownership rights to the individual land holder. It has to be understood, that the parents themselves are beginning to feel the pinch of the capitalistic world, hence the pressure to behave individualistic. Systematic demarcation in this context may be perceived as extinguishing customary claims, as well as the social responsibility embedded in that system, although the capitalistic society has no room for social based property rights. In other words, it is what Kagawa calls “the reactions of the society towards implemented policy”³¹. Such behaviour may be non-responsive to norms, or it may be modified resulting in adaptation and modification of the customary system as the outcomes depict in Rukarango.

3.2.3 Status of Women’s Land Rights

In parcel registration, results show a total of 1,374 registration forms (parcels) from 7 of the 11 villages in Rukarango, out of which, 574 parcels are held singly. Among those held singly, 46% (291) are held by women. Parcels held under joint arrangements total 695. Of these, 678 (98%) include women implying that the total number of parcels over which women have rights are 969 representing 71% of all the parcels that were considered in the study. In spite of this seemingly brilliant rights situation; the number of parcels where women were recorded as principle owners were only (291) i.e. 21% of all the parcels that were considered in the study, See Table 3.3.

This result reveals a higher level of land rights ownership by women, compared to the often-cited 7% figure that prevails in all national statistics. Several factors might explain these patterns. An earlier investigation³² revealed an overwhelming significance of purchase as a means of acquiring land in an era characterized by economic empowerment of women; hence, explaining the women ownership statistic.

In addition, however, it should be noted that inheritance practices in Rukarango are relatively responsive to wives and girl children inheritance rights. Despite all this, the most interesting finding is that the process of systematic demarcation is revealing insightful patterns and levels of land

³¹ Kagawa (2000), page 4

³² On Joint Titling of Land by Kibombo, Kamusiime and Sebina Zziwa, 2002

holdings across genders. Secondly, this finding partially confirms, the arguments on which the evolutionary theory is founded, showing that customary tenure on its own is capable of reacting to trends and external influence (like the drive for recognition of women’s rights) and as such is a dynamic tenure.

Table 3.3: Parcel Registration Pattern

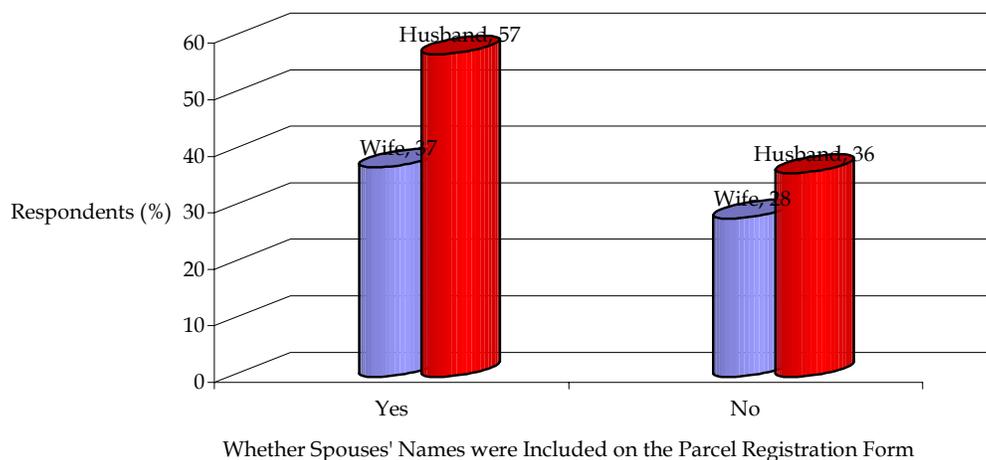
Parcel Ownership	Other Owner (Male)		Other Owner (Female)		Singly Owned		Total	
	n	%	n	%	n	%	n	%
Principle Owner (Male)	17	63	651	97	308	54	976	71
Principle Owner (Female)	10	37	17	3	264	46	291	21
Missing information							107	8
Total	27	100	668	100	572	100	1,374	100

Source: Data Extraction-Parcel registration Forms

This finding will also aids analysis of community and household production dynamics as well as understanding the divergence between ownership and control and how this impacts on productivity and labour inputs of women. In Uganda, women are the major cultivators, and are thus partially responsible for increases in land values through influencing levels of production. From the results, it is evident that the community in Rukarango is aware that recognizing women’s rights in land is an essential first step towards increasing their control over assets and willingness to invest in improving land values, which would otherwise be mediated through relationships with males in the community.

The survey revealed that out of 132 male married respondents, 95 (72%) attested to having included the names of their spouses on the parcel registration forms. This pattern of registration is depicted in Figure 3.3 below. The result reveals that whereas 57% of the husbands attested to including their wives, a comparatively smaller proportion of the wives (37%) agreed and/or perhaps was aware that their names had actually been included on the parcel registration forms.

Figure 3.3: Pattern of Parcel Registration amongst Spouses



Source: Household Survey

The reasons for registering land in both spouses' names were several, most outstanding was 'land belongs to both husband and wife' rated at 39%. Interesting however, was 'we were told by the demarcation team' rated at 12% amongst both female and male respondents. The full result is shown in Table 3.4. Reinforcing the sentiment echoed in the prior result (Fig 3.3), is the rating of 'I do not know, my spouse knows' at 11%; this observation is indicative of the vulnerability situation amongst women, even when gender legal and policy protections exist, empowerment to seize these opportunities is still dismal.

Table 3.4: Reasons for Registering in Both Spouses' Names

(Multiple Responses)		Respondent Sex				Total	
		Female		Male		n	%
		n	%	n	%		
Reasons for the Decision to Register in Both Names	Land belongs to both husband and wife	26	32	35	46	61	39
	If one of us died the other can manage	5	6	12	16	17	11
	We were told by the demarcation Team	10	12	9	12	19	12
	Land belongs to either a man or a woman	8	10	9	12	17	11
	I do not know, my spouse knows	14	17	4	5	18	11
	Because am a widow	15	18	4	5	19	12
	To minimize family wrangles/ quarrels	3	4	2	3	5	3
	We are just Married			1	1	1	1
The spouse wasn't around	1	1			1	1	
Total		82	100	76	100	158	100

