

# PILOTING THE PROTECTION OF RIGHTS TO CUSTOMARY LAND OWNERSHIP IN ACHOLI LAND.

Re-Draft Of The Text Document  
Titled; Principles And Practices Of  
Customary Tenure In Acholi Land  
By Ker Kwaro.

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SUBMITTED TO TRÓCAIRE AND JOINT ACHOLI  
SUB-REGION LEADERS' FORUM (JASLF)

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## INTRODUCTION

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In reviewing the document, we looked at formatting, clarity, wording, organization and content among others.

**The improvements made to the original text document include the following;**

The definition section was too long and unnecessary. For Acholi words that can be translated to English, the English version should be used other than the Acholi version.

Part 2 of the original text is headed “Principles of Customary Tenure”. This is in our view narrow as it only covers tenure and not estate. The heading of Part 2, Section 1, “General” does not provide clarity on the content of the section.

Sections 3 and 4 of the earlier version talk about “universal rights and responsibility”. Given that customary tenure system is limited in terms of geography, this in our view is not an appropriate use of the word universal.

The preamble in the original text only talks about dispute resolution. We included a section on application of the practice in the redraft. Long title to the document was included to give more description of the document beyond the dispute resolution talked about in the original preamble.

Application section was also provided to clarify on the scope of application. We left out “Parts” in our version because they are suitable for huge documents or when it is relevant to group related sections together. This is a small document and the need of grouping the sections was not envisaged. The interpretation section cannot be a part on its own.

The heading of the document was changed to customary “system” not to limit it to “tenure” as tenure deals with ownership and not the estate in the land. The tenure and the estate are linked and interconnected. Ownership is vested in the clan while estate is bestowed to both clan and families.

In the Interpretation some definitions were superfluous and thus deleted. Definitions that were deemed unnecessary were deleted and some definitions like “communal land” improved. Words that have not acquired technical meaning need not be defined.

Section 3 was changed from “customary tenure” to “tenure and estate”. The concept of tenure (ownership) and estate (interest in land) was in our view interwoven and treated as one. Matters of communal land should not have been put under the former document as this would mix up the issues.

The provision that the future generation has rights to land is vague. Third generation of rights is group rights not individual rights.

Protector is a new and strange concept. If you look at the translation they are referring to “lagwokpaco” which is the head of the family and to keep that section as it was would be duplication.

Dispute resolution was improved to provide for the various levels of land matters control.

Supremacy of the law was provided for just to give guidance on the position of the law.

Just to explain the major sections in the redraft, section 3 (a) is about tenure, the rest of the section is about estate, the interest that one might have in the land.

Section 4, is how one might acquire an estate in the land, which is essentially using the land.

In Section 6, we dealt with communal land and we tried to have all the issues of communal land under one section.

# PRINCIPLES AND PRACTICES OF CUSTOMARY SYSTEM IN ACHOLI LAND.

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**Principles to Guide the General Interpretation, Application, Management or Administration of Acholi Customary Land System and to revise and improve the Principles and Practices of Customary Tenure in Acholi land, 2008.**

## 1. Application

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These principles shall apply to interpretation, application, management and administration of customary land system in Acholi. It is limited to those, owning, using or acquiring land in Acholi.

For avoidance of doubt, these principles may be used as general customs considered to be binding and authoritative in handling disputes.

## 2. Interpretation

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- a) 'Acholi land' means the geographical area as defined by the 1962 Constitution as Acholi District.
- d) 'Communal land' is that land over which more than one family has rights and which is managed by people chosen by the clan, on behalf of the clans. This includes but is not limited to grazing land; hunting grounds, forests,.
- c) 'Customary land' means land in Acholi land, which is governed by rules, practices and norms generally accepted as binding and authoritative by the Acholi people that is not registered under the Registration of Titles Act or officially owned by or vested in the local or central government of Uganda.
- d) 'Family land' is that which is allocated by the clan to a family for their exclusive use.
- e) 'Ker Kwaro Acholi' is the traditional institution for Acholi people as provided in Chapter 16, article 246 of the 1995 Constitution of the Republic of Uganda as amended.

