

What should be included in the new “*Certificate of Title of Customary Ownership*” mandated under the 2013 Uganda National Land Policy (NLP)?

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A. Background:

Uganda's new National Land Policy (NLP), approved in 2013, brought an overdue and much needed change for the recognition and support of *Customary land tenure* in Uganda. Amongst other changes, the NLP recognized *Customary land tenure* and indicated that a new "*Certificate of Title of Customary Ownership*" based on customary land registry would confer rights equivalent to *Freehold land tenure*.

This information leaflet has therefore been prepared to examine and propose what form the *Customary land title*, to be called a "*Certificate of Title of Customary Ownership*" should take. The information is derived from our organizations' (Land & Equity Movement of Uganda, or LEMU's understanding of *Customary land tenure* practices in Acholi, Bunyoro, Lango, Teso, and three West Nile tribes, with input from clan leaders/councils) specifically from the customary laws of each area. The *Customary land tenure* practices have been recorded in publications on behalf of clans and their land customs in "*Principles, Practices, Rights and Responsibilities*" (PPRR) for each *Customary land tenure* system within the traditional institutions of these areas. The information was also derived from a workshop of members of the Teso Customary Land Rights Advocates (TECLARA) held in June 2016.

B. Differences between *Customary land tenure* and *Freehold land tenure* systems:

Section 27 of the Land Act states: "Any decision taken in respect of land held under customary tenure, whether

in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void."

For the benefit of communities and families who hold *Customary land* (which is a majority of those in the five regions where LEMU works), our lawyers and Project Managers have facilitated the writing of traditional practices that are followed in Acholi, Bunyoro, Lango, Teso, and West Nile) according to clan leadership and representatives most knowledgeable of the *Customary land tenure* practices in each area. However, there are more differences between the *Customary* and *State* land tenure systems than there are discriminatory customs since the *customary land tenure* system also has methods and practices that protect vulnerable widows and the rights of children as well as divorced or single women and families. Now that the NLP recognizes *Customary land tenure* and mandates that a "*Certificate of Title of Customary Ownership*" instrument be designed and implemented under the authority of the NLP, it is hoped that policy makers will be informed more by the following distinctions of *Customary land tenure* as they create an appropriate legal instrument of land ownership according to *Customary land tenure*.

LEGAL DISTINCTIONS BETWEEN *FREEHOLD* AND *CUSTOMARY* LAND TENURE SYSTEMS

S/No.	FREEHOLD LAND TENURE	CUSTOMARY LAND TENURE
1	<p>a) Land Rights are for Individual ownership of rights either as a natural person or an incorporated legal person</p> <p>b) Land rights are for men and women with no further categorisation of women and children;</p> <p>c) Land rights seem to exclude children not yet born.</p>	<p>a) Land is held in TRUST in units of family and community. Since all men are expected to marry at some point, even if they buy land as individuals, the land quickly becomes family land when they marry. Ultimately it is only women who can own land as individuals, but only if they buy the land. Most women cannot afford to buy land.</p> <p>b) Land rights come from either maiden homes or marital homes (but never both at the same time) with women and children moving in between families. For this purpose, land rights are described for different categories of people – married man, widow, unmarried man and woman, divorced woman, child born in marriage and child born outside of marriage.</p> <p>c) Land rights are for all family members today and for the children in future who have birth rights to land.</p>
2	State laws and regulations apply to govern land relations.	Traditional land customs, now documented in some regions as "Principles Practices, Rights and Responsibilities" (PPRR), or unwritten customs apply.
3	The principle of land administration is that "Land should be a marketable commodity" as per policy statement 84 of the NLP.	Customs take it that customary land is not for sale and must therefore be managed in trust for the future generations. Land is therefore not to be sold easily.
4	Female divorcee shares marital home with the husband.	A divorced woman returns to her parental (maiden) home since she is expected to have another chance at marriage. She is allocated land here to manage as head of family. Her children she gave birth to during marriage remain on the marital land where they have land rights.
5	All children are legitimate and biological parents are responsible for the wellbeing of the children. Land rights are not explicitly included amongst the "welfare provisions" of the Children's Act.	<p>All people born into or married into a family have rights to the land; BUT only children born during a marriage and not outside of a marriage. Children born outside of marriage therefore have no automatic rights to the land since the actions of their parents fall outside an accepted marriage institution. A procedure to correct the wrong therefore follows for the man to either marry the girl or pay a penalty to the girl's family to claim the child as his. However, if he declines the two options, then the child is taken in by the girl's family and given land by her family.</p> <p>The land rights of women therefore come from either maiden homes or marital homes depending on the status of the woman (if she is married, widowed, divorced, unmarried, or separated; Land rights of children also come from either maiden or marital homes.</p>