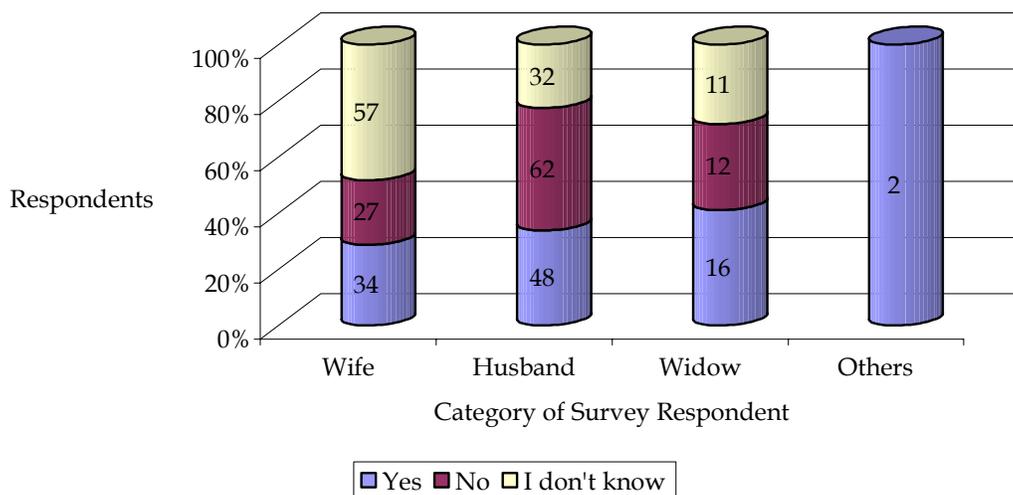
Source: Household Survey

It is often, argued that it is impossible to bring to the adjudication table all the multiple rights claimable under customary law. The complex bundle of rights associated with given parcels is extremely hard to sort out, especially in terms

of where one person’s bundle of tenurial rights stops and where another begins is often very difficult to determine³³. The innovativeness of Uganda’s legislative framework must be commended, in finding it necessary, even under the demarcation guidelines to encourage spouses to undertake joint registration on customary tenure. However, it still affirms the commonly held belief that women’s claims to land within the customary systems are generally obtainable through their husbands or male kinsfolk and are hence considered secondary rights, even in the demarcation process. The stricture of the parcel registration form as well confirms this; it requires the names of the ‘owner’ and the ‘spouse’ with no provision for ‘other owner’ who could as well be the spouse.

The other aspect of transformation of women’s rights is the perception of community as far as these rights are concerned because it determines the extent, to which they will be enforced and the practice of meaningful implementation on the ground. The study sought to establish the perceived clarity of rights and tenure security for women. Over 70% of the respondents irrespective of gender attested to women in the area having much clearer rights to land. However, slightly more women 19% responded ‘I didn’t know’ on whether their rights were much clearer compared to men (10%) in the same category. Interestingly, analysis by the respondent category reveals that 57% of the women (in the category of spouses) in the survey do not know whether they have clear rights as depicted in Figure 3.3. The most mentioned reason advanced amongst respondents who felt women’s land rights are much clearer was ‘husbands cannot sale without the consent of the wives’ rated at 67%, this was followed by Women’s names recorded on land documents rated at 17%.

Figure 3.3: Perceived Clarity of Women’s Land Rights



³³ Plateau J-P. (1999): Does Africa need land reform? Paper presented to the Suningdale Workshop

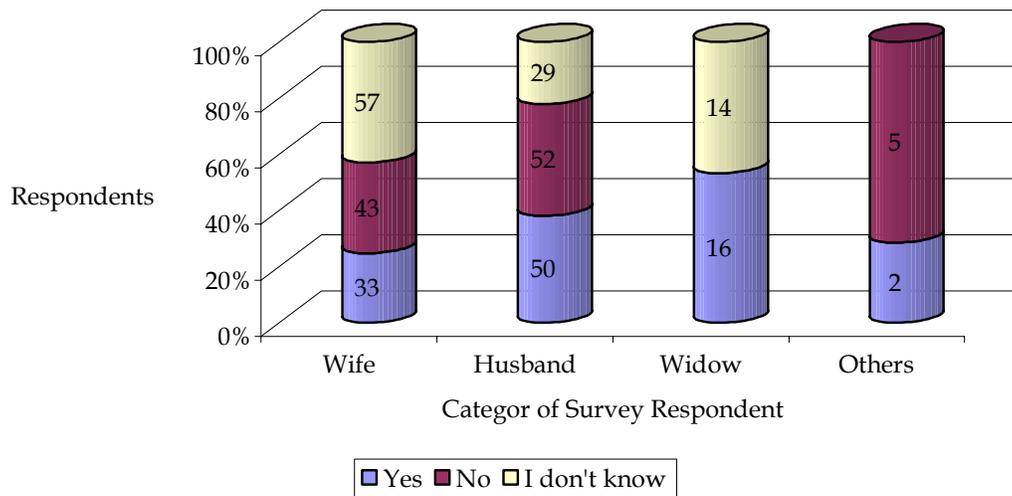
These ratings give an interesting revelation, where policy or statutory gender enforcement mechanisms readily translate into practical limitations like failure to sale without compliance, there is profound effort in the community to implement policy requirements in every day practices; which is a pointer to the need for policy to be more forthwith with demands on gender for visible results to be obtained. On the other hand, those dissenting claimed that after all land is still registered in the husbands' names (69%) and that women's names are yet to be put on the registration certificates (19%). The full result is shown in Table 3.5.

Table 3.5: Reasons for Opinion on Women's Land Rights

(Multiple Responses)		Do women have clearer rights to land because of Systematic Demarcation				Total	
		Yes		No		n	%
		n	%	n	%		
Reasons for clarity of Women's' land rights	Husband can't sale without consent of wife	105	77			105	67
	Women's names recorded on the documents	27	20			27	17
	Land still registered in husbands names	1	1	18	69	15	9
	No land problems in case of divorce	3	2	3	12	6	4
	Women's names not yet on the certificates			5	19	5	3
Total		136	100	26	100	162	100

The mystery of names included or not included in the process of registration is partly influenced by fear on the part of the men folk of the perceived independence that this may generate; and how this then threatens the various social relations and bonds such as marriage, parochially perceived to be stable in a state where control lies with the male. On the other hand is the category of enthusiastic men, who view the benefits of increased labour inputs on land by their spouses as a result of confidence gained from including names of their spouses in the demarcation process, as an opportunity for increased farm outputs and incomes.

Figure 3.4: Perceived Security on Land for Women



Source: Household Survey

In addition, over 75% of all the respondents irrespective of gender felt that women were more secure on land as a result of systematic demarcation; while almost twice (14%) the number of female respondents compared to males (8%) did not know. The result by respondent category is depicted in Figure 3.4 and the reasons for opinion expressed are shown in Table 3.6.

Table 3.6: Reasons for Opinion on Women's Security on Land

(Responses)		Are Women more secure on land now after demarcation				Total	
		Yes		No		n	%
		n	%	n	%		
Reasons for Perception	Their names are on the documents	95	76	4	29	99	71
	A few widows have security	22	18			22	16
	Divorcees now given where to stay	7	6	4	29	11	8
	May be in future, no security for now	1	1	6	43	7	5
Total		125	100	14	100	139	100

Source: Household Survey

From the foregoing, it is apparent that the inclusion of women's names on the parcel registration documents has positively influenced community perceptions on security of tenure for women. This occurrence was rated 71% amongst factors that have enhanced women's security on land. These findings contradict the generally held belief that women's rights of either access or

ownership are often upheld on parcels that are infertile, not required by the household and of low value³⁴.

