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The nexus between formalisation of land rights and access to financial services

Private mailo and traditional land rights in Uganda

AVE Study 31b/2022

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AVE Study 31b/2022

Ways out of Poverty, Vulnerability and Food Insecurity

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List of abbreviations

| | |
|--------|--|
| BMZ | German Federal Ministry for Economic Cooperation and Development |
| CCO | Certificate of Customary Ownership |
| COO | Certificate of Occupancy |
| FAO | Food and Agriculture Organization of the United Nations |
| GIZ | Gesellschaft für Internationale Zusammenarbeit GmbH, German development agency |
| ILGU | Improvement of Land Governance in Uganda to Increase Productivity of Small-Scale Farmers on Private Mailo Land |
| INEF | Institute for Development and Peace |
| LIP | Land Inventory Protocol |
| MLHUD | Ministry of Lands, Housing and Urban Development |
| NGO | Non-governmental organisation |
| RELAPU | Responsible Land Policy in Uganda |
| UGX | Uganda Shilling |
| USD | US Dollars |
| ZFD | Civil Peace Service |

Summary

This study deals with Uganda's national strategy, which was announced in 2013 and implemented in pilot projects, to increasingly formalise and protect land rights. In addition to protecting the land rights of a large number of rural households, the formalisation of land rights was also intended to release economic potential. For example, the commodification of land can enable the sale of land parcels, but also loans secured on them. This potentially creates easier access to financial services for previously financially excluded households and rural businesses. The resulting nexus between the formalisation of land rights and the access to financial services was examined in the survey in central Uganda, where the *mailo* land rights system is predominant, and in the eastern part of the country for customary land rights. On the one hand, the impact of different land rights systems on access to financial services was elaborated, and on the other hand, the current situation of the rural financial market was highlighted.

The study is linked to the implementation of land rights formalisation by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. The project shows that any intervention in the field of land rights in Uganda must follow a highly conflict-sensitive approach and can only be successful if it involves local authorities and stakeholders. In particular, the approach chosen by GIZ to raise awareness in rural areas can be described as good practice in development cooperation. A particular challenge is the sustainability of the implementation. Formalisation of land rights requires extensive strengthening of decentralised capacity as well as ongoing subsidisation by the Ugandan government and / or international partners.

The study of the nexus shows or anticipates that the formalisation of land rights can and will indeed improve access to financial services. However, it remains questionable whether this will also have poverty-reducing effects from a development policy perspective. Financial literacy is described as very low in rural areas. As all individual loans are secured with land as collateral, there is a risk of land loss due to over-indebtedness. Accordingly, on the basis of the survey, the researchers argue for accompanying regulation in the financial sector in order to cushion the risks for vulnerable population groups accordingly.

Project background

Given the fact that the number of extremely poor people in many developing countries is not declining despite many efforts, the Institute for Development and Peace (INEF) at the University of Duisburg-Essen, with funding from the German Federal Ministry for Economic Cooperation and Development (BMZ), conducted a four-and-a-half-year research project entitled “*Ways out of Extreme Poverty, Vulnerability and Food Insecurity*” from October 2015 to March 2020. The aim of the project was to develop recommendations for German official Development Cooperation (DC) with regard to improving the accessibility of extremely poor, vulnerable and food-insecure population groups and sustainably improving their living conditions.

The focus of the INEF team’s research has been on examining projects that work primarily within the following thematic areas:

- (i) Access to *land and security of land ownership* and use,
- (ii) *agricultural value chains* and
- (iii) *social security*.

Socio-cultural aspects of development, participation of the population in decisions and *gender equity* were consistently taken into account as overarching cross-cutting themes.

Since October 2020, with a planned duration until the beginning of 2023, the research project is being continued, with a slightly different target group: poor, vulnerable and food-insecure people. The first phase focused on extremely poor households and individuals, or the ultra-poor, who had no self-help capacities and were often “overlooked” in the context of development cooperation. In contrast, the focus is now on groups of people who cultivate at least some land and can thus be reached in development cooperation projects through classic agricultural and rural development approaches.

As before, the focus is on the search for good practices for successful poverty reduction and the review of the respective conditions for success. The focus of the research is now on *agricultural finance* and *comprehensive support approaches* for smallholder households, i.e. *support approaches that combine financial services with advisory services and the provision of productive goods*. A special topic in agricultural finance is the nexus of lending to smallholder households and the use of land titles as collateral to obtain credit. In all three areas of investigation, the successful consideration of the cross-cutting issues of socio-cultural aspects of development, participation and gender is maintained as criteria for good DC approaches.

1. Introduction

“In short, any attempt to understand ‘the question of land’ in contemporary Africa has to grapple even more than in the past with the dynamics of social transformation at multiple levels – global, regional, national, sub-national – that are reshaping not merely access to land itself but the very bases of authority, livelihood, ownership and citizenship. And in reverse, any attempt to understand the multiple transformations taking place on the continent has to include ‘the question of land’ as a central element” (Peters 2013).

Questions about land are at the centre of daily media discussions in Uganda and run through the political events of post-colonial politics. In rural areas, massive interventions in land law, land grabbing and failed initiatives to formalise land rights led to a conflictual environment characterised by an omnipresent fear of displacement among smallholder farmers. Due to the scarcity of resources, the increasingly noticeable consequences of climate change and constant population growth, conflicts within clans, families and even within households are also multiplying.

With the Uganda Land Policy 2013, the Ugandan government set the goal of securing land rights claims through the issuance of land certificates and thus pacifying the situation in the rural areas in a piecemeal manner. Both on *mailo* land, a land rights system with overlapping claims, and on land under customary law, this is intended to increase the protection of users and to upgrade the traditional or historically established land rights systems.

Despite the legislative basis, however, hardly any certificates could be issued in the following years due to the very time-consuming process of land surveying and documentation. In response to the political target, the Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH is carrying out a project to implement land rights formalisation. Through capacity building at district and sub-county level, local authority structures are to be enabled to establish and maintain a formal land rights system on a sustainable basis, and to build a basis of trust with the rural population through cooperation with regionally active non-governmental organisations (NGOs).