6	<p>a) Inheritance was provided for previously by the Succession law that gave a percentage of property to children (75%), wives (15%), dependents (9%) and heirs (1%). The Constitutional Court ruled that this law was discriminatory and has overturned it, so this is no longer valid as law. The vacuum created has not been filled with a new Act of Parliament.</p> <p>b) Inheritance takes place <u>after</u> the death of the person from whom the land is inherited. The deceased owner of the land has <u>predetermined (by a will or other written documents)</u> to whom the land will be given after his or her death.</p>	<p>a) All born in a family or married into a family have automatic land rights. The amount of land allocated to an individual male child at marriage and his wife differs according to how much land and how many children a family has.</p> <p>b) Inheritance takes place at marriage where land is passed on by the father/mother to their son/his wife, and their children.</p> <p>Persons who have died have no land rights under <i>Customary land tenure</i>. <i>Land is passed on to the children by land allocators who are still alive, and not dead.</i></p> <p>c) At the death of the head of household (a married man, widow, divorced woman, unmarried woman), if land is already allocated, the members of the families usually already know how much of the family land they own by previous allotment; A percentage distribution would therefore not make sense. But if land is still in the family pool and has not been allotted, it then needs to be divided equally to the wives first, who will then divide the land amongst their children.</p> <p>d) Land must be used for farming, building, and/or grazing.</p>
7	<p>Land justice occurs through the state and local courts, including: Local Council Courts, Tribunals, Magistrates' Courts, High Courts, and the Court of Appeal.</p>	<p>Land justice occurs through clan forums with appeals from the lower village level to the parish level to the sub-county level to the district level to the Apex body such as Lango Cultural Foundation (LCF), Iteso Cultural Union (ICU) and Ker Kwaro Acholi (KKA) within the customary hierarchical system.</p>
8	<p>The names of those who own land appear on titles and the managers of land are provided for by Acts of Parliament.</p>	<p>a) The same land owners manage the land in trust and are also the people with the management responsibilities of land. The most important aspect of management is protecting land rights of women and children and protecting land from leaving the clan and these roles are by men such as fathers, fathers in law, brothers in law, uncles, brothers, inheritors and male heirs. .</p> <p>b) The managers of land are the "heads of family," who are described to be a married man, a widow, a divorced woman, and an unmarried woman. These land managers manage one at a time and hold and manage the land in trust for the family.</p>

C. In whose names will a "Certificate of Title of Customary Ownership" be issued?

Understanding the differences in *Customary land tenure* and *Freehold land tenure* might be helpful but still does not answer the following questions:

1) 'In whose name should the title deed be given?'; 2) 'What conditions of the title should be adopted to reflect characteristics of *Customary land tenure*?' and 3) 'What laws should apply (state or customary) to subsequent land transactions on the land?' These questions and legal issues are discussed below:

In a workshop attended by the 15 NGOs; members of Teso Customary Land Rights Advocates (TECLARA), who support customary land tenure, the following proposals were made on different aspects of "Certificate of Title of Customary Ownership" for a family as the basis for the Ministry of Lands to start a nationwide consultation, discussion, and agreement.

Proposed Names on the "Certificate of Title of Customary Ownership"

1. **Husband, all wives, and all children:** This option was later rejected as it distorts land rights since each wife has individual land which they pass to their children. This option also leaves out the land management/clan role that the parents of the son(s) usually have to ensure the head of family does not abuse land rights

of family members and does not sell land without permission of the family members and parents.

2. **Each wife and her children, excluding the husband:** This was rejected as it would expose family land to risk of sale since as a widow, especially if childless, she becomes the sole owner of the land and this would make it easy for her to sell clan land, without the required consents. She could also remarry and bring a non-clan member to clan land.
3. **Husband, a wife, and her children.** If it is a polygamous family, the husband appears in all the titles of each wife but with each wife having only her children on the title (unlike the first option). This was rejected since this would give the husband more land rights than he is given under customs.
4. **"The Family of X (husband) and Y (wife).":** The facilitator said for this to work, the law would have to declare "family" to be a legal entity as it has already done in S. 22 (2) of the Land Act, but this section needs to be amended to define "head of family" in line with *Customary Land tenure*, which defines a "head of family" as either a "married man, widow, divorced woman, or unmarried woman" and that they can be heads of families in either marital or maiden homes. A married

man is "head of family" in only the marital home.

