

Women's Land Rights in Uganda

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I. Introduction & Background

Introduction & How to Use This Guide

Introduction

These country-specific guides were developed using two general guides we created in the past: [Women's Land Tenure Framework for Analysis: Land Rights](#) and [Women's Land Tenure Framework for Analysis: Inheritance](#). These country specific guides do not seek to answer every question found in the other two guides; not all of the questions apply to every country. The general guides are intended to raise all possible issues. The country-specific guides use those guides as frameworks for understanding the main issues related to women's land rights in a specific country context.

The country-specific guides not only serve as an example of how one can use the general frameworks for analysis, but they also analyze the women's land rights situation in the particular country. Note that when it comes to analyzing customary law, we have selected one customary system for deeper analysis; however, this does not mean that all customary systems within this country operate the same way.

How to Use This Guide

In order to make these guides useful and user-friendly, when possible we have uploaded the full-text laws and articles that we cite to into the LandWise library.

The footnotes throughout this guide are all hyperlinked to full-text laws, articles or other citation information. When you hover over a footnote, the citation information will pop up in a bubble. When you click on the footnote, you will be taken to the full-text of the item the footnote is referencing.

Background

Land is a fundamentally important resource in Uganda, and is the basis of income, sustenance, and identity for the majority of Ugandans. Agriculture dominates the country's economy, and accounts for 80% of export earnings and an estimated 80% of employment nationwide.[1] Approximately 87% of Uganda's estimated 35 million people reside in rural areas, 85% of whom are involved in subsistence agriculture.[2] Nationwide, 90% of all rural women work in agriculture, and women produce an estimated 80% of food crops and contribute 90% of all labor for food production.[3]

Like much of sub-Saharan Africa, Uganda has a pluralistic legal system combining various sources of law.[4] Pre-independence British law, Ugandan civil law, and customary law all figure into Uganda's legal structure. Some British law is still in effect in Uganda, particularly in regard to family law. Additionally, customary law figures prominently in the day-to-day functioning of family law and land rights, with wide-ranging impacts on women.[5]

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II. Formal Legal Framework for Women's Land and Property Rights

Introduction

Uganda has a dual framework for land governance: the Constitution (1995)[6] and the 1998 Land Act[7] formalized legal pluralism by explicitly recognizing customary rights to property, while also strengthening formal protections for women's land rights. The Land Act 1998 defines customary tenure rights and lays out a process for registration and administration of customary rights. With an estimated 80% of all land in Uganda held under customary tenure, customary rules for land governance play a major role in determining women's land and property rights.

Constitution 1995

Uganda's Constitution 1995 provides that all land in Uganda is owned by the people of Uganda (art 237), and vests attendant rights in the people in accordance with the four formally recognized land tenure systems (customary, freehold, leasehold, and *mailo*) (art. 237(3)).^[8] The state retains the right to acquire land in the public interest, subject to Constitutional protections. Article 26 restricts the taking of personal property to those “necessary for public use or in the interest of defense, public safety, public order, public morality or public health,” and requires the payment of prompt and fair compensation and a right of redress to rights holders.^[9] Public tenure comprises a fifth category of land, and applies to all lands that are designated for public use. In some cases, public lands overlap with *mailo* and customary lands.

The Constitution 1995 was the first step in ongoing reforms that have significantly strengthened protections for women's rights under the formal framework. Uganda's Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1)); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33); and prohibits any customary laws, traditions, or customs that discriminate against women (art 33).

Article 32 of the Constitution also provides for ‘affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.’

The Constitution stipulates that formal law prevails where it is in contradiction with customary law, a provision that seeks to ensure that statutory and constitutional protections for women's rights override traditional norms that inhibit women's rights to land. While these provisions under the Constitution form a strong normative basis for women's rights, Ugandan women are still struggling to achieve the equality and non-discrimination promised in Article 33 as a result of the continued application of pre-1995 Ugandan statutory law; conflicting norms under customary law; and the lack of political will to confront institutional discrimination. However, certain cases in the Ugandan Constitutional Court have resulted in some discriminatory provisions being ruled null and void for failing to uphold the principles of equality and non-discrimination. Accordingly, many of the legal issues discussed below have the potential to change significantly through legislative reforms, though it is unclear when.