It should be noted that the impact of capitalism is such that the dynamics of production and maximization of profit have forced unprecedented rethinking at household levels. The changes are geared more toward coping with the externalities than recognition of women's rights in land. Indeed systematic demarcation is the first benchmark to individualization of customary tenure, henceforth the erosion/ reduction in traditional obligations, which often constitute security value for certain sections³⁵ of society such as women.

3.3 ASSET ENHANCEMENT

Beneficiaries' ability to make better productive use of land secured through systematic demarcation will depend on changes in the patterns of land utilisation, clear delineation of responsibility for production outcomes and the construction of complimentary infrastructure suitable for smallholder agriculture³⁶. In the Rukarango study site, the time lapse is too short for concrete measurement of the variables above. The investigation, therefore, adopted proxies to the concept of productive asset enhancement as perceived by the beneficiaries; first, by understanding the perceived attributes of valuable land and later applying the rating.

Table 3.7: Respondents' Understanding of Valuable Land

(Responses) What is understood as valuable land	Respondent Sex				Total	
	Female		Male		n	%
	n	%	n	%		
That with good topographical attributes	15	16	8	9	23	13
That with good soil characteristics	24	26	33	39	57	32
That with documentary evidence on ownership/ boundaries	26	28	17	20	43	24
Land which is productive	27	29	27	32	54	31
Total	92	100	85	100	177	100

Source: Household Survey

The result as depicted in Table 3.7 shows a reasonable level of consensus amongst female and male respondents as to what constitutes valuable land as an asset in the household. The attribute endowed by systematic demarcation (documentary evidence) is surprisingly rated low at 24%. Major attributes cited were good soils at 32% and endowed by productivity at 31%. This finding is contradictory to the popular belief that documentary evidence is the major

³⁴ Thea Hilhorst, Women's land right: current developments in sub-Saharan Africa. Paper written in reference to workshop paper present in Suningdale, 1999

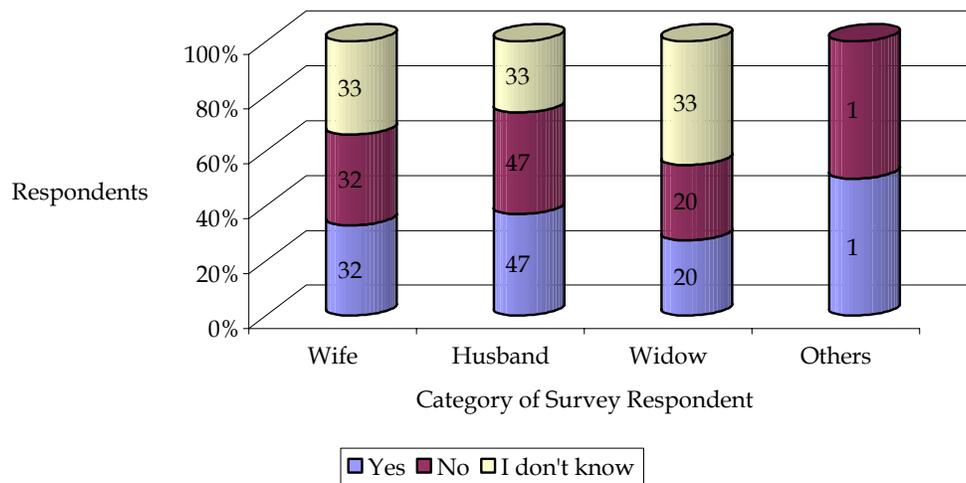
³⁵ Thea Hilhorst, 1999

³⁶ Hayami, Quisumbing and Adriano, 1990

factor for enhanced land values; a notion set forth in the Registration of Titles Act Cap 205 by the certificate of title being declared as the conclusive evidence of ownership.

Whereas this may not hold in the short run for farm households, it may be borne out in the long run depending on attendant transformations in the credit market in the area. Thus, the rating is explainable by absence of credit markets, where the beneficiaries of the systematic demarcation can feel and witness the drastic implications of documentary evidence; otherwise, they may well not feel a significant change on land values³⁷. On the other hand, the results are not statistically significant to indicate the extent to which systematic demarcation will have an enhancing effect on land as a household asset.

Figure 3.5: Whether Land is More Valuable after Systematic Demarcation



Source: Household Survey

Having established the understanding of enhanced value of land among respondents, 51% attested to positive improvement in this aspect. This is close to 42% who dissented to having witnessed any variance in the value of land, while 6% did not know. The result by gender is shown in figure 3.5 above.

Table 3.8: Perception of Enhanced Value of Land

(Responses)		Increased value of land because of Systematic Demarcation				Total	
		Yes		No		n	%
		n	%	n	%		
Positive	Land can now be owned permanently	20	23			20	13
	No encroachment on others land	18	20			18	11

³⁷ Klaus Deininger, 2002. Land policies for growth and poverty eradication

Opinion Reasons	Given Titles, I can access a loan	16	18			16	10
	Easy to develop with full ownership on land	16	18			16	10
	The price of demarcated land is higher	13	15			13	8
Negative Opinion Reasons	Land has remained the same no value is added	1	1	59	83	60	38
	No Value, promised certificates are no where	4	5	3	4	7	4
	Land was instead grabbed			9	13	9	6
	People have stopped selling			1	1	1	1
Total		88	100	71	100	159	100

Source: Household Survey

The positive opinion on improved land value is based on the fact that land can now be owned permanently and encroachment is curtailed. These are measures of tenure security that elucidate the centrality of documentary evidence in asset enhancement in terms of access to loans and ease of developing full land ownership. The positive and negative opinions are shown in Table 3.8. Much of the negative opinion hinged on the understanding that 'land has remained the same, no value is added' this is striking, as it points to failure by the beneficiaries to pinpoint tangible opportunities from the context for poverty eradication a pit fall that can be tagged to the focus of the sensitization efforts.