Discussion and consensus on names on the *Certificate of Title of Customary Ownership*: After a lengthy discussion, it was agreed that Options 3 and 4 be combined so that the title should be in the name of: "The family of X (husband) and Y (wife), with names and photographs of owners in drawn *Family Land Rights Lineage Tree* (FLRLT) and details of the family land in a sketch map signed by all relevant people is appended to the title to make it easy to record the subsequent changes that take place to the land rights through death, births, sale of land, allocation of land to children or inheritance resulting from new marriages, etc. The FLRLT would also name the people who gave land to the head of family and members of the family. They then perform the two management roles – a) manage the head of family to protect land rights of women and children; b) ensure land is not sold without family and clan consents, and c) appoint an heir to replace them as managers.

The slight change that the issuance of *Certificate of Title of Customary Ownership* will bring to customary land tenure is that rather than having one person as a head of family at a time, a husband and wife will now be joint managers/owners of land in trust for the family. In the case of an unmarried woman, widow, or divorced woman, the discussion should continue to agree

how the woman in one of these statuses should jointly manage/own family land with their family members. This could involve the eldest boy and/or girl child or the heir. This would protect land rights and land from becoming individually owned so that it will not be easy for an individual owner to sell the land.

D. Conditions to apply to the Certificate of Title of Customary Ownership.

The condition for holding the family land is that land is not for sale without written permission of all the adult family and the parents/land allocators and those who replace them as heirs. The **Family Land Rights Lineage Tree (FLRLT)**, their children, and grandchildren born thereafter would be drawn starting from the parents/land allocator and those who replace them, who will provide the management function of ensuring that the land rights of women and children are not abused and land is not sold irresponsibly by an individual owner/manager without the required consents; also "head of family" would need to be defined to be a married man, widow, unmarried woman and divorced woman.

E. What laws should apply to customary land titles?

The laws governing *Customary land tenure*, are documented by the traditional institutions in their books of customary land laws, called "*Principles, Practices, Rights and Responsibilities (PPRR)*" that have been produced by Lango Cultural Foundation (LCF) Iteso Cultural Union (ICU), Kumam Elders Forum (KEF), and

called “*Values, Principles, Practices, Rights and Responsibilities (VPPRR)*” for Bunyoro Kitara Kingdom (BKK), and Alur Kingdom (AK) with the assistance of LEMU and donor partners. Some of these laws that are similar across regions should be used to enact laws governing the *customary land tenure* system, especially for subsequent land transactions.

F. Risks involved in issuing *Certificates of Title of Customary Ownership*: The elements of risk concerning issuance of *Certificate of Title of Customary Ownership* include:

- *Customary land tenure* will lose its flexibilities to accept new members of families to become owners of land. For example, a married woman with a family title might not agree to include a child born to her husband outside of marriage.
- Loss of the clans’ responsibility to counsel and manage the head of family not to abuse the land rights of family members and not to sell land without the consent of the family and the parents who allocated the land.

G. Conclusion:

We at TECLARA believe that it is *only* when the provisions of the NLP as stated below are met, that *customary land tenure* will evolve and not be converted to other tenure systems such as a Freehold:

- An appropriate *Certificate of Title of Customary Ownership* is designed, popularized, and issued to *Customary land tenure* owners;
- Appropriate laws are passed to govern customary land in the process of getting titles and after the issue of titles.
- An appropriate Registry for *customary land tenure* certificates of ownership is designed, operationalized and housed in the Ministry of Lands, Housing and Urban Development.

Therefore, we urge the Ministry of Lands, Housing and Urban Development, Parliament of Uganda and other stakeholders to support the implementation of these provisions for *Customary land tenure* by enacting a proper *Certificate of Title of Customary Ownership* under the 2013 NLP so as to positively affect the livelihoods of the citizens who own up to 80% of Ugandan land.



Iteso Cultural Union
(ICU)



Kolir Women
Development
Organization
(KOWDO)



Teso-Karamoja
Peaceful Co-
existence Initiative
Programme
(TEKAPIP)



Soroti Catholic
Diocese Justice and
Peace Commission
(SOCAJAPIC)



Teso Karamoja
Women Initiative for
Peace (TEKWIP).



Elders Forum for Peace
and Development -
Amuria (EFPDA)



Teso War Victims
Cattle Rustling
and Claimants'
Association
(TEWCCA)



Soroti Catholic
Diocese
Integrated
Development
Organization
(SOCADIDO)



Apoolo Na Angor
(ANA)



Teso Initiative for
Peace (TIP)



Teso Religious
Leaders Efforts
for Peace and
Reconciliation
(TERELEPAR)



Kaberamaido
District NGO Forum
(KADINGOF)



Making land work for us all

Land and Equity Movement in
Uganda (LEMU)



Teso Women Peace
Activists (TEWPA)



Action for
Community
Development
(ACD)

Trocaire
Working for a just world.