



Policy Discussion Paper 2 – Titling customary land

Customary and freehold tenure

Most land in Uganda is currently held under unregistered 'customary tenure'. This means that it is privately owned, either by individuals, families or by clans. (Most farming land is owned by households or families, while clans usually own grazing and hunting land.) People's rights to this land are recognised by law, although they have no documents to prove ownership, and there is no register where their land ownership is recorded. Their land has never been formally surveyed: boundaries are locally established, usually by trees or other natural markers. Local land judges or clan elders know who owns which land and they will arbitrate in cases of dispute. The 'traditional' rules of the people relating to land have legal force – this would include matters concerning the rights of the elderly or children, rights of passage through land, rules about borrowing and lending land, and about selling land. (However, local rules are not allowed to discriminate against women or the disabled.) However, these authorities have no power to enforce their decisions except through social pressure.

In freehold (or '*mailo*') tenure, there is a title deed with the names of all the owners, registered at the National Lands Registry. The rules relating to the land are those of the local authority (e.g. for planning, zoning) or rules set by Parliament or the Government.

What is Government policy?

Current Government policy on land is to move rapidly from this system to one of freehold title. In this system, each parcel of land is mapped (and usually marked with recognised marker stones). Land ownership of each surveyed parcel is recorded in a formal land registry, and a title deed is issued, which serves as proof of ownership. Any disputes can be resolved through state courts – the LC2 land committee, with appeals to LC3 land committee and to a District Land Tribunal. The full State machinery

of coercion (police, fines, prisons, etc.) is available for enforcing judgements.

There are two main ways in which the transfer can take place. The law allows for owners of land under customary tenure to apply for a 'certificate of customary ownership' – which functions a bit like a title, only the procedures are much simpler. This certificate can then be converted into a freehold title if the land is surveyed. Because surveying is an expensive process, only the rich would ever be able to afford title, which would be unfair. However, if surveying is done for everyone in a village all at once, it becomes much cheaper. The Government is therefore running a project of what is called "systematic demarcation", whereby everyone who wants can have their land surveyed, with a view to obtaining title to their land if they so wish.

The objectives of changing the system are to help economic development. If people have better security on their land, they will be more willing to invest in its long term future – improving the soil, controlling erosion, buying equipment, etc. Few banks will lend money to people who don't have title to use as collateral, so title will also make cheaper loans available. Also, the Government policy is to encourage a land market, so that people who want to invest in farming are able to buy land from people who cannot, or do not want to, use their land. A system of titles makes it much easier for people to buy land with confidence.

All this seems very sensible and uncontroversial, and of little interest to most people except economists. But are things as simple as they seem? Few people would disagree with the Government's policy objectives of economic development, poverty eradication and more secure land rights for all. But the way to achieve this has been based on arguing from several assumptions which prove

not to be true. As a result, rather than giving people more secure rights to their property, there are grave dangers that Government policies will make many people lose their rights to land, and will be a source of serious conflict and tension. This should be a matter of concern to everyone.

What are the assumptions behind the policy?

Land under customary tenure is owned communally. Private freehold will give individuals an incentive to invest.

False. Most farmland held under customary tenure is already privately owned, usually by families. They are therefore already willing to invest. Titling will tend to make ownership individual, rather than family based: this is not the same as privatisation. (It is the grazing or hunting lands which are often owned by clans or villages, because they are too small to divide among individual families.)

People lack a feeling of security of tenure because they have no titles.

False. People feel secure on their land – they only fear when they see others surveying and getting titles. Disputes are usually about boundaries, not ownership: people are therefore more interested in getting their boundaries known than in getting papers.

Lack of title deeds for collateral means people can't get loans to invest in land.

False. People say they would not risk their land on a loan in rain-fed agriculture, which is always a risky business. People don't invest because loans are expensive and because returns are poor.

People will use land more productively if the tenure system changes.

False. Since people already have a sense of security and private ownership, land use will be affected more by economic and social factors than by legal ones.

A land market cannot develop under customary tenure, because there are no documents and sales are not allowed.

False. 80% of people surveyed nationally had bought land, mostly held under customary tenure¹. Customary tenure rules restrict sales where the interests of all, including children, are not fully catered for.

People who buy land are those who can use it most productively.

False. The conditions for this to be true do not exist in Uganda, where most people cannot afford the risk of investing much capital in farming. Studies² show that people buying land are either urban based, who have not invested in agriculture, or local people who have not changed the way farming is carried out on the land.

Transferring land from one system to another is an exercise that does not create conflict or involve loss of rights.

False. This is the most important error. Changing the system of ownership will ALWAYS change which rights people have, and this will always create the potential for conflict.

Conflict can be managed, if everyone knows their rights, where there are strong institutions in place to administer land, and where everyone has access to these institutions. This is not yet the case in Uganda. Few people understand their rights, or the possibilities that the law gives them to protect those rights. Many of the bodies which are supposed to settle land disputes have not been set, and the

¹ Mwebaza and Gaynor, 2002. *Land sector analysis. Land market, land consolidation and land readjustment component.*

² *A Land Market for Poverty Eradication? And TESO research*

others cannot cope with all the cases that could come their way.