3.4 ACCESS TO CAPITAL

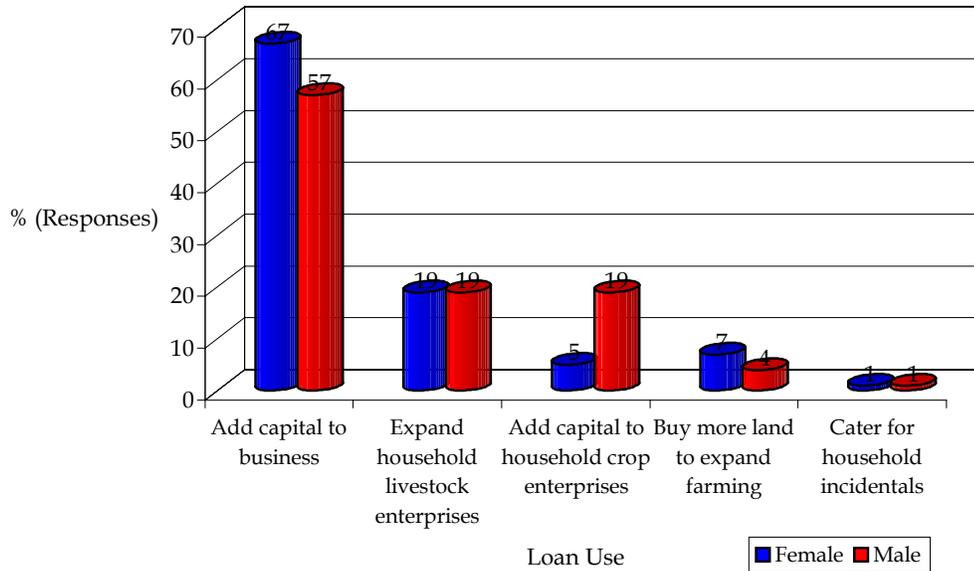
One of the perceived benefits of systematic demarcation is improved access to capital for investment. This is based on the concept that a secure parcel provides incentive to invest by increasing opportunities to access capital. The combination of increased ability to secure operational and long-term capital and increased incentive to use this capital in the farm enterprise actually increases the probability of long-term capital investments. With higher investment and greater use of production inputs, the value of production per hectare will be higher and provide future benefits³⁸. It is argued that when people have formal land/ property rights they can access formal credit by the use of collateral, since demarcation is able to unlock capital potential immobilized by social relations and responsibilities characteristic of customary tenure.

The study explored access to capital by exploring the presence of credit institutions in the pilot area, the ability to access credit facilities and the purpose for which credit would be obtained. Overall, as indicated in figure 3.7, 66% of the respondents felt systematic demarcation would improve access to loans while 15% and 19% said 'no' and 'didn't know' respectively. The demand for credit (mainly loans) was rated at 72% (n=135) amongst the survey

³⁸ De Soto (2000) *Mystery of Capital: Why Capitalism triumphs in the West and fails everywhere else*. Basic Books: New York. Forms the basis for theoretical and conceptual framework of this study

respondents of which 61% emanated from female and 82% from male respondents.

Figure 3.6: *Envisaged Use of Credit*



Source: Household Survey

The study also found the need for capital to invest in various forms of trade leading at a rating of 61% in influencing the desire to access loans, followed by investment in household livestock enterprises (19%) and arable farming at 13%. Gender disaggregated results are shown in Figure 3.6 above.

The emphasis on access to formal credit ignores the fact that for many, the major source of credit remains informal such as family and friends or loan sharks even when processes such as demarcation are undertaken. Atwood's³⁹ summary of the African cases suggests that, while tenure security flowing from demarcation may encourage innovations and investment, this occurs in the minority of large agricultural operations. In the vast majority of operations, which are small farms, culturally ingrained practices and the hegemony of unsophisticated farming practices conspire to discourage investment by individual farmers. Therefore, several other factors determine access to formal credit such as interest rates and willingness of lending institutions to avail credit facilities to certain sectors of society, which points to acceptability of the certificates of ownership as equivalents to land titles by credit institutions.

³⁹ Atwood's (1990: 665)

The study found 3 micro finance institutions operating in the area; UGAFODE, Biika Oguze and Akabare Co-operative Savings Scheme. However, less than half (46%) of the respondents interviewed were aware of the existence of these institutions in the area. The requirements for loan access are shown in Table 3.9, out of these the most interesting is the requirement for consensus between husband and wife (10%) as part of loan terms and conditions. This is attributed to the requirement for transactions to recognize section 38A of the Land (Amendment) Act 2004 to realize gender in household land dealings.

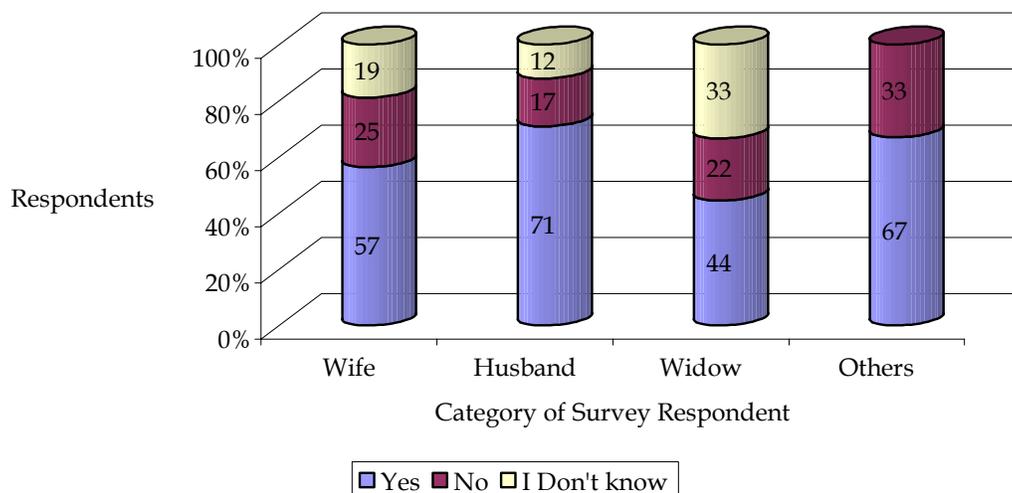
Table 3.9: *Loan Requirements using land as Collateral*

(Responses) Requirements for Loan Access	Respondent Sex				Total	
	Female		Male		n	%
	n	%	n	%		
Land title/ agreement/	16	36	26	43	42	40
LC secondment / a witness/ guarantor	14	32	18	30	32	30
Consensus with wife	4	9	6	10	10	10
Saving with them	3	7	6	10	9	9
Household assets (Bicycle/ motorcycle/ cattle	5	11	3	5	8	8
For Salaried persons Employer must recommend	1	2	2	3	3	3
I don't know	1	2			1	1
Total	44	100	61	100	105	100

Source: Household Survey

The result above sets into context the use of the ultimate product of systematic demarcation- the certificates of ownership; drawing from the fact that documentary evidence to land ownership is a key requirement for access to credit (40%). Results show that more male respondents (71%); compared to female respondents (54%) are conscious of the use of the certificate of ownership as a tool for poverty eradication. In addition, within households fewer wives are conscious of this as depicted in Figure 3.8. It should be noted that more widows (33%) do not know about this linkage than any other category.

Figure 3.8: *Use of Certificates for Poverty Eradication*



Source: Household Survey

The results also show consensus amongst female (67%) and male (82%) respondents that the certificates of ownership can be used to obtain loans. In addition, among female respondents there was caution with respect to conflict of interest rated at 5% where the husbands may not agree with their wives to use land as collateral as shown in Table 3.10. The reasons for the negative opinion mostly arise from the inability of the beneficiaries to relate investment and production incentives created by Systematic Demarcation and the general feeling of helplessness that is characteristic of chronic poverty.