In the context of this study, the effect of such land rights formalisation on access to financial services for rural households, primarily those engaged in agriculture, is anticipated. With a formalisation, but also the increasing individualisation of land rights claims, the commodification of land, with or without the direct intention of the political actors, enables or facilitates the mortgaging of land and thus creates the basis for land being used as collateral for loans. While for many farms this opens up the possibility of financing capital-intensive cultivation, e.g. in coffee and banana cultivation, examples from other regions show that loans with land as collateral can also always pose an existential threat to smallholder households. Especially in an environment where internal shocks, such as illness or death, and external shocks, such as droughts, are only partially mitigated by appropriate insurance, debt for seasonal cultivation is highly risky.

The study focuses on two areas to investigate this question: the formalisation of land rights claims and the rural financial market (with a focus on agricultural finance). It combines the findings with an anticipation of the interrelation of these issues.

The study is thus embedded within the project “Ways out of Poverty, Vulnerability and Food Insecurity” (AVE) of the Institute for Development and Peace (INEF) in a series of three surveys that address land as loan collateral.

2. Land rights and land as collateral for loans

Land rights and access to land describe the relationship (legal or traditional) developed over generations between individuals, communities and households in relation to land (cf. FAO n.d.). In the case of Uganda, this relationship was strongly influenced by the colonial period. In the country, land rights have so far been largely neither legally individualised nor systematically recorded. Informal land ownership and informal access to land have repeatedly led to conflicts at regional and local level in recent years. The parties to the conflict are very different and correspondingly complex. What can be generalised, however, is that in many places, from the household level to large-scale foreign investment, the lack of formal proof of access to land is exploited and abused in an unequal power relationship. This situation is decisively influenced by different land rights systems.

2.1 Land rights systems and land conflicts

“Tenure systems define and regulate how people, communities and others gain access to natural resources, whether through formal law or informal arrangements. The rules of tenure determine who can use which resources, for how long, and under what conditions. They may be based on written policies and laws, **as well as on unwritten customs and practices**” [emphasis by the author] (see FAO 2012: 3).

Uganda has had four land rights systems since a constitutional amendment in 1995 (cf. Mwbaza 1999): *mailo*, customary, leasehold and freehold. The present study is limited to a consideration of customary law and *mailo*, as these land law systems are almost exclusively prevalent in the rural regions of Uganda.

Customary tenure

Customary law is the predominant form of land law (cf. MLHUD 2013) and covers approximately between 75% (cf. Busingye 2002) and 80% (MLHUD 2015: 28) of Uganda’s total land area. The 1995 constitutional amendment recognised *customary tenure* for the first time; until then, the majority of rural households formally occupied and cultivated government land.

In customary tenure regimes, the customary leaders may play the principal role in land administration, for example in allocating rights and resolving disputes. [...] Where customary tenure has been recognised by the State, functional linkages are being developed between government and customary land administration bodies (FAO 2002: 14-15).

Tenure systems have different implications for control and access to land and how it can be transferred (cf. FAO 2002:7). According to Dieterle (2022), in customary law there are often difficulties with the respective *de jure* and *de facto* recognition by governments. Rural households under customary tenure are less protected against displacement and less likely to enjoy state protection (cf. *ibid.*). This becomes glaringly obvious especially in large-scale land investments. Customary law provides for control over land by local authorities, but in the case of large-scale investments, especially foreign investments, the state is also involved and the question is raised as to who can dispose of the land and allocate land to investors (cf. Owor / Dieterle 2020). Dell’Angelo et al. (2017) show that large-scale land investments and *landgrabs* by national elites deliberately target customary law regions, exploiting power inequalities. Ashukem (2020) therefore argues for better protection and recognition of customary land rights in the context of landgrabbing in Uganda.

Especially in informal land tenure systems, the perceived security of access to land is crucial for farm development and maintaining land value through medium-term and long-term investments. The tenure security required for this describes the extent to which the rights of use are recognised and protected by others and there is no need to fear displacement (cf. FAO 2002: 18). The *PRIndex* published by the Overseas Development Institute (ODI) and the Global Land Alliance indicates perceived land rights insecurity for at least a quarter of all rural Ugandan households (cf. 2019).

In regions under customary law, internal conflicts, both within clans and within families, arise in addition to conflicts with investors (cf. MLHUD 2019; ZFD 2020) and have a negative impact on tenure security. Due to the administration of the land by clan elders and local leaders, there are often not clearly defined boundaries between the rights of use within the clans (cf. MLHUD 2019). Due to population pressure, available land becomes scarcer and more contested within the clans. This leads to the migration of youth (cf. Bezu / Holden 2014). In the largely patriarchal structures and patrilineal land rights systems, the rights of women and vulnerable groups in particular are not sufficiently protected in many places in this already conflictual situation. In theory, all those who are born into the family or marry, regardless of their sex, have a claim to the family land, which belongs to all members of the past, present and future and is administered by the present generation (cf. Adoko et al. 2011). However, Adoko et al. see a process of individualisation in recent decades. Residents perceive the land more as their property and extend it where possible, e.g. by laying claim to the land of widowed and divorced women or even orphans (ibid.)¹. As a rule, women are not given rights of disposal (sale, allocation) over land, either in their own family or in the family they marry into, due to the clan's fear that this could cease to be under the clan's control in the event of marriage or divorce (cf. Tripp 2004).

Mailo

The *mailo* system, which is mainly established in central Uganda, has its origins in colonial times. The British colonial administration returned confiscated land to the Kingdom of Buganda in 1900 with the Buganda Agreement, which distributed it to nobles and chiefs, initially to 1000 people, and by 1905 to a total of 3700 new owners (see Mamdani 1996: 141), including institutions such as churches (cf. GIZ 2019). "Through this transfer, large masses of peasants living on that land were turned into rent-paying tenants of *mailo* (mile-owning) landlords" (ibid.) The smallholders residing on the land were not given separate land rights (cf. Ali / Duponchel 2018).

In order to strengthen the rights of land users, but even more in order to correct a historical mistake of the colonial administration (ibid.), in 1928 a maximum amount was set for the rent which had to be paid (*busuulu*), and households were protected from eviction as long as this rent was paid.

With the coup by Idi Amin in 1971, all land was declared state land, making the *mailo* system temporarily irrelevant (cf. Ali / Duponchel 2018). Under President Museveni, the system was reinstated in a land reform in 1995 and clarified in the Land Act in 1998:

¹ Marriage plays a central role in the discrimination of women. With marriage, the woman loses the social support of her own family and becomes dependent on the man's family. As soon as this dependency is dissolved through death or divorce, women often also lose the family support in the married family in order to still be able to claim land there (cf. Adoko et al. 2011: 2).

