

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

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7th November, 2014



ABSTRACT:

Security of tenure for women in customary tenure is a priority for all. The current strategy in Uganda and Africa is for women to get individual titles, even though in 80% of land women inherit family land rights under customary tenure. A push for individual titles will therefore endanger rather than improve their land rights. This Paper promotes family and community land titles instead, because customary land is held as family land managed by heads of families, three of them women. Promoting individual land titles will endanger the family land rights of women because: - male family head will title in only his name either deliberately or in ignorance of the legal implication; Clans will not allow widows, divorced and unmarried women to have individual titles to family land; Titling converts customary land and this is now against National Land Policy. The only recommended family and community titling should follow a process of: discussion and consensus; identifying owners; marking boundaries; drawing maps and setting up registries and registration. The result of this process is more likely to lead better protection of land rights of women than individual title.

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 women who have land rights under customary land giving them secure land rights. The paper argues that the push for individual land titles for women who have land rights to family land held under customary land tenure will endanger, rather than improve, their land rights, and yet once land rights are lost it is very difficult to get them back. The paper promotes family and community land titles as better alternatives to individual land titles.

2. How women get Land Rights.

Different categories of women get customary land rights through:

1. Marriage is defined in Uganda as dowry having been paid by the boy's family to the girl's family. A wife receives land rights from her husband's parents, which she owns equally and jointly with her husband in trust for their children. As a widow, she continues to own and manage the land as "head of family" after the death of the husband. If she divorces, she 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, or from the brother who used her dowry to marry.
2. Family allocation as inheritance passed mainly to boys at marriage. 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.
3. Purchase and Land gifts: As it is expensive to buy land, only those who have income can do so. These are mainly the educated and the business people who are predominantly men. Long time ago, land was so plentiful that they were given away to those accepted as members of a family as gifts.
4. Government leases. The practice is such that only those who are educated have political connections and civil servants had access to the knowledge and the means to apply and acquire government leaseholds. Some leases were issued to the same customary land owners. Besides, the land laws that made customary land tenure illegitimate was not known to many rural populace who continued to own their land irregardless of the law. Those with government leases again are predominantly male **(TO QUOTE DATA FROM Research by MISR)**

The predominant way that women acquire land is through marriage and family inheritance and not through purchase or government leases.

From the above, it should be noted that the majority of rural women have land rights to family land that are allocated to them either as family members. To ignore this reality and offer individual land rights of a family to individual women is to encourage resistance against women by the male family members. This is because of the nature of customary land rights and management described below.

Fundamentally, there is a deep misunderstanding about the nature of customary tenure, which is held by local and national Government, and by the international institutions which are supporting the development of Uganda's land policy. There is a strong belief that land held under customary tenure is owned communally by clans and that people only have the right to use land. Even the 1998 Land Act describes customary tenure in terms of communal ownership. This is believed to be bad for investment in land and agricultural development. Since all land is held communally, runs the argument, people don't have security of tenure and so will not invest in their land, because the investment would not be safe. Also, since land is communal, no one can have documents of ownership over the areas they farm. This means they don't have collateral and so prevents them from accessing (cheaper) loans. This too will prevent people from investing in productive agriculture. Finally, since people don't properly own land and can't sell it, no land market can develop. This will prevent investors, people who could use the land more productively, from buying land, so preventing economic development. These arguments, dating back to colonial times, are widely held by institutions such as the World Bank¹ and in Government. Government policy has therefore been to encourage titling of land for freehold tenure. This gives all rights in land to named persons, usually a single individual², and frees the owner from any social obligations that may be held under customary tenure regarding the land. Acquiring a title can be an expensive process, since it requires a survey of each individual plot of land. The Government usually implements a programme for systematic titling whereby it is surveying every plot of land where the owner wishes. The reason for undertaking systematic demarcation of all land at a time is to reduce the costs and so make titling available to more people. The underlying presumption is that there is a single owner who already holds all the rights in that land - a patently false assumption, under customary tenure.

Customary land management and rights remain unwritten and unclear or where it is written³, it is not respected and applied by the state actors. Some of the confusion about who 'owns' land under customary

¹ The World Bank does not have a single monolithic view, and it is very aware of the limitations of the theory, though it still tends to favour the individualisation of ownership and the development of a land market.