Table 3.10: Use of the Certificates to secure Credit

(Multiple Responses) How the Certificate can be used to fight poverty	Respondent Category								Total	
	Wife		Husband		Widow		Others		n	%
	n	%	n	%	n	%	n	%		
It can be used to get loans for Development	37	73	63	82	10	56	1	33	111	74
I do not know	3	6	4	5	3	17			10	7
Can't, its just a certificate not a title	4	8	8	10	2	11			14	9
We helpless even with those certificates	1	2	1	1	2	11	1	33	5	3
Provided conflicts of interest do not exist	2	4	1	1	1	6	1	33	5	3
Prevents unnecessary sale of land	4	8							4	3
Total	51	100	77	100	18	100	3	100	149	100

Source: Household Survey

Systematic demarcation may not be enough to improve farmers' access to credit since high transaction and other costs hinder credit supply in rural areas. Small farmers are generally not considered a good credit risk by formal financial institutions whether or not their land is titled, since their plots are not

readily marketable in practice⁴⁰, and an unpredictable, fluctuating environment makes farmers risk-averse and hence reluctance to apply for loans.

3.5 FARM INVESTMENT AND PRODUCTION

De Soto⁴¹ notes that while the expectation of property rights is creation of enough security and stability to possess land and build a house on it, it does not usually provide enough incentive for significant investment in that house. It is argued that the informal type of land tenure system usually discourages investment in land improvement and limits development. Since the land is not 'owned' by an individual, it has no mortgage value and cannot be used as security against a long-term loan. A secure title gives the farmer the ability to use the land as collateral against a loan. Having assurance that a parcel will not be taken away and the knowledge that the proceeds of investment will accrue to the farmer, gives incentive to invest in his agricultural enterprise.

It is suggested that if left alone informal customary property systems may on their own provide considerable security of tenure. However, it is difficult to see how informal property systems can provide considerable security of tenure in an environment of rapid urbanization and population growth. "The best use of land may be unlikely without secure tenure; but, security will not by itself ensure that land is properly used" (Simpson 1976: 10-11) Research has shown that farmers' perceived tenure security might be increased through means simpler than full- fledged titling procedures. Many farmers initiate the registration procedure but abandoned it after the preliminary boundary demarcation phase.

Table 3.11: Contribution to Increased Productivity

(Responses) Contribution to Enhanced Production		Respondent Sex				Total	
		Female		Male		n	%
		n	%	n	%		
Positive Opinion Reasons	Can get loans and invest in increasing production	18	18	30	33	48	25
	Land sales are limited, production will increase	2	2	1	1	3	2
Negative Opinion Reasons	1 do not know how demarcation is related	42	42	21	23	63	33
	Not related to production, land remains the same	26	26	31	34	57	30
	Production can't increase pieces are too small	5	5	5	5	10	5
	Will reduce since wetlands were taken	1	1	4	4	5	3
	Confidence on land is not enough	5	5			5	3
Total		99	100	92	100	191	100

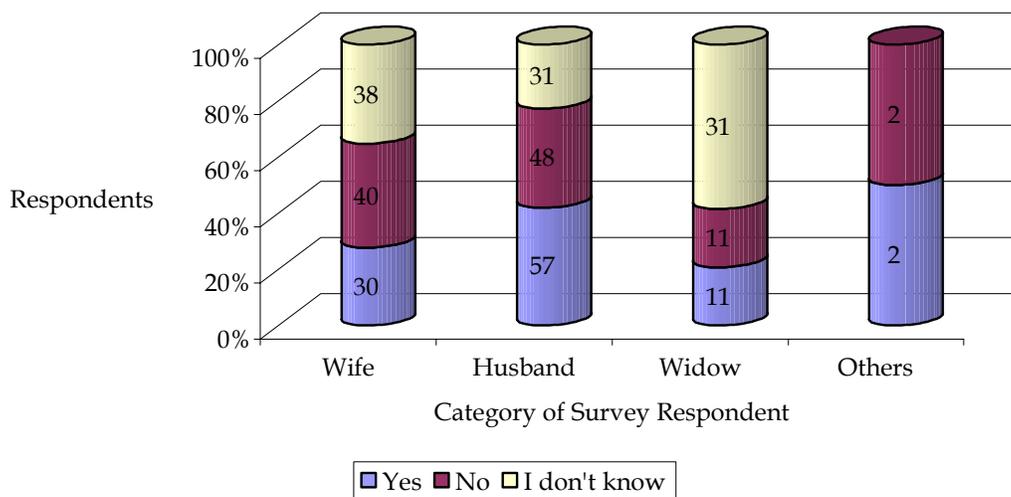
Source: Household Survey

⁴⁰ Shipton 1988

⁴¹ 2000, in his book the Mystery of Capital: Why Capitalism triumphs in the West and fails everywhere else. Basic Books: New York

The contribution of systematic demarcation to increasing productivity is perceived mainly as enabling access to capital (25%). However, failure to link systematic demarcation to production rated high at 33% while, the perception that size of land available to a household is a determinant of production was strong at 30%. The result is shown in Table 3.11. One of the aims of systematic demarcation is to remove production limitations by making land readily monetisable and to create incentives for sustainable land use and management. Interestingly, when respondents were asked whether systematic demarcation would contribute to increased production; overall, 53% responded in the negative while 30% responded in the affirmative. The result by survey respondent category is depicted in Figure 3.9.

Figure 3.9: Systematic Demarcation and Increased Production



Source: Household Survey

One of the main effects of ascertained property rights is to increase incentives for investment, as long as the duration for which such rights are awarded at least matches the time frame during which returns from possible investments may accrue⁴². While indefinite property rights are the best option, giving long-term rights that can be renewed automatically may be ideal given the long time spans involved. Attention should be given to the way in which such rights may be inherited as warranted. This has often proved critical to enhance women's ability to control land on their own.

⁴² Klaus Deininger (2002). Land Policies for Growth and Poverty Eradication.

3.6 THE LAND MARKET

African land privatization experience as reported by Atwood (1990: 663)⁴³ suggests that land registration by itself does not increase activity in the land market. At the inception of privatization in Uganda, for instance, an initial increase in the volume of land transfers was spurred more by the imposition of the requirement for privatization rather than by any single mechanism such as systematic demarcation or registration.

Feder and Nishio⁴⁴ describe the process by which parcel registration decreases the uncertainty faced by potential buyers. When the marketability of parcels is increased, it becomes easier to transfer land. The market pressure ensures transfer of land into higher-value uses to flow and stimulate activity. Studies reported by Hanstad⁴⁵ present conflicting outcomes regarding land market performance. For example, a 1980 study of the establishment of a land registration system (in the Caribbean) reported a significantly higher number of land transactions following implementation. A 1990 study of the advent of formal titling in Honduras showed either no difference in the incidence of transactions between titled and untitled areas, or a slightly lower incidence of transactions in the titled area.

