

ASK THESE QUESTIONS TO PROMOTERS OF TITLES AND CERTIFICATES ON CUSTOMARY LAND:

- 1) Ask** in whose names the family land title or certificate should be. This is important because the names that are excluded will legally no longer be considered as owners of the family land given a title or certificate. Ask especially how the children yet to be born will be included in the title/Certificate.
- 2) Ask** what laws will apply to the land after it is given a title or a certificate – If it is to be customary laws, ask how will government; Will you still hold your land in trust for the family?; **If** you want to sell the land, after you have acquired a title or a certificate, who is to give consent for you to sell? Under customary land laws, the family and the clan must give consent before land is sold. If the family or clan is to continue to give consent, how will the government know which family and clan members to ask for the consent if their names are not already recorded in the title or the certificate? Are you taking a risk?
- 3) Ask** who you are to inform within the government structure if you want to sell your land and who will oversee the sale – Is it the clan or the government institution? This is important because the current law says if you sell your land that is titled or has a certificate without the knowledge of the sub county chief; the sale will not be recognized by the government as having taken place. Ask if the office of the sub county chief is functioning well as a registry. If it is not, this becomes a risk when you sell your land because you are likely to have conflict with the buyer of your land.
- 4) Ask** what documents government will accept for you to transfer title to someone else either because you have sold, or the person whose name is in the title has died or you want to give a land gift or allocate to a child who was not yet born at the time you were issued the certificate/title. Will the government accept letters from the clans requesting the change in the names in the titles or will they only accept papers from the courts called “letters of administration” after you have engaged a lawyer to help you process and a birth certificate? If you have sold your land, will government (the Sub country chief) accept the sales agreement drawn by the clans or will they want documents drawn by a lawyer? Are you taking a risk?
- 5) Ask**, if you have conflict on the land with a title or certificate, who will hear this land dispute – the clan, the LC courts or the Magistrates courts? If it is the latter, are you confident enough to represent yourself in the Magistrates court or do you have enough money to engage a lawyer to represent you in court, especially if the matter is appealed? Are you taking a risk?
- 6) Ask** who will pay for the allowances to the Area Land Committees (ALCs) who are supposed to be paid for by the local governments when they come to verify ownership and boundaries of the land to ensure there is no conflict so that you only pay the 10,000/= in total for the title/Certificate. Are you at risk of being asked to pay more than the law allows?



ASK if the certificate you will be given is of the same legal weight or equal to other certificates given by the government – for example a Freehold title? If it is not, ask why government is treating your certificate as inferior when customary land was there long before Freehold, leasehold and Mailo tenure? **If** the answers to the questions above do not satisfy you, finally ask yourself is the title or certificate that is being proposed really going to improve security of your land rights or not? If yes, go ahead and process your titles or certificates. If not, we recommend that, in the short term you protect your land in the same way that your ancestors before you did by doing the following:

- 1) Respect customary land tenure systems by being truthful, respecting your clan leadership, respecting and protecting women's, children's and neighbours' land rights.
- 2) Document the names of all your family members who own family land in family land lineage tree (FLR<) to show who owns the family land whether they live with you or not.
- 3) Plant Omara Omara/ Etuba/Oligo or Eligoi/Ejumula on your boundaries with all neighbours and clan leaders, LCs present and in agreement in writing to prevent boundary encroachment and disputes.
- 4) Draw sketch maps of your family land and have neighbours, family members, clan leaders and LCs sign them so that you may have details on the land your own.

For the long term ASK your Members of Parliament and the Ministry of Lands to:

Lobby the government to stop continuous conversion of customary land to freehold as this contravenes the provisions of the National Land Policy (NLP) and continues to treat customary land tenure as inferior. Ask your MP to lobby specifically for government to:

- I. Design and issue** an appropriate family land title that keeps land management under the clans and does not replace clan management with state land management bodies such as the District Land Board, Area Land Committee, the Tribunal, the Sub Country Chief, and the District Registrar.
- II. Provide for a registry** for customary land in the Ministry of Lands in Kampala and with branches up country as it is the case for the other tenure systems.
- III. Pass a new law** that recognizes the responsibilities of the clans as the managers of customary land and makes them the first people to hear land disputes.
- IV. Provide a one path structure** for hearing land disputes and not the current parallel and LC/ clan/Magistrates structures.
- V. Lobby courts** to recognise and use the documented customary land law in courts of law as a guide.

Paper by Judy Adoko
Executive Director of LEMU
8th January, 2018