² though title can also be held by a "corporate body", a company which has a legal identity, jointly or in common.

³ Lango, Teso, Acholi regions and the Kumam communities have documented their Principles, Practices, Rights and Responsibilities (PPRR), all available on website www.land-in-uganda.org

tenure is because the ownership and management of land are not organised in the same way as for freehold land. In freehold, the person (or people) who have their names on the title have the rights to use land as they wish, as long as the planning regulations of the authorities (e.g. the Town Council) are followed. They can choose whether or not they want to sell the land and to whom – though the Government does not allow them to sell land to someone who is not a citizen. The Government has set up a system for administering the land – the Land Boards, the Land Tribunals, and the Land Registry. These offices do not own the land, but they are there to decide who owns land in case of disputes, and to make sure that everyone knows who owns which land. In customary law, rights and responsibilities are not organised the same way. Owning land does not mean the same thing, because the rights and responsibilities are different from rights under Freehold or leasehold tenure. This does not mean that people are not ‘really’ the owners of their land. They do ‘really’ own their land, but ‘owning’ land means something slightly different. Some people have the responsibility for administering land. This is usually the clan elders. However, they also have the right to say who can sell land. That is because they have the responsibility to protect the land for all the family members. They also have the responsibility to make sure that everyone is given rights to land. This duty does not exist in the freehold system, because there are no responsibilities for freehold owners to provide others with access to land. It would be legal for one person to own all the (registered) land in the country, and for him or her to refuse to allow anyone else to farm. This cannot happen under customary law for family land and for members.

The family head usually who are married men, widows, unmarried women and divorced women manage the land on behalf of the family. S/he is the steward of the land. His/Her rights to manage the land go together with the responsibility to look after the rights of others to use the land, and to make sure that the next generation will also be able to enjoy the land. Other people in the family also have rights to own the land. This is why it is not so easy to answer ‘who owns the land?’ The land really belongs to the family within the clan, but the rights are shared out in a complex way. In the midst of this difficulty, the implementation of a systematic demarcation programme spearheaded by technicians to the exclusion of the governance system and the rights holders is very likely to exclude rights of some owner, especially women and children.

Considering that in owning land heads of family has both responsibilities to be the steward of the land in the interests of the family and rights, to own the land and make decisions about allocation, asking “who owns this land” cannot have the same meaning and understanding especially as over time, the relationship between the dual roles of being steward and having rights to the land have changed and the rights-holder/steward has claimed to be the owner of the land. The result of this change is negative – those consider weak or whose rights take last priority and need more flexibility (women and children) have become vulnerable. Having government technocrats implementing systematic demarcation and asking the question “who owns this land” is very likely not to auger well for a) women, b) children, c) family members who are away from home.

3. Why focusing on Individual Land Titles are limiting – There are five reasons why prioritizing and focusing on individual land titles and not family land titles is limiting for women and children. These are

detailed below:

- **Land owned by Individual forms an average of only 8% of the land.** In 10 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, Chairpersons District Land Boards (DLB), Lands Officers and District Police Commanders (DPCs), members of Faith based institutions, the media and civil society. When asked, they estimated the prevalence of family land, communal land and individual land out of 100% to be as follows:

Workshops	Family land	Communal land	Individual
1	80	10	10
2	85	5	5
3	85	10	5
4	85	10	5
5	80	10	10
6	85	10	5
7	80	10	10
8	80	15	5
9	90	5	5
10	70	10	20
	820	95	80
Average %	82	9.5	8

Focusing and prioritizing individual land and not family land therefore means that the programme and policy targets few owners, little land and leaves out the majority of family land owners, where many women and children have land rights.