Land Act 1998

Uganda's principle land law is the Land Act (1998).^[10] Since its passage in 1998, the Land Act has been amended three times: in 2001,^[11] 2004,^[12] and most recently in 2010.^[13] The Land Act restates the recognized forms of land tenure found in the Constitution, affirming customary land tenure as an officially recognized form of land tenure.^[14] Under the Act, communities, families, or individuals holding customary tenure may apply for a certificate of formal customary ownership with the government. General procedures are provided under section 6 for how to register customary title, and under sections 9-14 for converting customary tenure to freehold. Communal land associations, which are tasked with the administration of disputes that arise within communally owned customary land, are governed by sections 15-21.

Section 22 allows communally held customary land to be formally parceled out to families or individuals by the operation of a communal land commission. This section generally conceives of the “head of the family”—most typically a man in Ugandan society^[15]—as the recipient of title. Section 27 forbids the application of

customary law where it denies women the right to own and/or occupy land.

Only two sections of the Land Act directly address gender, land and property rights. Section 38A of the Land (Amendment) Act 2004 provides for a spouse's security of occupancy on family land, and section 39 requires spousal consent prior to entering into any land transaction concerning land on which the spouse resides on and uses for sustenance. Section 28 of the Act specifically states that any decision that provides women, children, or persons with a "disability access to ownership, occupation, or use of any land or that violates Constitutional principles," shall be invalid.

The 2004 and 2010 amendments to the Land Act provide further protection for spouses by giving them the right to security of occupancy on family land. Security of occupancy means a right to have access to and live on family land and give or withhold his or her consent to any transaction, which may affect his or her rights. "Family land" includes "land on which is situated the ordinary residence of a family" and "on which is situated the ordinary residence of the family and from which the family derives sustenance." The right extends to the residence, whether or not there is also land from which (s)he derives sustenance. Additional rules relevant to tenants by occupancy—including spousal rights to occupy under section 38A of the Land Act—are covered in sections 29-37 of the Land Act.

The Act also requires land management bodies and institutions to have female representation. The Uganda Land Commission must include at least two females among its five members, one-third of the membership of the District Land Boards must be female, and Area Land Committees at the parish level must have at least one female among their four members. Under Section 17 (4) (b) at least one-third of the members of the Communal Land Association must be female. These Associations are corporate bodies which may be formed under the Land Act by any group of persons on any land for any purpose connected with communal land ownership and management of land.

Though the Land Act is fairly progressive in establishing protections for women's land rights, it stops short of establishing co-ownership rights among spouses, a provision that was passed by Parliament but omitted from the final draft of the Act, reportedly due to an administrative oversight.^[16]

National Land Policy 2013

Uganda's National Land Policy was adopted by Parliament in 2013, and is an attempt to provide a comprehensive framework to direct needed legal, regulatory, and administrative changes in the land governance system.^[17] The National Land Policy provides for the protection by government of natural land and water resources, which are held in trust for the people and are "reserved for ecological and touristic purposes for the common good of all citizens." These resources may not be leased out or alienated except by concession, license, or permit.

The policy expressly acknowledges the failure of Uganda's formal law to overcome discriminatory practices concerning women's land and inheritance, particularly in section 4.10, titled "Land Rights of Women and Children."^[18] In that section, the Ministry calls on the Ugandan government to overhaul the statutory regime in place in order to confront discrimination in land and inheritance. The policy does not, however, advocate for concrete legal changes, but instead provides a basis upon which government can take steps to redress discrimination and disparate impact and makes a case for law reform and practice change at the policy implementation level. Inheritance rights of women are among the issues the policy addresses, with a view to ensuring that there is a framework to guide the needed reforms. This policy is in the early stages of

implementation planning by the Ministry of Lands, Housing, and Urban Development. It remains to be seen whether this National Land Policy will have a significant impact on women's land rights in Uganda.