Why does it matter?

a) protecting the vulnerable

Under customary rules, different people have rights in land – e.g. children have inheritance rights which must be protected, women (including widows) have rights to use land and retain stewardship of land. Family land is also the only social security system that functions – as a place where people can go back to if city life proves impossible.

With freehold title, usually only one name is on the deed. Whoever's name is on the deed has all the rights, no-one else has a say. Cases are already being seen where one family member is applying for title, leaving others without rights over their own land. The powerful are gaining at the expense of the weak.

b) conflict

Land is one of the hottest issues in Uganda (and elsewhere), because it is the only significant asset most people own. Once title is established, it is almost impossible to correct mistakes. Even if the process of establishing title was "irregular", the title remains valid in law. Boundary disputes are almost inevitable. Many can take advantage of people's ignorance of land law, and they can process titles without the owners knowing. It is hard for some people to contest this and prove their ownership, especially if the land involved was their grazing land which they did not cultivate every year.

There are widespread fears about losing rights to land, so that people view the process of surveying with suspicion. Mistrust extends both to the authorities administering the process and the landowners, and is already a serious source of conflict in many places.

c) overwhelming the state administration

Taking land out of customary tenure means that the traditional authorities can no longer help settle disputes and manage land transactions. It all has to be done by State authorities. These are not well enough resourced to be able to cope. The vacuum which arises itself creates conflicts, and is easily exploited by some to take advantage of the more vulnerable.

d) cost

Systematic demarcation in just four districts is costing more than the support being given to the District Land Boards or District Land Tribunals across the country. It is many times more than all the funding being given to the sub-county and district structures nationwide who have to deal with the vast majority of land cases, but are unable to do so. These are the bodies which are supposed to help people protect their rights by setting up communal land associations and getting certificates of customary tenure. This process is simply not happening.

Loss of rights of the poor and social unrest are not compatible with poverty eradication.

Are there alternative ways of reaching goals?

The Government's objectives can be met in other ways, which would help reduce conflicts, establish a stronger system of land administration, protect everyone's rights in land – and help facilitate economic development.

The law gives people many opportunities to protect their rights. Individuals, families and clans can all register their different rights in land through communal land associations and with certificates of customary tenure. Boundaries of land can be established and written down without formal surveys. This is a cheaper process for everyone, and is less likely to create conflict if it is done by the community together. However, making sure everyone agrees on the rules takes time and needs

facilitation. The institutions which are supposed to help this process (the offices of the District Registrars) are not in place.

The law also allows the customary judicial process to adjudicate on disputes about land under customary tenure. This system of justice is accessible to all, cheap and works through consent. It can work together with the State

Customary tenure vs. freehold?

The argument is not about which system of land ownership is better, but about how land matters can best be managed in the current situation. In the long term, many people may prefer to transfer their ownership into freehold. This process can be managed well, if the right conditions are in place: secure rights within the customary system which are known and agreed by all; strong structures of land administration at local and District level; people who know their rights and well established courts and tribunals for defending them.

The choice is not between a well functioning system of freehold administration and a strong customary system. The structures needed for the freehold system are not yet functioning, and less than 20% of land in the country has ever been registered. On the other hand, the customary institutions are weak because they have been marginalised. The key question is: how can Uganda best use scarce resources to get the best land system for the foreseeable future?

Conclusions

An evolution to greater freehold may happen. It can never be un-problematic, though it can be managed if people are aware of dangers and interested in preventing them.

The necessary conditions for rights being protected are not in place. In an environment where people's rights to land are contested

institutions, such as the District Land Tribunals, and institutions, such as the District Land Tribunals, which can act as a final appeal court unclear, an accelerated conversion to title as a deliberate policy is unwise. A small amount of effort in helping the two systems to work together could bring a huge improvement in land justice.

Not enough attention is being given to grass-roots structures, which is where the vast majority of land transactions and disputes are managed.

What should be done?

The time is not right for an accelerated process of systematic demarcation for titling, nor is this an optimal use of Government resources. Attention should rather be paid to creating a situation of land administration where people's rights are clear, understood by all, disputes are minimalised and there are transparent processes which have widespread consent.

Policy-makers need to think in terms of a long transition period and how land will be administered during this time. Building up a strong grassroots system will take time, and more support should therefore be given to the only system in place which can cope during this period – **the customary system.**

A wider range of actors needs to be involved in debates about land. It must be rid of its image as the preserve of legal and economic specialists. It is almost the only productive asset most people own and for whom it will remain the only possibility for economic activity for many years. It should therefore be a centre of attention of all those interested in poverty eradication and economic development.

This paper is one of a series of discussion papers written by Land and Equity Movement in Uganda (LEMU) intended to help inform both policy makers and a wider public.

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