- **Land owned individually by men is of temporal nature** - Individually owned land was described in the workshops by the participants as “land that is purchased”. It is mainly men who buy land because they are the ones with the money but also the ones with the responsibilities to raise a family. So, even if they buy land before they marry, the land they buy and own as an individual automatically becomes family land the moment he is married and brings a wife to the land. The implication for this is that individually owned land is temporal and not long term because all men except for priests are expected socially to get married one day. Nonetheless, by offering titles to land that is individually owned, policy makes it easy for the married man who buys land before they marry to regard the land as their own personal property and register only their sole names to the exclusion of the wives and children. Policy also plays on the greed and ignorance of the male head of family. Given the land rights contestation in

customary tenure and greed for land in society in Uganda today, giving people options for individual or 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. The offer of choices gives opportunity for greed to take root and is likely to lead to male and sometimes female heads of families who are to manage family land in trust for the family to apply for a title in his names for the family land. 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 land box choice.” The legal change that takes place to make him the sole owner to the exclusion of his wives, children 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. The fact that the clan will no longer be the manager of the land or that the laws applicable will no longer be customary laws is lost on him. By doing this, he legally “converts” family land into an “individual land” solely owned by him. The evidence of this happening is from Kasese District where the CCO implementation is the highest in the Country. According the research by Northern Uganda Land Platform (NULP) research in October, 2014, “Most of the CCOs applicants applied for individual ownership despite the fact that an overwhelming majority of the applicants were married and had wives and children. Of the 2028 issued CCOs, up to 74.8% had been issued to individuals, 17.3% had been issued to families, and 7.9% had been issued to groups/companies. Of a total number of 2544 individual names that appeared in the 2028 CCO application files of issued CCOs, 80.3% were recorded as married and only 13.5% indicated they were single. Similarly, of the 4033 individuals names that appeared in the 2851 applications that had been approved but not issued, 80.5% (3270) indicated that they were married and only 11.9% (482) indicated that they were not married. The findings therefore show that women and children had been disenfranchised of their land rights although they were often witnesses to the CCO acquisition process. When a greedy head of family grabs land from the family and titles it, whether fraudulently or through lack of understanding of its implication, s/he is then protected by Section 59 of the current Registration of Titles Act which states that: *“No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application in the proceedings previous to the registration of the certificate, and every Certificate of Title issued under this Act shall be received in all courts as evidence of the particular set forth in the Certificate..... and shall be conclusive evidence that the person named in the certificate is the proprietor”* Even though, with the new National Land Policy this law is to be amended, this law is still currently applicable. Any family member who wants to challenge the head of family would then need the services of a professional advocate to challenge the title in a court of law and are no longer able to solve the land dispute before their traditional systems since the land is titled land. Since this is beyond their reach, they lose their land rights permanently.

- **Converting customary land tenure to Freehold is now against the Land Policy** - 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.”* S. 32 (b) Policy Statements also provides that *“The State shall clarify the nature of property rights under the designated*

tenure regimes to remove uncertainties and allow for evolution” and S. 41 states that Government - “ to facilitate the design and evolution of a legislative framework for customary tenure, Government shall: (i) – Amend the Land Act (Cap 227) to permit only individually owned customary land to be converted to freehold and (ii) – amend the Registration of Titles Act (Cap 230) to place customary tenure at par (same level) with other tenure systems; Thus, family land, under which the majority of women have land rights, is excluded from conversion to freehold titles and any government programmes such as systematic demarcation projects designed to assist land owners get titles will only target the few individual male land owners who are able to afford the costs of titling. If the targeting of individual land owners does not precede the systematic demarcation exercise, it is likely that what is described above section on “Land owned individually by men is of temporal nature” will happen and women and children will lose their land rights.

- **Fear of families that women marrying and remarrying will deprive families of their land when they move to New Families** - In the marital homes, widows have options to live on their marital homes, return to maiden home and remarry. Until a widow gets very old or dies, the clans fear that she could remarry and leave the land. There is also an assumption that all girls will marry and leave their maiden homes for good. Because of this assumption land allocations to women in maiden homes exclude women until it is absolutely obvious that the girl will not marry. If therefore 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, for fear that when they marry or remarry and move on the family would lose the inherited land to the family the girls marry into. A family land title with the names of family members would reduce this fear.