Registration of Titles Act 1924

Uganda uses the Torrens system of titles registration, which was introduced through the Registration of Titles Act 1924. This act applies to all freehold, leasehold, and *mailo* land, but does not recognize customary tenure rights, which must first be converted to freehold tenure in order to be registered.[19] Under the Act, a certificate is conclusive evidence of title (barring proof of fraud). The Act recognizes any person's right to own property as long as it is lawfully in his or her name. Section 3 specifically disclaims any intentions to limit the application of laws providing for the property of married women, though because the Act only explicitly lists fraud as a means for rebutting the strong evidentiary weight of the certificate, it is unclear how a married woman's rights to marital property would be protected if her name is not on a certificate. In some instances where the certificate of title is in the names of the husband and wife, it is not clear how at the dissolution of marriage the property is shared. This often leaves the wife vulnerable to dispossession in the face of strong societal pressures and presumptions that men are the true owners of property. Many Ugandan women face significant challenges accessing justice when their rights are violated. The high costs of pursuing claims in the formal legal system, combined with institutional discrimination and a high level of inefficiency in the court system, create additional barriers to women's ability to exercise their property rights.

Individual and Household Rights to Land

A significant barrier to realizing women's land rights is that current marriage laws do not clearly spell out the property rights of married men and women. Common law, carried over from the British system, provides some guidance for marital property in Uganda, but there remains a lacuna in the existing law relating to marital property. In the absence of clear legislation defining women's property rights, courts continue to apply outdated laws that impede women's rights. For example, in 1993, the High Court established as legal precedent the subordination of women's property rights to those of a male head of household.[20] However, in a 2007 landmark case, the High Court ruled that women's non-monetary contribution should be considered when computing settlements in divorce matters.

Marriage Regimes

Ugandan law recognizes five types of marriages: civil, Christian, Hindu, Muslim, and customary.[21] Hindu, Muslim, and customary marriages are each covered by a specific law. The Marriage and Divorce Bill, pending in various iterations for approximately 40 years, aims to give effect to article 31 of the Constitution, and if passed, would apply to all marriages in Uganda except Muslim marriages. (Muslim marriage and divorce laws apply in those cases, and are codified in The Administration of Muslim Personal Law 2008, which has not yet been enacted into law).[22] The Marriage and Divorce Bill contains detailed provisions about the property rights of married men and women.

Marriage must be monogamous if contracted under the Marriage Act of 1904, the African Marriage Act of 1904 or the Hindu Marriage and Divorce Act of 1961. Polygamy is legal for customary marriages under section 4(2) of the Customary Marriages (Registration) Act and under the Marriage and Divorce of Mohammedans Act of 1906 (invoking Islamic law). Polygamous marriages are restricted by law in the event that a man married under custom seeks to enter into a civil marriage with another woman

Islamic Marriages

Islamic marriages in Uganda follow Islamic law. The Administration of Muslim Personal Law 2008 is a bill that has been proposed to regulate family and inheritance law for Ugandan Muslims based on principles of Islamic Law as laid down in the Qur'an and Sunnah. The bill is also based on Article 129(1)(d) of the Constitution, which provides for the administration of judicial power by *qadhi* courts "for marriage, divorce, inheritance of property and guardianship." As of April 2014, the bill had yet to pass.

The proposed bill spells out the property rights of women in Islamic marriages. Under the bill, a married woman would have the right to the property she got before the marriage as well as the right to get her own property during marriage. A married woman's salary or income belongs to her as separate property.

In Islam, a married woman has the absolute right to own, sell, give away or manage her property. This property includes the gift (*mahr*) given to her by her husband at the time of marriage. The husband has no rights over the *mahr* at all and cannot take it away from his wife. A husband and wife can, however, acquire property together during the marriage.