During the Rukarango study, this quantitative clarification was not obtained; however, analysis of qualitative evidence from the consensus panels indicates that transacting in land had slowed down in the aftermath of systematic demarcation. This was a result of confusion amongst the local populace on whether the parcels could further be broken down. In addition, the consensus panel participants expressed apprehension, over award of certificates for land that had been sold. The concern was that those transacting in land before the certificates are brought were engaging in fraudulent land transactions. In spite of this, however, it was indicated that there was appreciation in the value of land parcels especially those on higher ground away from the wetlands.

3.7 LAND DISPUTES

According to Hanstad,⁴⁶ the novel juxtaposition of a formalized registration system alongside a customary landholding system of long standing can actually increase land disputes which have the potential to turn to litigation. Imposition of a new regime of registration is often accompanied by fraudulent land takings. Simpson⁴⁷ notes that security of tenure can exist without formal

⁴³ (1999: 28) in Hanstad Tim (1996), *Land Registration in Developing Countries*, Seattle: Rural Development Institute

⁴⁴ HAL STUDY (2002), *the implications of Land Management Systems*. Technology Management and Strategy Economic, Canada

⁴⁵ Hanstad, 1996: 10

⁴⁶ Hanstad (1996: 12),

⁴⁷ Simpson (1976: 9)

recognition by state sanctioned systems, including those of survey and registration. Conflicts will arise when land titling projects attempt to supplant customary tenure systems with common law rules⁴⁸. Traditional systems of land use and state recognition of individual property rights provide a measure of certainty of occupational rights.

There are powerful arguments for why land rights of the poor are better secured through investing in systems for dispute resolution and access to justice, rather than by technical procedures to register land rights. One of the key envisaged benefits of systematic demarcation is its contribution to good governance through enhanced access to justice hence social harmony and less pressure on household resources.

The study sought to establish the extent to which systematic demarcation had influenced the land conflicts situation in the pilot area. The results indicate an overall reduction of 16% in the rate of occurrence of land disputes from 22% before demarcation to 6% after demarcation. Whereas the result did not show difference in the rate of occurrence of land conflicts amongst female and male respondents (Table 3.12), analysis by household category showed slight differences as depicted in Figure 3.10 below.

Table 3.12: Occurrence of Land Conflicts by Gender

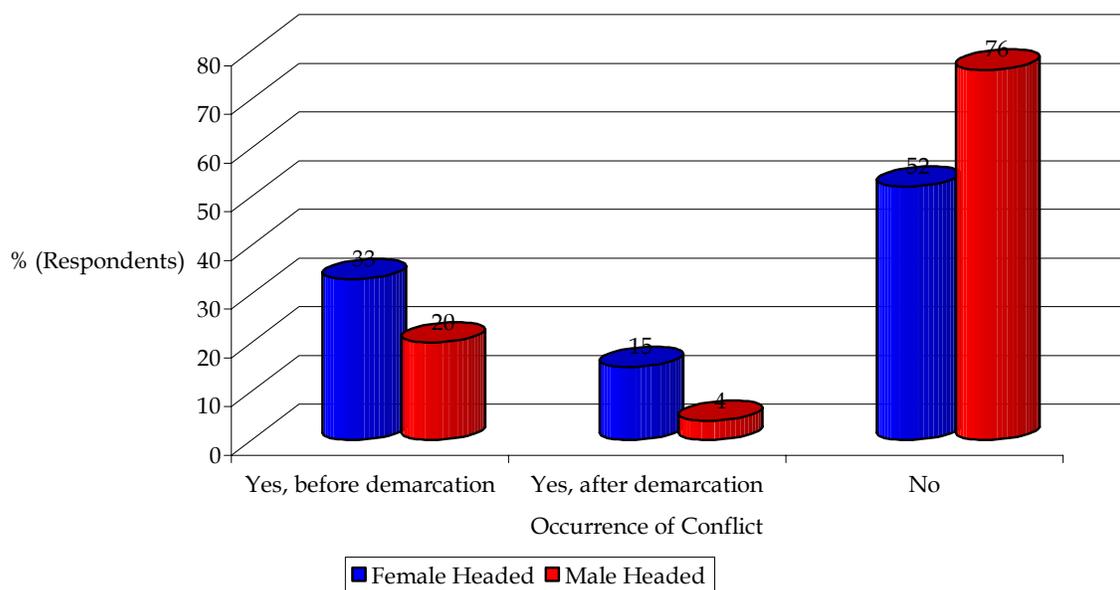
Whether Respondent has ever experienced a land dispute	Respondent Sex				Total	
	Female		Male		n	%
	n	%	n	%		
Yes, before demarcation	23	23	19	21	42	22
Yes, after demarcation	6	6	5	6	11	6
No	70	71	66	73	136	72
Total	99	100	90	100	189	100

Source: Household Survey

Amongst female and male-headed households, the study found reductions of 18% and 16% in the rate of occurrence respectively. Whereas this does not depict a significant difference, the interesting finding is the rate of occurrence of 15% amongst female-headed households compared to 4% amongst male-headed households after demarcation. This finding has implications in the context of vulnerability. While the conflicts have drastically reduced, women are still prone to recourse to social-economic protection- especially those in female headed households.

Figure 3.10: Occurrence of Land Conflicts by Household Category

⁴⁸ HAL STUDY (2002)



Source: Household Survey

This result also points to reoccurrence; fortunately only 5% of the respondents attested to disputes solved by the Adjudication Team to be reoccurring. The reasons for the resurgence of these disputes are depicted in Table 3.14 below.

Table 3.13: Reasons for the Resurgence of Land Conflicts

Why disputes are reoccurring	% Of Mentions
There wasn't fair judgement	17
No consensus was reached	50
Irregular boundaries now thought to be straight lines	17
Uprooting of Mark stones	17
Total	100

Source: Consensus Panels

Qualitative assessments further revealed that the reoccurrence of conflicts mostly involving readjusted boundaries in the precincts of wetlands, followed by those related to inheritance involving in-laws.

Eighty six percent (86%) of the respondents were of the opinion that knowledge of land size and boundaries is useful. The result on usefulness is depicted in Table 3.9.

Table 3.14: Use of Knowledge of Land Size and Boundaries

(Multiple Responses) Ways in which Knowledge and Certainty of Land Size and Boundaries is useful	Respondent Category								Total	
	Wife		Husband		Widow		Others		n	%
	n	%	n	%	n	%	n	%		
Ease of solving land disputes (Time/ Money/ Simplifies process of accessing loans	43	59	58	65	12	39	3	75	114	59
Know whether land is enough for the family	1	1	5	6	1	3			7	4
I do not know	7	9	5	6	1	3			13	7
No one can claim or steal (Tenure Security)	4	6	4	4	2	6			10	5
Its not useful in any way	11	15	14	16	13	42	1	25	39	20
Boundaries more permanent by mark stones	2	3	1	1	1	3			4	2
Total	4	6	2	2	1	3			7	4
	72	100	89	100	31	100	4	100	194	100

Source: Household Survey

The uses enumerated above point to removal of production limitations and strain on household resources by easing the process of solving land conflicts (59%), tenure insecurity (boundaries permanent and no one can claim or steal) rated at 24% points to the ultimate incentive for economic production decisions and long term land use planning while adequacy of the land resource for the family (7%) point to enhanced access and planning for household productive resources. This result shows the linkage between systematic demarcation (land reforms) and the quest to create an environment in which households can strive to get out of poverty.