Under that law, bona fide lawful occupants have the right to assign, sublet, pledge, sub-divide, bequeath, or create third party rights in the land. The 2010 amendment to the Land Act further clarified that tenants can only be evicted following a court order and only for non-payment of busuulu provided they had occupied the land unchallenged for more than 12 years before the 1995 Constitution (ibid.: 1).

Despite the legal empowerment of rural residents, the problem of overlapping interests between owners and residents remains. The owners have land titles and are registered in the national cadastre, while the residents and users have no proof of their leased land. In the past, this often led to conflicts and in some cases to violence between residents and owners and often resulted in illegal eviction (cf. Musinguzi et al. 2021). In many places, the situation deteriorated to such an extent that owners were no longer able to access their land, and cases of violence and even murder have been documented². The reasons for the escalation are complex, dominated by the growing population pressure and immigration on unused *mailo* land, lack of knowledge about the land rights system and lack of possibilities to enforce it in case of doubt, as well as the existential fear of displacement³.

2.2 Formalisation of land rights

As the basis of livelihood security for farmers, access to land is a crucial factor for well-being and opportunities for farm development. In addition to social and cultural problems (cf. Slotkin 2017), insecurity with regard to access to land can, above all, immensely inhibit the willingness to invest in the farming business and thus leave potential untapped. Secure land access allows rural households to respond to growing problems and diversify, intensify and adapt their agricultural practices (cf. Higgins et al. 2018). In this context, studies show that the much desired effect of increased productivity following the formalisation of land access can only be demonstrated to a limited extent (cf. Huntington / Shenoy 2021; Huggins et al. 2018), and access to credit is also not demonstrably increased (Huggins et al. 2018; Domeher / Abdulai 2012). Positive effects are shown in the area of strengthening women's rights (ibid.).

The issue of formalising land rights is receiving increased attention in international cooperation (cf. Tseng et al. 2020). While no analysis of donor objectives will be undertaken here, it can be stated that this engagement is embedded in an increased dynamic around land markets, a further growing commodification of land (cf. Peters 2009), immense population pressure and resulting conflicts in large parts of the African continent (cf. Mwesigye / Matsumoto 2016). While the literature is largely based on economic potentials, the formalisation of land rights in Uganda rather focuses on reducing conflicts around land and protecting the population dependent on agricultural land. Not surprisingly, however, conflicts have a strong negative impact on investment and agricultural productivity, so that these issues are mutually dependent (cf. Deininger / Castagnini 2006).

With the Uganda National Land Policy, the Ugandan government is committed to strengthening customary land rights as an equal form of land rights and to empowering the inhabitants of *mailo* land. This is done in particular through the opportunity to apply for certificates for access to land and thus to secure and formalise land access (cf. MLHUD 2013).

To this end, it was stipulated, among other things, that already individualised land can be converted into land tenure under customary law (cf. MLUHD 2013: 18). With the issuance of

² Global Press Journal 2020: Violence Between Landlord and Tenants Turns Deadly. <https://globalpressjournal.com/africa/uganda/amid-confusion-land-ownership-uganda-violence-landlords-tenants-escalates/> [05/2022].

³ Ibid.

Certificates of Title of Customary Ownership (CCOs) for the other land users, customary land is given a status equivalent to land tenure and should be able to be registered in a land register for customary land (cf. *ibid.*: 19). In this process, joint ownership by the spouses is promoted and gender equality and equity are to be ensured (cf. *ibid.*).

For the regions under *mailo* land rights, the responsible ministry stated in 2013:

“The Land (Amendment) Act 2010 grants statutory protection to the bona fide and lawful occupant and his or her successors against any arbitrary eviction as long as the prescribed nominal ground rent is paid. However, the nominal ground rent provided for is largely ignored creating a land use deadlock between the tenants and the registered land owner, hence conflicts and in many instances evictions. The landlord-tenant relationship as legally regulated is not amicable or harmonious” (*ibid.*: 19).

In response to the hard-to-harmonise interests between *mailo* landowners and residents, the Ministry sets itself the following goal: “The Government shall resolve and disentangle the multiple, overlapping and conflicting interests and rights on *mailo* tenure and ‘native’ freehold tenure” (*ibid.*: 19). The documents indicate that the government’s basic aim is to resolve the overlapping claims to *mailo* land. In the best case, *mailo* is converted into land tenure with only one interested party. In order to reach a compromise here, the government envisages that residents should give up their claim to part of the inhabited land and in return receive the remaining land as titled property (cf. *ibid.*). Where this agreement is not reached or is not in the interest of one of the parties, the claim of the occupants, as already regulated in the Land Act 1998, is to be recorded on the title of the owners via a Certificate of Occupancy (COO) and thus secured⁴, which in turn requires permanent lease payments (*busuulu*).

The government’s strategy to increasingly formalise land through the issuance of certificates established a legal framework for the process, but in implementation there was hardly any customary law land registration through the issuance of CCOs and not a single case of women residents of *mailo* land receiving a COO. The legal framework was taken up by the RELAPU (Responsible Land Policy in Uganda) project of GIZ and implemented in a pilot project (see Chapter 3).

2.3 Land as collateral for loans

To examine the nexus between land formalisation and access to financial services, it is central to first look at the issues in detail.

De Soto (2001) already argued at the turn of the millennium that the lack of access to credit for people in “developing countries” is not due to a lack of assets, but to the fact that these assets cannot be used as collateral because ownership is not formalised. This circumstance makes it impossible to profit from the capitalist, globalised economic system (cf. *ibid.*).

However, this effect was largely refuted in the following years (see chapter 2.2). Two central reasons can be identified for this. On the one hand, in many countries of the Global South, land is used as loan collateral that has not (yet) been formalised, so from the perspective of banks and microfinance service providers, formalisation changes little. On the other hand, formalised land does not influence a household’s ability to repay, which is clearly more decisive from a lender’s point of view than loan security (cf. Domeher / Abdulai 2012).

⁴ Land Act, Chapter 227, Section 33.

Rather, with a focus on poor and vulnerable population groups, the question arises as to whether the use of land as loan collateral is expedient for all population groups and what risks this entails – especially when looking at agricultural households.

