Family Land Titles: the best strategy to advance and protect women’s land rights.

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1. Introduction.

The improvement of security of tenure for women under customary law is a priority for all stakeholders. The current strategy in Uganda, as elsewhere in Africa, is for women to get individual titles. In Uganda, the laws promote customary owners getting Certificates of Customary Ownership (CCOs) where no survey occurs and where land can be converted to freehold titles. This paper examines the likelihood of CCOs or titles being issued to rural women so as to give them secure land rights. The paper argues that the rural women have rights to family land and that a push for individual titles will endanger, rather than improve, their land rights. The paper promotes family land titles instead.

2. How women get land rights.

Different categories of women get land rights through: 1) marriage; 2) family allocation as inheritance; 3) purchase; 4) gifts; and 5) government leases. The predominant way that women acquire land is through marriage and family inheritance.

1. A wife receives land rights from her husband’s parents, which she owns equally and jointly with her husband in trust for their children. Neither the wife nor the husband can sell the land without family and clan consent.

2. A divorced woman must move back from the marital home to her maiden home, leaving her children, who have land rights, behind. Her clan membership, which entitles her to land rights from the husband’s family, is terminated at divorce. She then gets her land allocation (inheritance) from her parents if either is still alive and has any remaining family land for the brother who used her dowry to marry.

3. Unmarried girls are presumed to marry one day and never to divorce. If they do not marry, the father must allocate land to her as her inheritance. This is also her family land she manages in trust and can pass on to her children, but cannot sell without consent of her family and the clan.

4. A widow continues to own and manage the land as “head of family” after the death of the husband.

From the above, it is noted that all the women have land rights to family land that are allocated to them either as family members or as wives.

3. Why focusing on individual land titles are limiting.

1. Individual forms an average of only 8.2% of the land. In 11 workshops facilitated by LEMU in all districts in Lango and Teso regions to share the National Land Policy on boundary tree and sketch maps held between August and November 2014, LEMU met 652 participants who comprised of District Speakers, Resident District Commissioner (RDCs), Chief Administrative Officers (CAOs), Local Council 5 (LCVs), clan members, ICU contact persons, Chairpersons District Land Boards (DLBs), Lands Officers and District Police Commanders (DPCs). Members of Faith based institutions, the media and civil society who estimated the prevalence of family land, community land and individual land to be as follows:

<table>
<thead>
<tr>
<th>Family land</th>
<th>Communal land</th>
<th>Individual</th>
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<tbody>
<tr>
<td>Workshops</td>
<td>80</td>
<td>10</td>
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<td>85</td>
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<td>70</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>820</td>
<td>95</td>
<td>80</td>
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</tbody>
</table>

Average % 81.8 9.55 8.2

2. The participants also described individual lands as land that is purchased, and not many rural women purchase land.

4. According to Section 41(i) of new Uganda National Land Policy: “The Government shall amend the Land Act (CAP 227) to permit only individually owned customary land to be converted to Freehold.” Thus, family land, under which the majority of women have land rights, is excluded from conversion to freehold titles.

5. Implementation of laws, such as provisions implementing the Certificate of Customary Ownership (CCOs) under the Land Act, may not be as is expected. The Land Act provides that:

a) Land owners may also acquire land individually or with family members, and may acquire Certificates of Customary Ownership (CCO), which can be converted into freehold titles, and

b) The form for CCOs gives 3 choices for titles as: a) individual; b) family; or c) community. Given the land rights contestation in customary tenure and greed for land in society in Uganda today, the legal choices for titles are likely to lead to only individual titles being applied for because:

• The husband, as the “family head” of family land, is likely to register his name alone in the title, even when he ticks the “family box choice.” The legal change that takes place to make him the sole owner is lost on him because freehold is a new tenure system, to which he does not understand the terms and conditions. He will believe he is the “head of family,” managing customary land in trust for the family. By doing this, he legally converts family land into an “individual land”.

• A greedy “head of family” or an heir who manages family land may deliberately opt for individual land title to grab the land from the rest of the family for himself alone.

• Men who buy land before they marry, even when the land quickly becomes “family land” after he marries and produces children, may regard the land as their own personal property and register only their sole names. “In Kasese district, of the total number of 2.544 individual names that appear in the 2028 Certificate of Customary Ownership (CCO) application files that were processed and issued with CCO, 2058 (80.3%) were recorded as married and only 348 (13.5%) were indicated as single.”

• Women’s names will be left out of the family title because they are expected to marry and move to other families. Their rights will therefore “fall between two families”.

• If the three female heads of families – widows, unmarried girls, and divorced women—try to register the titles in their sole names, it is very likely that their families will stop them, as families fear that the women will remarry and move on and that inherited land could be lost to the new marital family, unlike men, who remain in one family throughout their lives.

• Giving people options for individual and family land titles risks the rights of those needing protection by men in families, as the men are likely to deliberately grab family land or mistakenly register only their names on the title. To reduce the risks, policy should give only one option for family land titles because:

a) family land is the most common; b) women’s rights will be included; c) the element of greed in men to grab land for themselves will be minimized, and d) individual land owners who can buy the land do not support systematic demarcation; they can afford.


1. Issuing CCOs or titles in the names of all family members should be the only option given for customary land owners with no other options or choices, as these choices are what leads to insecurity of tenure for women. Mandated family land titles ensure that family consent must be given before land sales.

2. The process of systematic demarcation must have four important phases throughout the country, with each stage completed before moving to the next.

The phases are:

Follow up report to CCO Kasese visit by members of the Northern Uganda Land Platform in November, 2014.
• **Phase 1** - Identify and record all the family and community members with land rights by drawing a family and community land rights and resource trees. In this way, all persons with land rights, whether currently living on the land or not, are documented and can be verified by others.

• **Phase 2** - Mark the land’s boundaries with special customarily-accepted “boundary trees” such as Jathropha, in the presence of all neighbours, then draw and sign sketch maps to determine size and other marks on the land. This work should be done only by family and community members, clans, Area Land Committees (ALC) and Local Council 1 (LC1). The Ministry of Lands, Housing and Urban Development (MLHUD) should put in place policies and guidelines to regulate these activities and pay for mapping equipment such as tape measure but should not be physically involved. The NGOs involved in this could then ensure that other owners are not left out.

• **Phase 3** - Discuss and agree on the “family and community land ownership units” and whose names would go on the family and community land titles and conditions for holding family and community land “in trust” within the formal documents.

• **Phase 4** – After the completion of phases 1 to 3, families and communities who want family and community land titles may then apply and be issued the family and community land titles. This only after a land registry for customary land titles is designed and operationalised.

7. Conclusion.

If the above phases are not followed, then all stakeholders should expect improvement of women’s land rights to remain “at sensitization” with no meaningful and tangible results. Wives, widows, unmarried girls, divorced women, and children will all lose their land rights of their “family land” to “male heads of families or heirs.” Once land rights are lost, they are very difficult to get back.

Government should prioritise the issue of family and community land titles over and above “individual privatized land,” since these are the predominant types of land in rural areas in Uganda. The implementation of systematic demarcation should remove the options of individual and only retain family and community titles.

The government should design appropriate “family and community land titles” with conditions for the head of family and clans to hold land in trust and a registry for it. This follows the National Land Policy.

Systematic demarcation process should be in four phases, starting with documenting family and community members’ land rights and resource trees, marking boundaries and drawing and signing maps, and, eventually, issuing family and community land titles.