Shared Tenure

The Land Act provides that land may be held individually, jointly, or in common, though it does not provide a clear definition of each form of ownership. This may include family land, defined as land where the family home is situated, that helps sustain the family (through income or crops), or land that is called family land according to the family's norms, customs or traditions.[23] Both spouses—husbands and wives— have the right to use and live on family land, and each must seek the approval of the other spouse before carrying out any transaction on family land.[24]

There is no clear presumption of co-ownership of land by husbands and wives in either the Land Act or elsewhere; the Marriage Act 2000 and the Succession Amendment Decree 22/72 of 1972 are silent as to the disposition of property acquired during a marriage.

Inheritance Under the Formal Legal Structure

Inheritance in Ugandan law is governed by the Succession Act (Amendment) Decree 22/72 of 1972, which restricts the application of customary law in inheritance cases, and explicitly recognizes women's right to inherit from their husbands. While these provisions, along with Constitutional guarantees of widow's right to inherit matrimonial property, would seem to provide ample protection, women's inheritance rights under the formal law remain tenuous due to incomplete legislation. Significantly, the Constitutional Court ruled in 2007 that parts of the Succession Act and Penal code are unconstitutional due to discrimination based on sex, and are therefore void.[25]

In that case, two laws were challenged on the basis of discrimination against women. Under Section 154(2) of the Penal code, a married woman – but not married men –having sex with someone outside of marriage were guilty of adultery. The Succession Act was challenged on the basis of discrimination against females and female heirs. The Constitutional Court found that section 154 of the penal code was unconstitutional because the provision constituted discrimination based on sex. The Court also declared that sections 2(n)(i) and (ii), 15, 16, 27, 43, and 44 of the Succession Act were unconstitutional and therefore null and void on the grounds that they were also discriminatory contrary to the Constitution. Significantly, provisions allowing fathers and not mothers

to appoint guardians (sec. 43), and only male relatives were permitted to be guardians (sec. 44) were struck down. Additionally, sec. 27, “Distribution on the death of a male intestate,” was deemed unconstitutional on the grounds that it contained no provision for female intestate, and should apply to properties of both females and males.

Corrective legislation is currently under review by the Law Reform Commission in the form of the Domestic Relations Bill, which has been stalled for some time due to political and public opposition to the bill. Currently, the unconstitutional provisions of the Succession Act remain on the books.

The Succession Act defines the manner of apportioning a deceased man’s property in the absence of a will among various categories of heirs. In so doing, the Act curtails women’s rights to marital property in several ways.

First, because it contains no provision for distributing property of a wife who dies intestate, the law presumes that marital property belongs solely to the husband, who automatically acquires the marital home upon the death of his wife.^[26]

Second, the Succession Act provides that the matrimonial home goes to the legal heir, which the Act defines as the nearest living male relative in patrilineal descent to a person who dies intestate. Lineal descent refers to a person who is a direct line of ancestry such as a son and his father, grandfather, and great-grandfather.^[27] In the event that there is no living son, a daughter will be appointed the legal heir. Only in the event that there are no living children will the senior wife be named the legal heir.^[28] The provisions for intestacy in the Succession Act prefer the male child in the appointment of a legal heir, promoting patriarchal, and potentially discriminatory, inheritance customs.^[29]

Third, a widow is disadvantaged by the portion of her husband’s estate allocated to her under the Succession Act, which provides that lineal heirs receive 75% of the estate, while only 15% is left to his surviving spouse or spouses. In the event of polygamous marriage, all surviving spouses must share the 15% allocated to widows. Sections 27 and 30 of the Succession Act excludes the residential holding occupied by a wife or child from the property taken into account in assessing the share of an estate to which the wife or child may be entitled. This section conveys to the widow an entitlement to her deceased husband’s residence. However, according to Bennett et al, because the Act conveys the residential home, chattel, and surrounding land to the intestate’s legal heir, the Act extends only a limited right to occupy the marital home, a tenancy that depends on the wishes of the legal heir. Thus, a widow’s rights to remain in the marital home under the Succession Act are limited in scope and enforceability.^[30]

Finally, under the Succession Act, widows’ maintenance and occupancy rights terminate in the event that she remarries.^[31]

As discussed above, these should be remedied through the passage of the pending Domestic Relations Bill.