A supply of credit for rural farms in countries of the Global South is one of the key factors for the efficient use of agricultural assets, for cushioning risks and for long-term-oriented investments in the farm (Worldbank 2009: 118). According to the World Bank, a broad credit supply not only has a positive impact on farms, but also on the agricultural economy as a whole (ibid.). It should be noted, however, that in large parts of the Global South such an offer is lacking (cf. World Bank 2009, Rieber, Bliss, Gaesing 2022). According to De Soto (2001), in response to this, the Theory of Change envisages formalising and thus commodifying assets to mobilise them as loan collateral, thus providing a basis for the financial sector to extend more credit and build a broad supply. In rural areas, it is mainly a matter of formalising the asset value of land in order to generate corresponding land titles. In the best-case scenario, the loans granted are used for investment purposes, thereby increasing the productivity of the rural farm and generating a higher income. However, especially in the case of lending to poorer rural households, who work in a very risky sector in large parts of the African continent, this can trigger poverty-increasing effects in unfavourable cases (cf. Holden & Ghebru 2016). In the event of crop failure, loss of livestock due to disease or fluctuating market prices, farmers may find themselves in a debt trap that can only be solved by proactively selling assets such as livestock or parts of the land, or which may even lead to loss of the entire land holding and thus loss of livelihood.

Developments from India and especially Cambodia strongly challenge the Theory of Change presented above (see AVE Study 30: Bliss 2022). Aggressive money lending to rural households led to considerable land loss, while at the same time there is no evidence that money lending is poverty-reducing for the rest of the population (discussed in more detail in AVE Study 26: Rieber, Bliss, Gaesing 2022).

The issue raised here is not intended to call into question the formalisation of land in principle. There is sufficient evidence that this has a positive impact on rural development and protects access to land for smallholder farms. However, the nexus of formalisation of land and access to credit for rural households is critically examined in the context of the study with regard to more resource-poor rural households.

3. The GIZ Project “Responsible Land Policy Uganda”

The project with the title “Responsible Land Policy Uganda” (RELAPU) is part of the GIZ Global Programme “Responsible Land Policy”, funded within the framework of the Special Initiative ONE WORLD – No Hunger by the BMZ and co-financed by the European Union with a duration from 2015 to 2026⁵. The Global Programme covers the countries of Ethiopia, Benin, Burkina Faso, Côte d’Ivoire, Laos, Madagascar, Peru (completed in 2021), Uganda and Paraguay (completed in 2018). The aim is to improve access to land for “certain population groups, especially women and marginalised groups”⁵. This is done through cooperation with the political leaders of the respective project countries. In the case of Uganda, both collective and individual land tenure and use rights are to be strengthened through improved land administration mechanisms. The project is supported by civil society groups, especially in the areas of conflict monitoring and dialogue. In addition, the framework conditions for “responsible private agricultural investment” are to be improved⁵.

RELAPU and ILGU

GIZ has been active in Uganda since May 2016 in Teso in the east of the country in the context of customary land rights. The following year, work in this area was expanded to Lango in the central north and West Nile in the northwest of the country. The programme, which is co-funded by the European Union, has also been operating since 2017 in the centre of the country under the project title “Improvement of Land Governance in Uganda to Increase Productivity of Small-Scale Farmers on Private Mailo Land” (ILGU). The activities are ongoing, and only the activity in Teso will be discontinued in mid to late 2022.

RELAPU was included in the RLP Global Programme in response to Uganda’s land rights reforms to support the Ugandan government’s strong interest in improving access to land for smallholder households. This is not primarily about economic goals, but about protecting land as a basis for livelihood. Access to land is the basis for poverty and hunger reduction, with a focus on protecting the rights of women and marginalised groups⁶. In addition, the project aims to improve women’s land ownership. The Ministry of Lands, Housing and Urban Development is the project partner from the Ugandan government’s side.

To improve the land rights situation, the project relies on a multi-layered approach with the ultimate goal of supporting rural households to apply for the Certificates of Customary Ownership or Certificates of Occupancy described in Chapter 2.

Land and land rights interventions are an extremely sensitive issue in rural Uganda. The fear of dispossession and displacement is deeply rooted in many places and any initiative in this area must expect a high level of scepticism, but also hostility and even attacks⁷. RELAPU is therefore working with local authorities, village representatives, the Area Land Committee and civil society groups known in the villages to build trust and inform the villagers about the planned project and the existing land rights. These awareness-raising measures and the knowledge gained from them strengthen the residents to defend their land against possible

⁵ <https://www.giz.de/de/weltweit/39918.html> [05/2022].

⁶ Programme proposal 2015 – Global Programme – Responsible Land Policy.

⁷ Attacks on surveyors are not uncommon, and in the (recent) past even murders have been deplored. Reports on this can repeatedly be found in the national media: <https://realmuloodi.co.ug/10-arrested-over-alleged-murder-of-surveyor-in-gomba/> [05/2022]; <https://chimpreports.com/govt-pledges-to-protect-surveyors-after-karamoja-incident/> [05/2022].

external pressure and empower all persons in the subsequent process to adjust expectations and demands. Awareness-raising is a difficult and lengthy process. Especially in the area of customary rights, basic principles of previous land management are being questioned and the role of local hierarchies is potentially changing in this process. Especially with regard to the better protection of women and marginalised groups, there is a need for a fundamental rethinking of social structures. Accordingly, the project resorts to various forms of awareness-raising, e.g. radio programmes, plays (dealing with conflicts and their resolution), information brochures as well as information events at local level. The process is extremely lengthy, but necessary in view of the tense land rights situation, and it pays off in the end (see Chapter 5).

Successful education and awareness-raising among the population and local stakeholders is the basis for defining the boundaries between households, which have often been unclear up to now, in the next step together with the community and measuring them with the agreement of all the parties (neighbour, owner, clan representative and LC1 Chairperson⁸). Since the actors on *mailo* land are of a different nature, the main aim there is to improve the understanding between the landowners and the residents. A pacification of these conflicts offers the best chance to establish the model of dual entitlement to the land provided for in the Land Act in reality and to persuade the residents to make their claim to use the land (in the legal sense) incontestable via the annual lease.

Simultaneously to the community awareness sessions, GIZ works on capacity building of local stakeholders, especially the Area Land Committees, the surveyors and the District Land Board. This also includes the necessary technical equipment, which is rarely available in the sub-counties. The legal framework provides for responsibilities and a system of checks and balances between the different actors. The central tasks are distributed as follows (cf. Becker 2019):

In each sub-county of Uganda, the **Area Land Committees (ALC)** are a focal point for land issues and conflicts and are considered a mediation point alongside traditional leaders. The committee consists of four representatives and a chair. Applications for land certificates are made to the ALC. This supervises the survey of the land, collects all the necessary documents for the application and submits them to **the Area Land Board (ALB)**, which formally makes the decision to issue the certificate. The survey is carried out by qualified **Mapping Assistants**, who are employed by GIZ at sub-county level for the RELAPU project. All certificates issued in rural areas are subsequently held and managed by the **Sub-County Chief**.