Key Questions for implementation. - Nearly all stakeholders agree that some alternative instrument or paper title –could be highly beneficial in principle to help secure rights of women and children to land based on local practices and understanding of customary tenure. At the same time, a growing number of actors caution that successful implementation on the ground faces far too many obstacles under the current regime. Numerous problems hinder proper land administration in Uganda, including: parallel clan justice and Local Council court systems, greedy individuals within families who seek to obtain the land of vulnerable communities, backlogged and bribable courts, poor enforcement for land-related judgments, and the sheer cost of hearing land cases caused by both the need to visit the land in question and frequent court adjournments. The proposal for family and community land titles cannot therefore be implemented until these questions are clarified, an over-hasty implementation could result in a situation where the potential benefits of family and community land titles are outweighed by difficulties, whether administrative or otherwise.⁴ Before implementing this proposal the following questions and issues need to be discussed and answered:

⁴ This would be an unfortunate missed opportunity to improve systems of customary ownership in the three sub-regions for the vast majority of those who rely on its principles. It is imperative that the final structure of a CCO – or its alternative – is appropriate to customary land practices, and not treated as a “quasi-freehold” approach.

1) Under whose names will a CCO be registered?

The majority of land in greater northern Uganda is family-held land under the management and authority of a larger kinship-based group, typically a clan or sub-group of a clan (hereafter referred to as “clan”). In most cases, a rights-holder is considered the customary manager, or steward, of the land, while the land rights are equal to all family members. For example, the heads of family⁵ are allocated land to own and manage in trust and on behalf of their family members (and clan), both those born and yet to be born. But how will titles capture the important aspect of “managing land in trust for family members (and the clan)”? In other words, under whose names will a title be registered?

It is important that practitioners are careful with the language employed when discussing customary rights: the concept of freehold, individual ownership should not be confused with customary management and stewardship, or else there is a risk that the two will in future be taken to be interchangeable, risking the loss of fundamental aspects of customary ownership.

While a title for family and community land can cater for many names the implementation of the current Land Act in issuing Certificate of Customary Ownership (CCO) which form even includes an option to “add (names) as necessary” has been difficult to realize on the ground. In their introduction of CCOs in Oyam and Apac districts, because the Area Land Committees advised community members that only five (5) names should be written on the form. This left out names of some persons with rights to family land, as the local applicants had numbers of children ranging from 3 to 22. This practice results in the loss of recognition of legal land rights and permits the opportunity for bitter family land conflicts to simmer for the future.

2) What is the appropriate unit for Registration of Family Land Title?

Most land in Northern Uganda is held as either individually, as family or community/clan land, managed by heads of family or appointed people in trust for the other family members, as well as for the larger kinship group of which the family is a part. The family unit, however, varies from region to region. In Lango, the family seems smaller and typically comprises a father, the son and his wife and children – leaving out the grandfather as administrator of the land. In Acholi, ongoing research indicates that the units in which land rights are typically vested are clans, sub-clans, or extended families. Such a system presents a real challenge for issuance of family and community titles. In whose names will a family and community land title be registered, since the number of households (and even more, the number of individuals) can be very large, and some of them would be living outside the land? And how would the title keep land distinctive to each user/owner individual or household?

⁵ A married man, widow, unmarried woman, and divorced woman are each recognized as the head of their respective family.

3) How will Family and Community Land Titles recognize clan governance?

Even when all the names of a family are entered on the family and community land title, the question still remains as to how the clan would continue to legally manage the land, especially to ensure that the land is not sold without their consent. In other words, how will family and community land titles issued to single families not strengthen the concept of freehold (or quasi-freehold) individual ownership at the expense of customary management or clan stewardship? And for transactions involving land under titles, how will the registrars ensure that the consent of the family has been obtained by the head of family?

The same question applies in the context of succession. When a head of family dies and leaves behind customary land, survivors may seek Letters of Administration. Should the clan, as the legal custodian of customary lands, be the one to authorize administration of customary estates? Which law of succession applies for customary land title?

4) How can Titles or Certificate of Customary Ownership (CCOs) reflect changes in the Marital Status (and land rights) of Women?

Another difficulty is the issue of women and their children who, because of marriage or relationships, move between two families – maiden and marital families. Under customary tenure, women and children are allocated land from either their marital or maiden home. A woman and her child is allocated land from her maiden home (or clan) if not married or divorced and from her marital home (or clan) if married or widowed. Thus, the source of their land rights can change accordingly. How can the special status of women and their children who move between family groups be accommodated on Titles as currently designed and fall in between the two families? Will authorities and their records be able to keep up with these constant changes? From the experience in the initial roll-out of CCOs in Amuru, Oyam and Apac, girls' names are left out on the CCOs "because they are either married or will be married." This raises the concern that if the names of the family members are not documented before the process of titling, this will act to further marginalize the land rights of women and their children rights that are already all too often abused. It is crucial that family and community land titles do not inadvertently offer an opportunity to legitimize this marginalisation.