Enforcement of Inheritance Rights

Women face significant obstacles in realizing their rights to marital property due to traditional norms and practices. One study found that in the face of these obstacles, a widow was only able to inherit the marital home *in practice* if she was the joint owner of the home; or her husband stipulated in his will that the widow was to inherit his share. However, unless the wife is appointed sole executor of the will, she is likely to face challenges

to take possession of her inherited property due to interference from her husband's family.[32] Even where the wife was appointed the sole executor of the will, she is likely to face obstacles in taking sole responsibility of the estate.

Separation and Divorce

The Divorce Act 1904 outlines rules for separation and divorce applicable to civil and church marriages. Separation can last up to two years, and can be by mutual agreement (*Separation by Agreement*) or by court order (*Judicial Separation*). Separation does not end a marriage, but only suspends certain rights of the husband and the wife, who remain formally married.

Divorce is the permanent ending of a marriage, and only applies to legally recognized marriages. The procedure for divorce depends on the type of marriage.

Divorce: Civil or Church Marriages

The Divorce Act 1904, which only applies to civil, Christian, and Hindu marriages, touches on marital property rights, including land rights. Section 27 provides that “When a decree of dissolution of marriage or of judicial separation is pronounced on account of adultery by the wife... the court may...order the whole or any part of such property to be settled for the benefit of the husband or of the children of the marriage, or of both.”

This section gives the court discretion to deny women – but not men – their right to property in case of a divorce or judicial separation as a result of her adultery (or alleged adultery).

The section of the Divorce Act that describes the grounds for divorce has been declared unconstitutional on the grounds that it made it easier for men to obtain a divorce than women. Parliament has not yet amended the Divorce Act in accordance with this ruling, and to date women remain disadvantaged in terms of the requirements for obtaining a divorce. As a result, official divorce is very rare in Uganda. Instead, spouses simply separate; typically it is the woman who leaves without any property.[33]

The court decides how to deal with the distribution of property upon divorce in civil marriages, as well as who should retain or stay in the matrimonial home.

The Marriage and Divorce Bill and the Administration of Muslim Personal Law Bill are two important pending bills that, if passed, would significantly change the family law of Uganda. These bills remain pending, and it is uncertain at what point, if ever, they will be adopted into law.

Divorce: Customary Marriages

There are no uniform rules for the disposition of property or grounds for separation and divorce of customary marriage, which follow the customs of the particular tribe or community to which the husband or wife belongs. However, constitutional standards of equality between men and women apply to customary marriages, giving women and men equal rights upon the termination of a marriage. A customary marriage can also be terminated by court of law following the procedure used for church and civil marriages.

A customary separation or divorce is usually brought before a clan or family court where evidence is presented. The clan or family court decides whether to grant the separation or divorce, as well as the terms and conditions

to be followed by both the husband and the wife. Where bride wealth has been paid to a woman's family, customary divorce is also completed through the return of the bride wealth by the woman's family to that of the man.[34]

Divorce: Islamic Marriages

Ugandan law does not address separation within Islamic marriages, which follow Islamic law. Islamic law, based on the Quran and the Sunnah, is applied in Uganda in both Islamic court, or *qadhi*, and secular courts. All divorces have to be registered by the Registrar of the *Qadhi* court.

Under Islamic marriage rules, a groom or his father must pay a *mahr*, a mandatory payment in the form of money or possessions, to the bride at the time of marriage. This payment becomes the bride's separate property, and she retains the right to this property upon divorce.[35] A divorced woman is free to stay in the matrimonial home if her husband is unable to provide her other suitable accommodation. The woman loses her right to the matrimonial home when her children have reached the age of 18, when she remarries, or if she is guilty of open lewdness.