3.8 AREA LAND COMMITTEE OPERATIONS

The key advantage of formal, as compared with informal, property rights is that those holding formal rights can call on the power of the state to enforce their rights. For this to be feasible, the institutions involved need to enjoy legal backing as well as social legitimacy, including accountability to and accessibility by the local population. Yet, in many countries, especially in Africa, the gap between legality and legitimacy has been a major source of friction, something that is illustrated by the fact that often more than 90 percent of land remains outside the existing legal system. Failure to give legal backing to land administration institutions that enjoy social legitimacy can undermine their ability to draw on anything more than informal mechanisms for enforcement. By contrast, institutions that are legal but do not enjoy social recognition may make little difference to the lives of ordinary people, and have therefore often proven to be highly ineffective. Bringing legality and legitimacy together is a major challenge for policy that cannot be solved in the abstract.

The ability of an institution to deliver is also determined by its capacity in terms of technical skills and resources availed. In this regard, the local instructions in charge of systematic demarcation was the Area Land Committee (ALC), According to its members, there was insufficient induction on commencement of the systematic demarcation exercise, it was a training for two days given before the commencement of the adjudication exercise. Since

then no skills training or development has taken place to ensure that the committee's skills are commensurate with responsibilities, that arise with the conclusion of the exercise of Systematic Demarcation, given the fact that in the aftermath, there is a growing demand for them to witness land transactions and give opinion on land cases, a role they were not trained to carry out, but is an absolute necessity. In addition, the officials are at a loss on how to handle subsequent subdivisions of already recorded plots.

This absence of guided and controlled administration of land rights has left the committee without options but to act on the limited knowledge and skills that they possess. Matters were made worse, when it was revealed that they had not even been issued copies of the Land Act or a schedule of their responsibilities as a Land Committee. In terms of authority, the instruments to originate this are also lacking, whereas the District Council approved the committee, there are still no appointment letters and no logistical support is provided from the District.

It is important, to note at this moment in this research, that the basic framework that would have defined guidelines and a starting point for systematic demarcation is the National Land Policy, however, this is still in its formative stage, hence the scattered administration arrangement. Land administration requires a clear hierarchy and procedure, otherwise formal and informal authorities will compete to fill the power gaps, the result will be administrative anarchy⁴⁹, which is not yet evident in the study, but whose symptoms are clear for all to see. Research affirms that when a land administration system fails, an informal system will replace it. Land Registration systems are unique and must reflect their host societies.

Considering the complexities of transacting and handling land as well as the socio-economic effects of land conflicts, the Committee is an important building block for the long-term realisation of positive effects out of the systematic demarcation process. The immediate capacity issues are the maintenance and update of the local land data bank established in the course of Systematic Demarcation and the handling of post-demarcation land transactions especially those involving subdivisions.

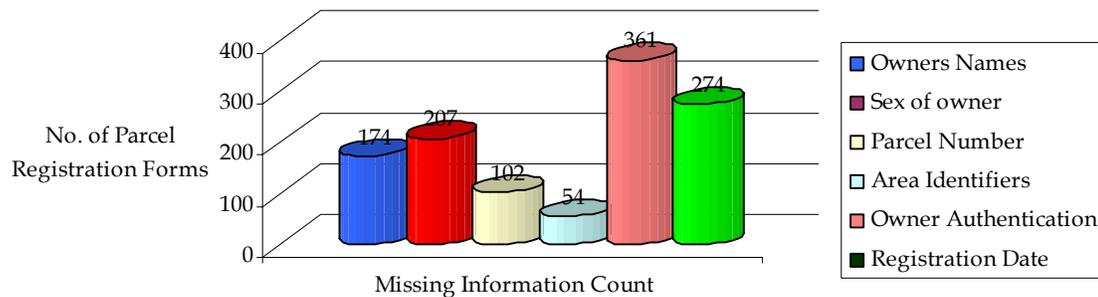
3.9 LOCAL PARCEL REGISTRATION DATA BANK

Systematic demarcation and adjudication allows for determination and confirmation of ownership and legal interests, in individual's parcels. It is hoped that greater security of tenure will be achieved by using documentation to clarify rights. The study argues that in order to ensure that title registration

⁴⁹ Mika-Petteri Torhonen (2003), Sustainable Land Tenure and Land Registration in Developing Countries, Helsinki University of Technology

is relevant to the needs of the community as well as land administrators and policy makers, the cultural dimension should be considered when incorporating informal tenure rights into formal registered titles, hence the demarcation process ought to have built and based itself on existing local forms of informal registration and land development management rather than trying to impose institutions modeled on imported systems. In the case of Rukarango, there was total disregard for the existing systems, which resulted in transfer of rights prior to the demarcation process. In other words policy makers should have moved away from a 'replacement paradigm' in which informal systems are legislated out towards an 'adaptation paradigm' where such systems are recognized, clarified and formalized. Unfortunately, this did not happen.

Figure 3.11: Local Data Bank Validity Test Result



Source: Data Extraction Exercise

From the Area Land Committee, it was established, that the demarcation exercise commenced without, the appropriate documentation facilitates, for examples the forms were not on site, thus the local parcel data bank is in a state of incompleteness. To test the validity of the data bank, a check was carried on 1,374 parcel registration forms from 7 of the 11 villages in the parish using an extraction checklist with selected variables. Analysis of the information obtained shows that 85% (1,172) of the forms have missing information of one sort or another as depicted in Figure below.

4.0 CONCLUSIONS AND RECOMMENDATIONS

This study argues, that massive public investment in systematic adjudication and demarcation ought to result into or have a direct bearing on poverty reduction at household level through enhanced property rights, facilitation of transactions in land, and use of land as collateral for loans. Larsson⁵⁰ argues that without registration, land use and management is a difficult task to achieve, thus a demarcation system is built on the need to regulate existing rights and as a legal means to influence the development of the land.

This study also confirms that land tenure, whether forced or unforced, is an evolutionary process, therefore for sustainable results, it should either be supported or else left undisturbed. Successful reforms are possible as long as they are fair, systematic, and create room for the mutation of customary tenure.