The actual surveying of the land in the RELAPU project is done on a demand basis. Households interested in a land certificate are visited in a surveying process and the boundaries are digitally recorded together (as required by law) with the owners, neighbours, and other witnesses. After agreement by all present, physical boundaries are set, e.g. by planting drought-resistant trees. Surveying is done with the help of GNSS (Global Navigation Satellite System) on tablets or with professional surveying equipment (cf. GIZ n.d.). Prior to the survey, the intention of the demarcation will be displayed in the villages for a fortnight to give all residents the opportunity to appeal against the application in the presence of the ALC.

⁸ The LC1 Chairperson is an elected village representative who chairs the village committee. The role is to monitor law and security in the locality, and he/she serves as a mouthpiece for the government at the local level (see also <https://www.newvision.co.ug/news/1481237/exactly-role-lc1-chairperson> [05/2022]). In the area of lending, LC1s play a central role by providing a guarantee to the bank that the (non-formalised) land given as collateral is in the hands of the borrower.

The process from awareness-raising to the application for a COO or CCO is thus in the hands of the local partners; GIZ itself is only active “in the background” in a supportive capacity.

The surveying process and the costs for the application are subsidised by GIZ, so that households only have to pay a small fee (usually 15,000 UGX⁹). The actual cost per certificate is around 50,000 UGX on *mailo* land and 200,000 UGX on customary land, not including the preparatory work to raise awareness¹⁰.

Land Inventory Protocol (LIP)

As there has been practically no issuing of CCOs and COOs in the past and the national bodies are not prepared for the applications, the process between application and issuing of the certificates is extremely lengthy. To bridge this administrative process, which can sometimes take several years, the Land Inventory Protocol was developed under the leadership of GIZ. The idea follows the approach of UN Habitat, which describes land rights as a continuum. Land rights adapted to local conditions require a more flexible system than just the juxtaposition of informal and formal land tenure (cf. Global Land Tool Network n.d.)

Although the LIPs are not a legally binding document, they contain all information such as land size, coordinates, owners, land use and the witnesses present at the survey. As these documents are approved by the ALC and recognised by the LC1, they already provide some legal cover. As the document is also evidence that neighbours (and on *mailo* land, owners) do not contest the boundaries (and on *mailo* land, land use), there is some assurance that no direct boundary conflicts are likely. Accordingly, there are already cases where LIPs are accepted by banks as loan collateral and preferred to other informal proofs of access to land.

Households reached so far

As of February 2022, GIZ monitoring shows 10,273 households reached in the Teso region, with a total of 11,825 land areas surveyed. This means that the target indicator was almost doubled. During the process, 359 land conflicts were recorded, of which 306 are considered to have been settled. By the beginning of the year, about half of the households had already received an LIP and as many as 2614 CCOs had been issued.

The work in central Uganda clearly exceeds this in numbers. There, 79,520 households with 86,721 parcels were reached, which is also slightly above the target indicator. In the course of the work, 3043 land conflicts were registered, of which 70% are considered to have been mediated. 76,334 LIPs reached households by February 2022, but fewer than 100 COOs were issued. In the context of *mailo* land, residents’ entitlements are deposited in the national cadastre on the titles of the owners. This seriously delays the process. In total, only 1184 applications for a COO could be made.

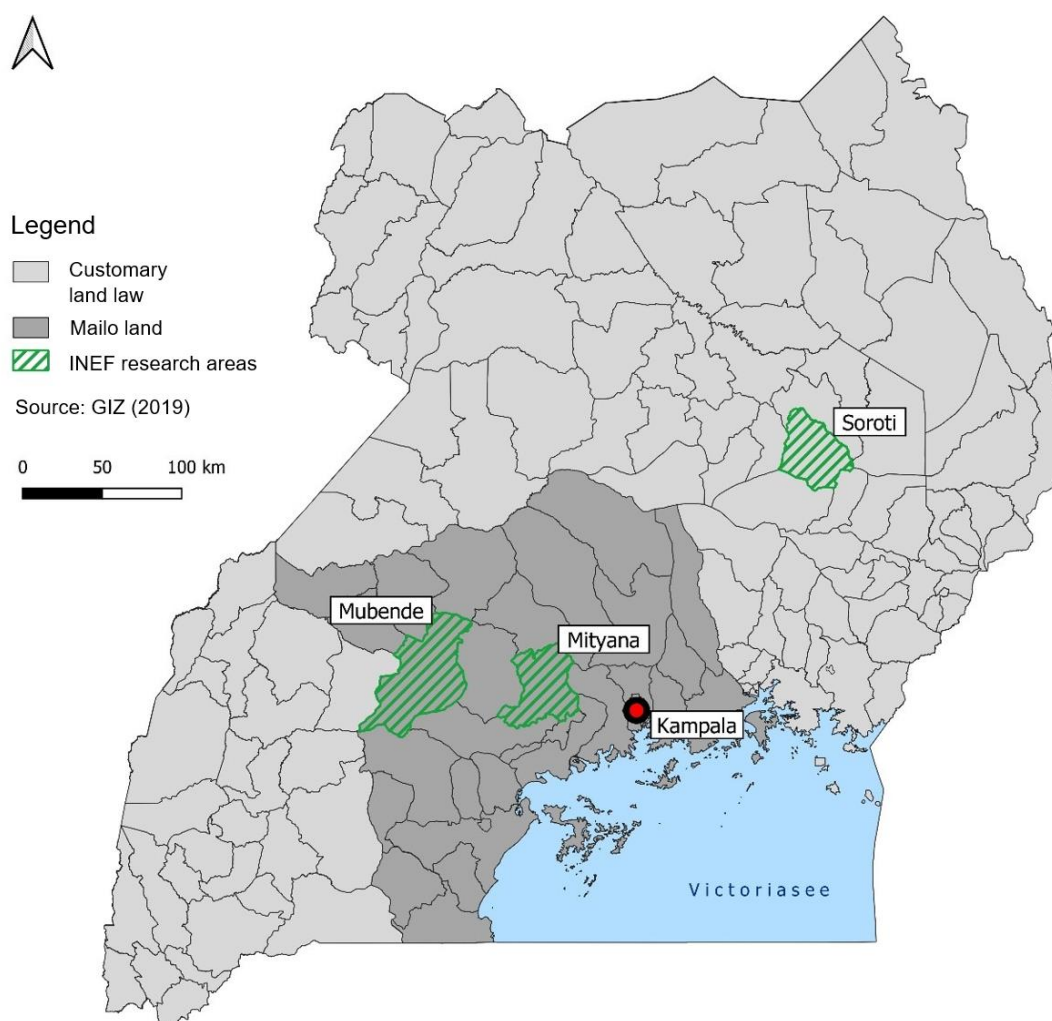
⁹ 1000 UGX = €0.26 (as of May 2022).