Both the *Qadhi* and secular courts have the power to determine the disposition of marital property upon divorce. In making the decision about division of property, the court considers: (1) the extent of the contribution of both the husband and the wife toward acquiring the property; (2) any debts either the wife or the husband incurred that were for their joint benefit; and (3) the needs of the minor children.[36]

A divorced wife can apply to the court for *Mut'ah*, a gift given as compensation to a divorced wife. After hearing the case, the court may ask the husband either to pay the wife in money or property. Islamic law prohibits a married woman from obtaining a divorce while she is pregnant or menstruating.

Pending Legislation: The Marriage and Divorce Bill

The Marriage and Divorce Bill applies to all marriages in Uganda except Muslim marriages, as the Muslim community has obtained permission to have their own marriage and divorce law. The Marriage and Divorce Bill is supposed to give effect to Article 31 of the Constitution, which gives men and women equal rights in getting married, during marriage, and if and when they decide to end the marriage.

Among other things, the Marriage and Divorce Bill would: (1) Make widow inheritance illegal. Widow inheritance is when a male family member of a deceased man marries a widow without her consent. (2) Make asking for the return of bride price a crime. Bride price would remain legal under the bill but is not required. (3) Make sex with a wife or husband without her/his consent a crime. The first two issues lie at the heart of the controversy over the bill, as bride price and widow inheritance are strongly rooted in the cultural practices in much of Uganda.

A new and important aspect of the Marriage and Divorce Bill is that it defines property rights for cohabiting couples. Current law is silent on property rights of cohabiting couples (not formally married) and only applies to married couples, leaving cohabiting couples who comprise the majority of the population vulnerable.

III. Customary Framework for Women's Land and Property Rights in Uganda

Introduction

Protection of women's land rights in the formal law currently has limited impact: traditional norms and practices commonly work to impede women from realizing their formal rights to property. The payment of bride price is frequently practiced, and women are often viewed as purchased property and are not eligible to own property of their own.[37] While there have been many advances in formal protections for women's land rights, implementation of these provisions has been uneven at best, and many challenges remain for women's land rights under the formal laws to be realized in practice.

Customary tenure is the most common form of land tenure in Uganda, and is estimated to cover 80% of the total land area of the country. The Constitution recognizes customary tenure, which the Land Act defines as land that is governed by customs, rules, and regulations of the community. The rules governing land vary among Uganda's 56 customary groups, though similar characteristics can be found among many of the contemporary tenure regimes today. This section provides a brief introduction to customary tenure framework for women's property rights within the Acholi customary system of Northern Uganda. It is important to note that there is often significant variation in how customary rules are conceived and applied even within the same customary group; this overview does not aim to provide a definitive analysis of Acholi custom, but outlines the Acholi framework for women's land rights.

Customary tenure predominates in Northern Uganda, where an estimated 95% of all land is held under custom.[38] Prolonged civil conflict in the region weakened the infrastructure and capacity of the administrative and judicial institutions under the formal systems, and seriously disrupted the customary institutions in northern Uganda. The displacement of the majority of the population of the region interfered with the implementation of the land administration provisions of the Land Act and Constitution, which assigned a strong role to customary institutions in land governance.[39]

Legitimacy of Customary Tenure under the Formal Law

The Land Act 1998 officially recognizes customary tenure, and defines it as a system "providing for communal ownership and use of land...in perpetuity," but also recognizes that subdivisions of customary land may be recognized as belonging to a person, a family, or a traditional institution.[40] Thus, customary tenure is defined in such a way to leave open the possibility of individualized property. This characterization is in line with the Acholi concept of land ownership, in which land is vested with the clan, and is held in trust for future generations.[41] Use rights, ownership, control, and transfers are all subject to the superior right of the family, group, clan or community. The clan elders decide who should be allocated land and for what purposes, and the clan leadership must approve any transfers of clan land (i.e. through sale or lease). Under this system, both men and women have use rights to land, subject to the approval of and long-term well-being of the clan.

The Land Act provides for the formalization of customary land rights, and in section 6 lays out the procedures by which "any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land."