Asset Enhancement

This study found evidence of asset enhancement; both in terms of appreciating value and ease of converting land into monetary form in the pilot area; although, the inherent opportunities for poverty reduction created by these two outcomes were largely elusive in the area. Realising poverty reduction opportunities created by processes such as systematic demarcation ought to be followed by initiatives to foster innovative household development efforts by helping beneficiaries of these programmes translate them into advancement opportunities coupled with deliberate capacity building for the beneficiaries and civil society to nurture these poverty reduction innovations.

From the Baseline Report⁵¹ for the exercise, this aspect was not conceived as part of the whole process and thus, it was not planned for in the sensitising process to orient the beneficiary community to opportunities for poverty eradication embedded within the exercise. Community education must be rigorously undertaken to implant the need to put land to the most optimal use/user if systematic demarcation is to bear any fruit. A key area of intervention is community awareness on how to transform the reforms into tangible benefits, particularly optimal use of land, household planning in the frame of the importance of land registration. Civil society should be co-opted to sensitize the beneficiaries of systematic demarcation on the benefits of acquiring certificates of customary ownership and on the advantages of converting them into freeholds.

⁵⁰ Larsson 1991

⁵¹ Ssebina-Zziwa Abbey and Nuwamanya Dick, 2004, Baseline Report for the Systematic Demarcation Pilot Program in three Parishes, LSSP Division, Ministry of Water, Lands and Environment.

Land Disputes

A dispute reduction rate of 16% and a resurgence rate of only 5% are a colossal achievement considering the socio-economic effects of land disputes on households and communities. It should be noted though that the disgruntlement with the readjusted boundaries in light of the population pressure in the area makes the situation fragile. The finding that the Area Land Committee is ill equipped to rise to its responsibilities in this respect makes the situation even more fragile. It is important that the achievements realised in land disputes, are nurtured carefully. Validity of the local data bank has a role to play as a point of reference for consensus that has to be reached in resolution of land disputes, especially boundary disputes. The local data bank should be maintained and local capacity built for updates. The Area Land Committee should be empowered to rise to this challenge in light of the fragile situation.

Transformation of Land Rights

This study reveals changing patterns in inheritance and spousal rights on land as well as ownership, access and use of land postulating both negative and positive facets. To others in the community, systematic demarcation was bent on altering the power relations within the family especially as regards land re-adjustments involving family members. In the first instance, boundary readjustments have created tensions especially with regard to the precincts of wetlands, on the other hand there is evidence of positive changes in inheritance patterns in terms of ascertained rights for the beneficiary person, it is no longer ambiguous as to whether, a parent has given a temporary or permanent right to a son or daughter.

The process of demarcation may not offset any change in tenure; in that the confines of how society views land ownership and use may not significantly change, because the basic principles governing these aspects are customs, norms and values, however, adaptations are already evident in terms of gender rights. This scenario is supportive of the concept of resilience of customary tenure. It has been argued that despite centuries of purposeful dismantling of the ideology of customary tenure supported by legal provisions, the tenure not only persists; but, is still by far the most wide spread⁵². Invariably the outcomes from systematic demarcation in this area, do hinge to a considerable extent on the culture and behavior of the people who have benefited from the process. In turn, the behavior of these people depends on their understanding of values that this process delivers.

It is understood that land rights are social conventions that regulate the distribution of benefits that accrue from specific uses of a certain piece of land. Land rights are a social construct, not merely as assets themselves, but as

⁵² Wily 2000

consensus between people about how these assets should be held, used and exchanged. If systematic demarcation is to deliver improved benefits, then there is need to expedite the issue of certificates of customary ownership.

Gender

Property rights to land, even in customary tenure are not static, but evolve in response to changes in the economic and social environment. Systematic Demarcation is seen as extinguishing customary claims, as well as the social responsibility because the capitalistic society has no room for social based property rights. This move is supported by the innovativeness of Uganda's legislative framework that found it necessary even under the demarcation guidelines to encourage spouses to undertake joint registration on customary tenure.

Secondly, clarification of women's land rights and their enhanced tenure security is an outcome that is beginning to enlist although the practice is still wanting. There is need to domesticate gender principles and to make the advantages thereof appreciated amongst men and women in the context of household development. As evidenced, the perception is still that of "a government initiative that people have to adhere to", in some instances it even seen as a pre-condition for participating or reaping benefits from such a process as systematic demarcation, this especially supported by the absence of a shared vision and responsibilities for productive resources for the benefit of the household. However, attention needs to be paid to the nitty gritty issues in each situation especially as far as they relate to derived and secondary rights over land.

Capacity of Area Committee

Community land demarcation is usually associated with the devolution of responsibility for land administration to a village, local community or traditional authority structure in this case, Area Land Committees. This relieves central land administration institutions of responsibility for registering land rights at local level, something which they do not generally have capacity or expertise to do. These bodies are responsible for considering requests for land, publicizing them, locally, if necessary providing adjudication of disputed claims, maintaining a village land register, and witnessing the various types of local transactions such as rentals, loans, pledges, gifts and mortgages. This type of approach seems to be reasonably simple, low cost, and accessible to all community members. It can provide a basis whereby people can upgrade to certificates of title through the formal land registration system, for instance to enable access to credit, or if permitted by community rules, to transact in land with outsiders.

The Office of the recorder and the Area Land Committee need to be strengthened and have their capacity enhanced to enable them cope with the demand service and land needs of the community. The capacity building needs of the Area Land Committee are urgent. This study finds an inalienable link between the role of the Committee and harmonising local land relations that have evolved and are critical to realising the accrual benefits (impacts) of Systematic Demarcation. The capacity of the Area Land Committee must be built for continued community level ownership of the programme lest it be discarded as an initiative of the government with little commitment to local needs.

When Systematic Demarcation carried out and the awareness creation there is a steadily growing demand for land services especially registration. This demand should be marched with an existing fully-fledged, District Land Office and functional offices of recorders. If this is not achieved soon, the perceived benefits of systematic demarcation may never be realised.

Tenure Security and Land Values

Rather than increasing security, the process of registering customary rights may generate increased uncertainty, and stir up dormant conflicts. The land issue has been at the heart of political tensions between incomers and local people, fuelling conflict. The Systematic Demarcation process and the eventual registration of the interest in land can provide can also provide the means by which some people, or groups, can get their rights re-interpreted in ways, which allow them to exclude others.

Rukarango Parish being the first pilot, a commendable task was undertaken by the Land Tenure Reform Project, which enabled for the first time the poor realise value in land in most cases the only household endowment. Positive opinion on improved land value is based on the fact that land can now be owned permanently and encroachment is curtailed. Despite the perceived benefits, more work needs to be done to ensure that the rights ascertained in the systematic demarcation process are registered so that land can be released to the most sustainable productive use. The activities of Micro finance Institutions need to be promoted and enhanced with caution to ensure that households do not lose land.

The success of Systematic Demarcation in Rukarango need to be applauded and the lessons learnt taken decisively for replication in other pilot sites. Mechanisms need to be developed to deal with political interference and influences in the systematic demarcation process.

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