¹⁰ Internal calculation of GIZ.

4. Methodology and study region

The study was conducted by Dr Moses Okech from Makerere University in Kampala and Arne Rieber from INEF in two districts in the centre of the country (Mityana and Mubende) and in Soroti district in the east of the country (see Figure 1). The study thus focused on both regions under *mailo* land law and one region under customary law. This selection was made under the assumption that land rights systems affect access to financial services differently. Teso sub-region and the Soroti district, which were studied, represent the area of the RELAPU project which has made the most progress in the field of surveying and issuing LIPs/CCOs.

Figure 1: Land rights systems in rural Uganda.



In total, the data collection included seven focus group discussions (three in Mityana/Mubende and four in Soroti) with farmers and other villagers and 26 expert interviews (twelve in Mityana/Mubende and 14 in Soroti). The expert interviews in the rural regions focused on the involved civil society groups, local authority and local representatives as well as employees of the financial sector. In addition, discussions were held in Kampala with actors from German DC and the private and financial sectors and supplemented by digital conversations during and after the field visit. Contrary to the vast majority of previous AVE studies, the survey focused more on institutional aspects and less on the assessment of the target group of the project. As land certificates were issued only shortly before the study

began (and for a comparatively small number of households), the study was confronted with the challenge of anticipating the nexus between land formalisation and access to financial services. An already existing correlation could only be observed in an abstract way (see chapter 5). Accordingly, there was a need to examine the sustainability of the measure on the one hand and the reaction of the financial sector to it on the other hand.

Figure 2: Outskirts of Soroti in the Teso region.



With regard to the sub-area of access to financial services, the study set itself the goal of recording the current as well as the expected future supply, i.e. the supply after the formalisation of land rights, in the area of agricultural finance. In addition to the issue of land conflicts, the focus group discussions concentrated on understanding the credit situation of rural households to date and the extent to which there is a willingness to use land as collateral for loans. Interviews with banks and MFIs active in rural areas focused on *tier 1* banks¹¹ (Centenary, Equity, Opportunity) and *tier 2* financial institutions (PostBank, BRAC). A weakness of the survey is the strong focus on nationally established banks and MFIs, some of which are donor-supported or owned by the Ugandan government (and thus potentially have a more social orientation). This does not allow us to assess how smaller MFIs or even the informal financial sector will react to the increasing formalisation of land.

¹¹ The Ugandan financial sector is divided into four levels: Level 1: Commercial banks; Level 2: Credit institutions and financial companies; Level 3: Microfinance institutions with deposit-taking business; and Level 4: SACCOS, NGOs and all non-deposit-taking financial institutions. Levels 1-3 are regulated and supervised by the Bank of Uganda (Clark 2016).

5. Results of the investigation

In the research within the study of the nexus, there was a strong focus on the formalisation of land rights through RELAPU. The process remains very young and has not yet been tested in Uganda in larger targeted projects¹². Accordingly, RELAPU is understood as a pilot project that aims to demonstrate that the process towards formalisation of the land, and in particular a pacification of the conflictual situation, is possible. From a development perspective, what is crucial for successful implementation is how sustainable the measure is and how easy it is to preserve the land rights security which has been gained or increased. This is central with regard to access to financial services and especially for the sub-aspect of land as loan collateral (completely independent of the developmental assessment), as only sustainable formalisation of land provides financial service providers with a basis for assessing creditworthiness and security with the help of the land certificates. As soon as the documents become contestable or even show an outdated ownership status, they become worthless as loan collateral.

5.1 Formalisation of land rights

GIZ's approach to steadily formalising land and protecting or improving land access for women and marginalised groups, which has been established in Uganda since 2017, must be seen in the context of an extremely conflictual atmosphere around land issues in Uganda. The strong population pressure, foreign and national land investments and climatic changes trigger a high pressure on the resource land, which often leads to conflicts between social groups but also within clans, families and households. Accordingly, the primary goal of implementation, although presented differently in the ILGU sub-component, is not to improve the economic situation, but to protect the livelihood of land in order to be able to strive for economic development in the first place. Due to GIZ's strong focus on marginalised groups, this is positive from a development perspective; synergies will arise in any case after the improvement of land rights security.

5.1.1 Awareness-raising

GIZ, together with local political partners, village representatives and civil society groups, has put considerable effort into awareness-raising in both study areas. The multi-layered preparatory process of reaching out to local stakeholders and then the population, as outlined in Chapter 3, slows down the approach and is cost-intensive. However, it became apparent in discussions with a wide range of interlocutors that this effort not only pays off, but is the necessary basis for interventions in the field of land rights. The social climate and developments in the land market have triggered extreme scepticism among the population, which must be taken into account in all land interventions. The knowledge imparted to the rural population in this process enables them to defend their rights against third parties and to assert them through local structures. Local complaint mechanisms are crucial, as legal recourse is hardly available for many smallholder farmers. The necessary journeys to the district court and the need for legal representation are usually financially unaffordable, so that

¹² In his article, Becker (cf. 2019) lists in detail the various reasons why a demand-driven, broad process towards applications for CCOs/COOs failed in the past without development interventions. Lack of qualification, but predominantly a serious underfunding of the actors involved, made the land rights reform envisaged in the constitution *de facto* unfeasible.

in many cases the law of the (financially) strongest applies in court proceedings. Moreover, proceedings in the area of land conflicts take up to 15 years.

Figures 3 and 4: Awareness-raising posters in central Uganda.