Under customary law, all land is vested in the clan and is held in trust for future generations. Traditionally, clan leaders – elder members of the clan, and almost exclusively men – make decisions about how, to whom, and for what purposes clan land is allocated. This stewardship concept is gradually giving way to match a more western concept of ownership, with (male) household heads increasingly conceiving of and disposing of household land as their own individual property.[42] This trend is reinforced by the growing commodification of land, perhaps encouraged by the growing prominence of the formal tenure system across Uganda.[43]

This shift away from the traditional conception of customary land as being vested in the clan has significant implications for the rights of women, formerly protected by the functioning of the traditional system. This weakened custom will also likely impede the application and enforcement of formal protections explicitly extended to women's land rights in the customary setting by the Land Act 1998 and Constitution 1995.

Acholi Land Tenure Structure

The Ker Kwaro Acholi – the highest level of customary leaders among the Acholi people – are in the process of recording their rules governing customary tenure in the form of the Principles, Practices, Rights and Responsibilities (PPRR).[44]

Under Acholi tenure rules, Acholi clan land falls into three categories: (1) arable land, (2) communal clan land, and (3) unallocated or unused land.

Arable land is apportioned, or “individualized” by the clan to a household head, normally at the time of marriage. The head of the household is almost always male. The household head is responsible for managing and protecting the land, while other family members have the right to use and access the land by consent from the household head. Clan elders oversee the family clan land and ensure that family heads manage the land well, protecting the rights of all users of the land and the interests of future generations of the clan. Traditionally, transactions in land were not permitted without sanction of the clan. However, as custodians of the land, today the clan may be informed to witness the sale, and have the right to approve or object to a sale based on the grounds for the sale.

Communal land is defined as “land over which more than one family has rights and which is managed by elected people chosen by the clan, on behalf of the clans.”[45] Authority over communal clan land is vested in the clan or clans as an institution. Communal land is used as communal hunting grounds, but also includes forest and grazing areas, as well areas used for cultural practices and market places. Also, in times of need, parts of this communal clan land might be used to supplement individualized land. Decisions about who may use this land, and for what purposes, are made by the clan leadership.

Unallocated land is land that the head of the household keeps for his own personal use. When the household head dies, the land is managed by the customary heir who is appointed by the clan. The heir is in all cases a son, most often the eldest son who must have shown signs of responsibility. The heir is installed in a cultural ceremony by the clan, and is responsible for the management of this unallocated land. Unused land is land that cannot be used or inherited. This might be the case if, for example, there are no male children born to the household head. If this were to happen, the land is used by the relative with the next claim to the land, most often the brothers of the household head.

Enforcement of Customary Tenure

The customary institutions parallel the formal system of Local Council (LC) courts, created in 1988 to deal with land disputes by drawing on both formal and customary law. People can choose to bring their land disputes either to the LC courts or to the customary institutions (family head, with appeal through the clan structure to the district *Jago* (sub-County Chief) and on to the *Rwot* (Chief)), and can appeal from either forum to the District Land Tribunal.[46] Currently, however, the District Land Tribunals are not functioning. According to the Land Act, decisions based on customary rules for each locality are to have the status of binding law as long as they are decided fairly, and are in accordance with formal and constitutional law.

There are no restrictions as to women's right to access these parallel systems under the formal law. However, several barriers exist that can impede women's access to these dispute resolution bodies in practice. Access to the formal system is costly and can be intimidating to women, who tend to be less educated than men. Additionally, cases before the formal system are costly to pursue due to court fees and legal fees for lawyers. The venues themselves may not be physically accessible to a woman if they are far away from her village and she lacks transport.

Decisions made by customary institutions are usually not upheld or used by the formal institutions, and any agreements made with respect to such decisions are not currently considered by the formal courts. The harmonization of the two systems would improve tenure security and improve land dispute resolution. Formal institutions should recognize decisions from customary institutions to assist in further court proceedings and improve the efficiency and fairness of land dispute resolution.

Though generally more accessible in terms of their location, customary dispute resolution bodies pose other challenges to women. Clan leaders often hear and settle disputes during regular clan meetings, at which male clan members are commonly the only ones allowed to be present or speak. To have her case heard, a woman may have to enlist the support of a male relative, who can then carry her cause to the clan on her behalf. Additionally, women's protections under the formal law may not be realized at the local level if her customary leaders are unaware of or in opposition to women's rights.