For widows, the issue is even more complex. If a widow acquires a title for family land and then she remarries and relinquishes rights to the first marital home, what should happen then?

Each of these scenarios implies massive coordination efforts at the Lands Registry, which – at present – do not seem realistic, particularly given the administrative limitations faced by land administrative systems in Uganda today.

5) Which law applies for Transactions involving Family and Community Land Titles?

For any land transactions (mortgage, sale, transfer) – any change in the title must be matched with the copy kept by the recorder (Registrar of titles or Sub county chief). For the family and community land titles, which law will apply for these transactions: the Registration of Titles Act, or another law?

6) How many titles per family?

Many families in northern Uganda have more than one piece of land and these plots are often not contiguous. If a family is to be granted a title, for which land will the title apply? Should each parcel of land have its own title – this would mean that one family might have multiple titles – or should all the scattered land to which the family has rights be put on the same title, as was the case with the CCO implementation in Oyam District? If such a title was used as collateral and there was a default in payment, what would be the implications of this?

7) How to increase buy-in for titles among local actors?

Traditional institutions, local governments, faith-based organizations, politicians and communities have not been engaged in the planning for or implementation of titles. In Oyam, Kasese and Apac, the people who carried out the sensitization were mainly the Area Land Committees who themselves seem not to have understood the full implications of a title. The fact that they only allowed 5 names on the Certificate and left out the names of other family members is proof of this. In Oyam, the sensitization of the CCO applicants took 3 days only – the same day they were sensitized was the day they filled in the forms for CCOs, with no time to consult with their families. The traditional institutions, who are the managers of customary land, were not consulted in this process and yet the *Land Act (CAP 227)* gives them this mandate.

8) Where is the Institutional Machinery required to make Family and Community Land Title work?

Currently, none of the Recorder's Offices, which the law assigns under the Sub-County Chiefs, are functioning as Land Registries in Northern Uganda. For these registries to function, each needs access to tools such as Customary Land Identification Number (CLIN) Allocation Books, family and community land Title Registers. Districts need to be equipped with these items.

Other technicalities needed for the proper registration of a family and community land title include a portion number and a listing of conditions, restrictions, limitations and encumbrances. These are not yet finalized. When these are agreed, they would most likely need a new Act of Parliament or an amendment to the Registration of Titles Act. The Land Act states that the customary land certificate registration be at the sub county level with sub county chiefs, but this goes against the spirit of the National Land Policies which puts customary tenure at par with the three other tenure systems and removes discrimination against one system.

In addition, although the *Land Act* allows for a clan or other community to be formed into a legal entity such as an Association in order to apply for a group title including for community grazing or hunting lands, the current law allows for the certification of the communities in the names of individuals and not the association. This exposes the communities of having the individuals sell their land without their consent.

The dangers of implementing a system that purports to offer additional security but in effect adds to confusion thus far outweigh arguments for proceeding. Should these shortcomings not first be ironed out before the family and community land titles can achieve the purposes for which it is proposed?

Implementation of family and community land titles – should therefore be viewed as a long-term process. In order to reduce the risks described above, the Ministry of Lands Housing and Urban Development (MLHUD) should suspend the roll-out of CCOs and systematic demarcation programmes under the current approach and adopt a more comprehensive strategy. As part of this process, the Ministry should:

- a) Create an enabling legal environment for customary tenure by putting in place relevant guidelines⁶, policies, and laws which include implementation of family and community land titles.
- b) Raise public support for systematic demarcation by using boundary trees or some other cost-effective and culturally appropriate boundary marks;⁷
- c) Support the recording of land rights on family and community land rights tree and on locally verified sketch maps;
- d) Engage all stakeholders (civil society, government, courts, banks, faith-based institutions, traditional institutions, politicians, academics, etc.) in the development of a long-term strategy to secure citizens' rights to customary lands;
- e) Put in place and fund necessary family and community land titles implementation institutions including traditional institutions, Area Land Committees, Registrars to register the customary land titles and interests of families and communities.

a) Create an enabling environment for Customary Tenure – The recognition of customary tenure and the family and community land titles are new in Uganda and in the world. This may be why before the current National Land Policy; there was very little support for initiatives to let customary tenure evolve in its own right (as opposed to being converted to another tenure). The Ministry would be wise to re-think what support it gives customary tenure and what form a family and community land titles take.