## 3. Customary Tenure and estate

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- a) Customary land is vested in and owned by the clan in trust for the members of the clan.
- b) Any member of the clan shall not dispose off customary land except with the consent of the clan.
- c) All members of the clan are entitled to usufructuary rights to land including but not limited to; living on their family land, farming on their farm land, burying their dead on their family land.
- d) Future generations shall be considered and provided for in any dealing with customary land.
- e) Land allocated to a family or an individual shall belong to them in perpetuity, provided the family or an individual have not relocated to another place with intention of not coming back to that land earlier allocated to them.
- g) Land that is allocated to an individual who does not have a child shall revert back to the clan upon his or her death.

## 4. Acquisition or Loss of Rights to Land

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Customary land rights are derived by;

- a) Membership to the clan, which is achieved by being born into the clan.
- b) Marriage into the clan by a woman.
- c) Invitation by a clan member and subsequent settlement by a non-clan member into a clan area, with prior approval or consent of the clan.
- d) A woman who is separated from the husband shall retain all the customary land rights provided she does not return to her father's clan.
- e) Customary land rights are lost when one dies or when a woman is divorced.

## 5. Responsibilities of Clan Members

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- a) All clan members, irrespective of their status, age or gender, have responsibilities to:
  - i. develop and use land for positive reasons,
  - ii. preserve and maintain land from degradation, or
  - iii. to defend and protect that land from foreign aggression.

## 6. Rights to Communal Land

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- a) All clan members have rights to use and access communally held land subject to the customs and practices governing their access and use.
- b) No person or family shall settle on communal land without prior approval of the clan which governs that area.
- c) The clan has a right to set out practices which are in line with general customary principles, practices or customs to govern communal land and to appoint managers of that land.
- d) Communal land that stretches beyond the boundaries of one clan shall be jointly managed by the clans that share the communal land.
- e) Every member of the clan shall in accordance with the practices or customs have rights to; access; collect resources such as firewood, fruits, water; graze or hunt from communal land.

## 7. Rights of Vulnerable Groups

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- a) A woman has the right to live on their family land and farm or use it in any other way as long as they remain unmarried or divorced.
- b) An orphan has the right to live on their land under the leadership of the head of the family.
- c) A child born out of marriage has rights to the family land of both parents.

- e) Widows, with or without children or those who refuse to be inherited or not, have the choice to stay on the land to which they are married.
- f) The elderly and infirm have rights to land and clan protection.

## 8. Custody of Customary of Land

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- a) The overall custody of customary land is with the clan. The Chief or his Council shall designate a person or a committee responsible for managing clan land.
- b) Land that has been allocated, given and vested in a family by the clan shall be managed by the head of the family.
- d) Land custodians have the following responsibilities to:
  - i. hold the land in trust for and to protect the rights of, all clan or family members.
  - ii. allocate land to the beneficiaries. The clan may allocate land to the heads of families and heads of families might allocate land to individuals.
  - iii. ensure that land is used for agreed purposes.
  - v. mark the boundaries of the land in consultation with the clan, family, and neighbours.
  - vi. hear and resolve land disputes peacefully.
  - vii. make decisions affecting family land equitably taking account of the interests of all members.

## 9. Dispute Resolution

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- a) Land disputes shall be handled in a reconciliatory, amicable and collaborative manner.
- b) The head of the family shall resolve or facilitate the resolution of land matters in the family.
- c) The clan shall resolve or facilitate the resolution of land disputes that are between families or those that the head of the family has failed to resolve.
- d) Ker Kwaro Acholi shall resolve or facilitate a settlement of disputes that the clan has failed to resolve.

## 10. Supremacy of Written Law

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These principles shall be subject to any written law having the force of law in Uganda.



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