The focus group discussions showed that the work of the civil society groups, although associated with a high level of effort, was able to arouse the interest of the population and reduce initial rejection. In addition, considerable success has been achieved in the area of awareness-raising. The civil society organisations are partners from the respective regions that have been known to the population for years. With this trust, the representatives managed not only to settle a multitude of land conflicts, but also to challenge established practices of land management in the clans. In the past, there was often displacement of widowed and divorced women. The discussions revealed that widowed women in particular retain title to the land in the clans even after the death of the husband and are given the right to bequeath the land to their descendants. The right of wives to access land, but also to own land, has also been strengthened, and a social process has been supported that has been questioning the patrilineal transmission of land for some time. This is also reflected in figures: in completed survey processes, about 35% of households on *mailo* land have both spouses listed as residents on the social LIP document. On land under customary law, the culturally embedded notion that the land belongs to all past, future and present family members was reinforced. This resulted in about 90% of the households registering all family members on the documents, and they accordingly receive a right of ownership when a land certificate is issued.

In central Uganda, in the area of *mailo* land rights, awareness-raising was particularly aimed at creating a dialogue between owners and residents. In the past, it was rarely possible for owners to enter their land or even collect rent, as they were opposed by residents when they tried. Education about existing land rights led to communicating both landowners' and residents' obligations and rights, and to establishing direct contact between the two parties. Separate meetings with landowners were organised for this purpose. This has enabled the

constitutional rent (*busuulu*) to be paid in many places, which in turn secures the title to the land for residents.

5.1.2 Surveying the land areas

The land surveying process described in Chapter 3 takes place with the participation of the inhabitants of the land, the LC1 Chairperson, neighbours and witnesses (as well as a representative of the clan in the case of land under customary law). The involvement of all parties concerned clearly contributes to a common understanding of land use boundaries and could significantly reduce conflicts between households and families. Boundaries are marked with traditional demarcation lines, e.g. with drought-resistant trees, but also digitally recorded and stored in a central system. This means that they can be called up in the event of potential conflicts.

Surveying the land helped many farmers to get a concrete indication of their land size for the first time. This helps not only in cases of sale or when land is used as collateral for a loan, but also in everyday farming practice. This means that farmers can now purchase inputs in a much more targeted manner for the cultivation of the corresponding area.

The joint definition of boundaries and the resulting reduction in conflicts between neighbours means that rural households are able to plan for the long term, make improvements to their own homes and invest in the perennial cultivation of classic cash crops such as coffee and bananas, the planting of trees or improvements to livestock housing. A successful reduction of land conflicts thus automatically creates synergies for improving the living conditions of the population.

However, in the focus group discussions it became apparent that the positive impact on farming activities is mainly felt by higher income farms, as appropriate investment capital is available to respond in the short term (at the time of the survey many respondents had only recently received a LIP or were still in the process of applying). For lower-income households, however, it has been possible to make previously disputed and thus unused land usable and thus to increase the area under cultivation to some extent.

5.1.3 Sustainability of the implementation

While the case of Uganda represents a very successful implementation in the area of formalising land rights, there are currently still major ambiguities in the area of sustainability. RELAPU relies on existing local structures. Through capacity building, provision of technical and spatial equipment as well as the financing of experts in the field of land surveying, but also the financial strengthening of the participating NGOs and Area Land Committees, the local structures were enabled to establish an inclusive process for land formalisation. However, if GIZ initiates its exit after a few years (in line with the logic of Technical Cooperation), the already time-consuming and costly process is in danger of being slowed down further. The financial support currently secures the work of some of the actors involved, and there would be a risk of a significant increase in costs for households. A high financial hurdle to the formalisation of land is not feasible for the many poorer rural households. For many households, a contribution of as little as USD 25 already corresponds to 5% or more of their annual income and is therefore a personal contribution which acts as a deterrent to them. If the approach has to be self-financing, i.e. via payment by households, the amount would certainly increase even further if all costs were included.

Due to a political decision on the part of the BMZ, GIZ will discontinue its work in the Teso region before the end of 2022. Both discussions with local officials and earlier unpublished studies strongly suggest that the lack of funding from another actor, such as FC or the Ugandan government, makes it difficult to sustain the successes in Teso. Accordingly, in the authors' view, it is important for the government to establish supra-regional coordination in order to be able to coordinate projects in this area with each other and to secure external funding via this platform.

Maintaining an ongoing system of land surveying is necessary for many reasons. Many households react sceptically to land rights interventions and initially hold back. Since RELAPU is demand-driven, such households are omitted in a first "wave" of the survey, but many later also wish to formalise the land. What is more central, however, is the ability to update LIPs and land certificates after surveying. Land markets in rural Uganda are active, with residents regularly buying, selling and bequeathing land. If there is no way to record this movement of land, the documents already issued lose value because there is a possibility that they do not reflect the current state of affairs. This is of particular importance with regard to the use of the certificates as loan collateral.

5.2 The rural financial market

With a high presence of nationally active financial service providers in the rural regions and socially oriented microfinance actors, there is a good availability of credit offers in the agricultural sector in the two regions under study. Formal savings or offers in the area of agricultural insurance remain a rarity.

Through group loans and cooperatives, financing can be obtained without collateral *in rem*, but in the area of formal individual loans, collateral through land is a basic requirement without exception. Informal purchase or sales receipts and confirmation by the LC1 serve as proof. Minimum loan amounts vary slightly between providers, but start in the very low range of around UGX 250,000 upwards. The credit offers are adapted to the agricultural calendar and include a term of several months, depending on the investment. Interest rates are traditionally high, usually in the range of 22-28% *per annum*. In central Uganda in particular, demand is very high in the capital-intensive and labour-intensive cultivation of coffee and bananas. Medium-sized farms (around five acres and more) and large farms can therefore benefit from agriculturally adapted financing. The banks' credit assessment focuses on the investment reported. Output is relatively easy to predict, especially in the coffee and banana growing sectors. In addition, the cash flow of the budget represents a central criterion. In addition, there is the very time-consuming verification of the land ownership or claim if this is deposited as loan collateral and a land certificate has not yet been issued. To do this, the bank seeks confirmation from LC1, but also talks to neighbours to ensure that there are no competing claims. This elaborate process of physical verification drives up transaction costs. The land deposited as loan collateral – as long as it is not formalised – represents only limited security for the banks. In the case of a non-refunded loan, an extremely elaborate process of confiscation begins. While it is possible to confiscate the land because of LC1 testimony (and on land under customary law through compulsory clan confirmation), legal processes can greatly delay this. From the perspective of the financial service providers, the personnel costs are very high, which is why (so far) they see the land as a last resort. Instead, attempts are made to obtain the outstanding amount by restructuring the loans or encouraging the sale of assets (and also land). Ultimately, the lack of security leads to a very elaborate and thorough

examination of creditworthiness, but also to a high level of risk aversion. Accordingly, there are only limited possibilities for poor households to obtain individual loans.