Other related discussion topics include: building consensus on the appropriate units for families, how to enforce land-related judgments; preventing land disputes; which laws are applicable for land transactions; how to standardise sketch maps; how to operationalise land data management systems, and so on.

b) Support Systematic Demarcation – To date, systematic demarcation means the process of cadastral survey of land to convert customary tenure into freehold tenure. With the recognition of customary tenure, policy and practice need to move away from this approach and replace it with a different type of systematic demarcation – one which marks boundaries, records rights on maps, and is registered, without changing

⁶ These guidelines may vary by region since customary land management schemes are specific to particular cultural contexts.

⁷ This is different from the current government strategy for systematic demarcation which promotes titling.

the rights and responsibilities of the various forms of customary tenure in Northern Uganda. This paper recommends that the Ministry convenes a meeting of all executive members of traditional institutions in Uganda before the actual implementation of a process, to discuss:

- i) whether or not they agree with the proposal
 - ii) the type of boundary trees which they recommend and
 - iii) the structure which they feel should be responsible for ensuring trees are planted and are protected.
- a) Giving official recognition and protection to these trees and sketch maps through law or administrative circular.
 - b) A step by step procedure for use at local level in planting the trees and drawing local maps as in the Land Act could be amended or approved by the Ministry, so that it can be translated and shared nationally.
 - c) Monitoring indicators should be set for following the impact of this process. These indicators can then be used for monitoring by various actors – local Government, customary authorities, NGOs, etc.
 - d) Agree on a map structure and details.
 - e) Agree on the registry for the sketch maps and names of family land owners.
 - f) Discuss and agree the real implication of titling. The systematic titling is supposed to give existing owners better documentation of their ownership, but it is clear that it will in fact radically change the meaning of ownership, and will transfer rights from some people (losers) to others (winners). The current “sensitization” of systematic demarcation informs people that systematic demarcating will give them: a) improved security of tenure; b) ability to get bank loans using the title as collateral. The “sensitization” should include the implication of having titles some of which is a) which laws apply; b) who manages the land – the clans or the state; c) the costs involved d) the institutions involved.

- *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. The amount of land owned by each member of the family is also recorded and will become known. The resource and land owners’ tree will offer timeline information on land size, land owners and other issues.

- *Phase 2* - Mark the land’s boundaries with special customarily-accepted “boundary trees” such as *Jathropha*, in the presence of all neighbours, then draw sketch maps to determine the land size and have the map signed by all family members, neighbours and witnessed by clans and state authorities. This work should be done only by family and community members, clans, Area Land Committees (ALC) and Local Council 1 (LC1) after The Ministry of Lands, Housing and Urban Development (MLHUD) has put in place policies and guidelines to regulate these activities. The Ministry should also meet the cost of mapping equipment such as tape measures, counter books for clans recording, etc. They should not be physically involved at this stage. The NGOs involved in this could then ensure that other owners are not left out.

- *Phase 3* – Lango, Teso and Acholi have community land used for grazing, water, building grass, clay, anthills, firewood, fishery, hunting, etc. Community land also need to be better protected by the owners discussing and agreeing on the “community land owners” and whose names would go on community land titles and conditions for holding “community land “in trust” within the formal documents.
- *Phase 4* – Land Registry. Land under Customary tenure currently has no land registry but the National Land Policy has provided for a registry for customary land. Without the registry, the transactions in family and community land titles cannot be updated. Most importantly, the changes that will be brought about by the mobility of women and children in between the maiden and marital families cannot be recorded with an active and efficient land registry.
- *Phase 5* – After the completion of phases 1 to 3, families and communities who want family and community land titles may then be informed of the implications before they choose to apply or not apply. They can then be issued the family and community land titles.

c) Support Systematic recording of land claims in sketch maps and registration in Recorders’ Offices