5.3 The nexus between formalisation of land rights and access to financial services

Lending is significantly influenced by the formalisation of land rights. The issuance of both LIPs and land certificates is welcomed by financial service providers and is or will be included in the credit assessment. During the survey, it was already observed that financial service providers accept the social documents of LIPs as loan collateral. LIPs overcome the glaring information deficit of banks and MFIs and reduce the need to physically verify the declared area itself, as the document makes visible the coordination, land use, ownership and confirmation by LC1 and Area Land Committee. Since the LIPs show the neighbours as witnesses, it can be assumed that competing claims only occur in the rarest of cases. As the scope for fraud is relatively large when using informal documents, several interviewees stated that they expect a reduction in fraud cases through land formalisation. With the increased information and reliable data on land sizes, banks have already been willing to raise the maximum loan size for households with LIPs in past cases. Discussions with the rural households showed that among the previously financially excluded households, the possibilities of accessing credit with the help of a LIP were relatively unknown.

In the area of legal land certificates, this study is in the realm of anticipation, as the first certificates were only issued immediately before the survey period, and only in the Teso region. However, during discussions with the financial service providers and representatives of the umbrella organisation of banks, it became clear that the financial sector has high hopes with regard to the legal formalisation of land. This would drastically increase loan security, as the land is much easier to seize and sell in the event of a loan default. While this is still not in the interest of the banks, since after deducting costs any surplus from the sale goes to the borrower, it increases the certainty that loan repayment will not be missed in full. All interviewed representatives of the financial sector therefore assume that the credit offer can be provided to broader segments of the population. While this certainly serves a much-needed financial need for some households, land as collateral for credit provides access to financial services for households that have had no previous contact with the formal financial market. The expert interviews revealed that many representatives of civil society and local authorities see a very low level of financial literacy among the population. This low level of knowledge about financial services and very limited experience with the formal financial market creates the risk that once the land is formalised, more households will fall into a debt trap, potentially losing their land through confiscation or through unavoidable proactive sales.

The fundamental question remains whether it can make sense for smallholder households with small farm sizes to enter into an individual credit model. While the academic literature (see Chapter 2) can certainly demonstrate productivity increases from access to credit, the question remains open whether this usually also leads to an increase in income, quite apart from the risks in the event of a bad harvest, which can have existential consequences in the case of small farms.

6. Conclusions and recommendations

The formalisation of land rights through GIZ's RELAPU project in Teso and the central region of Uganda is considered a pilot project in the implementation of the national land rights strategy. The project shows that despite the extremely conflictive environment, the formalisation of the land is possible. The approach of awareness-raising in the project can be described as a good practice in development cooperation; the inclusion of local stakeholders and well-known NGOs provides the basis for the necessary trust-building. The formalisation of the land not only provides better protection for land rights claims, but has also enabled a large number of existing conflicts within communities and between owners and residents to be settled in the past.

The rights of women and vulnerable groups were significantly improved through the awareness-raising measures and their access to land ownership was increased in the patrilineal inheritance systems.

However, the RELAPU approach also shows that an intervention in the area of land rights in Uganda is correspondingly time-consuming and cost-intensive. Scaling up the approach to the whole country will require a joint effort – both in terms of human and financial resources – between the Ugandan government, the Ugandan local authorities, and the international donor community. A steering committee, which has been lacking up to now, would play a decisive role in bringing together different initiatives and ensuring that all interventions work with comparable standards.

The biggest challenge remains in the area of sustainability of the approach. While the project has been able to demonstrate that land formalisation is possible and generates considerable demand in rural communities, handing over the necessary structures to sub-counties and districts faces unresolved funding and capacity issues. GIZ will leave the Teso region before the end of 2022, and a large number of stakeholders fear that the established successes will be unsustainable once GIZ's support is gone.

Being able to update the recorded plots is crucial in the area of sustainability. Uganda's land markets are very active and the ownership structure is constantly changing through inheritances and sales. In the absence of the possibility to update this with appropriate costs for the service, rural households fall back on informal arrangements, which ultimately leads to the official documents becoming obsolete and thus losing their value.

This is especially a problem in the area of financial services. For financial service providers, the documents provide a necessary basis of information for the assessment of creditworthiness and as a basis for credit security. When the documents show the current ownership or access status, they become valuable for assessment of creditworthiness.

The financial sector has so far reacted extremely positively to land rights formalisation through the RELAPU project. The assumption is that more people can be offered credit due to the improved credit security. To this end, GIZ has concluded a Memorandum of Understanding with the Uganda Bankers Association. Through EU co-financing of the project, it has the direct mandate to promote lending using the social land rights documents (LIPs) or legal certificates. This will certainly enable necessary investments to be made in seasonal cultivation by a large number of households, but it will also pose a risk, especially for the large number of households that have very little experience with the formal financial market. The risk of losing land due to a failed loan threatens the livelihood of rural farms. Accordingly, from the researchers' point of view, it is central that GIZ not only focuses on financial system development, but acts much more strongly at the demand level. In this context, the awareness-

raising measures that are taking place anyway provide a good basis for pointing out the risks of individual borrowing.

The EU co-financing indicators only provide for increased lending by land as loan collateral. It is believed that these credits lead to an increase in productivity and promote adaptation to climate change. This Theory of Change should be reviewed regularly in the interest of development policy. From a household's point of view, increasing productivity is only a goal if this leads to a sustainable increase in income (i.e. years with a low harvest are taken into account). The indicators that are ultimately relevant for households, e.g. the increase in income from increased borrowing, are not captured by the planned monitoring.

Experiences from other regions can help to anticipate certain developments on the (micro-)financial market. Should the improved land rights security and the resulting improved credit security lead to a more active offer of microfinance services and this also attract new players to the Ugandan market, the corresponding regulation should react in order to avoid developments such as those in Cambodia (see AVE study 30: Bliss 2022). The proposal formulated in AVE Study 30 to allow land as loan collateral only above a certain loan amount would be one way to cushion the risks for small rural farms.

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