– Customary land is primarily owned by family and/or larger kinship units, with land rights-holders also responsible for protecting both land and land rights, for present and future generations. Some land rights-holders, such as women and children, move between two families, making their rights difficult to capture in a one-off situation. The Ministry should agree with families how to record their members on a family and community land rights tree to capture names, age, of owners which could be recorded on the maps at later stage. This would triangulate the information on the maps. After systematic demarcation, it would be important to agree how to translate rights and responsibilities which exist in customary land tenure to a paper document. Consensus on how these rights would be recorded and updated would also be essential. For recording of family and community members on a title, there is need to think through the venue, staffing, equipment, security, accountability, responsibilities, transferability issues, and applicable laws. Customary land owners must be assisted to document their boundaries and land transactions, no matter how basic these records are. Recording needs to take place at two levels—on sketch maps with an attached list of rights derived, and on the government’s register in the Registrar’s Office.

d) Inform stakeholders of the full implications of CCOs

– In recognition that a family and community land title is but evidence of land rights that already exist under customary tenure, the Land Act makes the acquisition of a family and community land title voluntary, not mandatory. It is therefore vital that the people and their social, religious, and political leaders are informed of “why” the titles are important.

Most “sensitization” has stressed better security and the ability to get bank loans, while very little explanation of other issues has been given - such as how to transfer rights through sales and death, who must give consent when land is to be sold, and whether customary or statutory law would apply in these situations. The Ministry and other stakeholders need to reach a consensus on the content for all sensitizations about family and community land titles and their implementation.

e) Establish and facilitate Institutions to handle Family and Community Land Titles – Even if the above recommendations are addressed, the Ministry needs to ensure that all institutions to be involved in family and community land title implementation are in place and the funds they need to carry out this work are provided for before family and community land titles are issued. Requisite institutions include the clans, Area Land Committees, Registrars and District Land Boards. To avoid exploitation of poor people, the rates to be set should include the allowances to be paid to the officers, where the money is to come from, as well as the transport fares they charge applicants. This means that the Ministry of Lands, Housing and Urban Development must budget for these activities and be given the money for their operation by the Government, or provide by policy, a percentage of money derived for land related sources to be ploughed back to land administration. Any formally issued family and community land title must be right the first time, or else the benefits that family and community land titles could offer might be outweighed by later disputes over who should or should not be named on the family and community land titles. If family and community land titles are implemented without sufficient preparation of (and funding for) the institutions involved, then rather than reducing the number of land disputes overall, it may be that disputes are exacerbated by the family and community land titling process.

CONCLUSION AND THE WAY FORWARD

If the above recommendations are adopted as part of a gradual process, lasting benefits in clarifying and documenting family and community land rights are much more likely to result. In turn, this could mean a lasting reduction of land rights contestations and conflicts. If the above recommendations are not followed, then all stakeholders should expect improvement of women's land rights to remain "at sensitization" level only, 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."

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 for individual land and only retain the options for 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 is what the National Land Policy caters for.

Since much of the process proposed here is likely to involve input from the various traditional institutions, with the Ministry performing what it does best – that is, providing policy guidance and oversight – this strategy also has the benefit of being cost-effective. The proposed family and community land rights tree, boundary marking, using sketch maps and boundary trees (or other locally available and acceptable boundary marks), will be low in cost, especially as the relevant families' and traditional institutions' work would be partly voluntarily. Formal registration costs will, however, still be substantial. But taking the time to bring together the various stakeholders - including traditional institutions, and being willing to discuss and agree upon policies - will be our most valuable resource for Uganda as a nation.

Finally, in order to achieve a sustainable customary land policy, the Ministry of Lands, Housing and Urban Development would need to **set up a Customary Tenure Department in the Ministry** where a Working Group, comprised of 10-15 people from various backgrounds can deliberate the points raised above, as well as proposals in the approved National Land Policy, concerning ways to support customary land tenure, including implementing the family and community land titles. Such discussions could include appropriate documentation procedures and support for customary tenure as a tenure system in its own right. The team should include members from traditional institutions, donor partners, civil society, faith-based institutions, District Land Boards, law enforcement, academia, politicians, and local and national government.

Introducing and supporting family and community land titles for customary land in Uganda as the best strategy to increase the security of tenure for women and children is certainly not a simple task. Yet in light of the millions of citizens whose livelihoods and families rely on these time-honoured systems, it is a challenge worth supporting and thinking through and implementing.



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