Women's Land Rights under Custom

Under Acholi customary rules, women's rights to land are limited use rights that depend on their relationships with male family members (usually the father or husband), while men tend to have rights to land by birthright. Women's rights are secondary to those of men, and can change depending on the occurrence or non-occurrence of key events, such as marriage, separation, or the death of a spouse or family member. Compared to their male relatives, women generally have access to less land, have fewer rights to the land they can access, and their land rights are less secure.

Marital Practices

Under the Acholi tenure system, everyone who is born or married into a family has land rights: men typically acquire land from their family when they marry, or through inheritance upon the death of their fathers or male relatives, while women gain access to land through their relationship to men – typically a father or spouse. Thus, as in much of Uganda, a woman or girl's rights to property in Acholiland is determined by her relationship to a male. At different stages in her life, or when life events occur, her property rights change. If that relationship is disrupted, damaged, informal, or tenuous, her access to land is jeopardized.

Unmarried women

Acholi custom provides that an unmarried girl living with her natal family, can access land through her father, who is normally the household head. Typically women will use such land to assist with cultivation of subsistence food crops. Her right to use this land lasts as long as she remains unmarried. However, whereas male family members are allocated land upon marriage, a female loses her right to natal land when she marries. This is the basis for the Acholi assumption that girls are "temporary" and are therefore not candidates for permanent rights to customary land. Instead, her rights to land are considered impermanent, and her continued presence on

the individual family land can cause disputes with her brothers, who would otherwise be allocated the land she is using. The longer a woman stays unmarried, the more pressure her brothers are likely to exert on her to move off the land.

The continuing practice of men paying a bride price to a woman's family in exchange for the right to marry makes a girl child 'valuable' to the family to the extent that she will someday get married and her family will receive a bride price. But because she will move away and settle on her husband's land, when land is allocated to other family members, the unmarried girl does not receive any, or receives a smaller or inferior plot, as it is assumed she will eventually marry and receive land rights from her husband.[47]

Widows

Normally a widow becomes the head of the household on the death of her husband. She then has the responsibility of managing the land and allocating it to male children when they become adults and get married. After her husband's death, a widow may choose to continue to live in her marital home without remarrying, return to her maiden home, or pick an inheritor within her husband's family or from outside the family. Traditionally, Acholi custom protects widows through the practice of widow inheritance, or levirate. The inheritor – usually a brother or uncle of the deceased – is supposed to help the widow by providing work, protection, and support for her children.

A widow will most often choose not to return to her maiden home. Acholi tenure rules provide that her rights to land are in the marital home; they do not provide a right of return for widows, who are expected to remain on their husbands' land. Traditionally, it was assumed that men and women would live to old age on the husband's family land, and upon her husband's death, a widow would remain on the land where she had spent her adult life. However, women's rights to remain on the marital property are increasingly challenged in practice. A key driver of this trend may be the large number of young widows due to HIV and the conflict. The widow's right to remain on their husband's land thus has vastly different implications for the future use of that land. Family members of the deceased husband may not respect a woman's right to remain on the matrimonial land. This abuse of customary rules is today increasingly common, and the traditional structures for enforcing customary rules are often ineffective to stop it. In addition, where a woman's husband died of HIV, or if the man interested in "inheriting her" has HIV, a widow is vulnerable to being pushed off the land. Although customary laws allow a widow to choose an inheritor from outside the clan, such a move may turn the clan against the widow and weaken her land rights.

Divorced women

The practice of paying bride price contributes to women's vulnerability upon divorce, since women are regarded as part of the man's acquired property. A divorced woman is expected to return to her natal land, and in order to be able to remarry, she must repay the bride price to her ex-husband's family. Unlike widows, a divorced woman is instead expected to return home and get land allocation from her father or mother if still alive, or from the brother if her parents are deceased. Traditionally, this allocation would come from unallocated land set aside for such events. Customary rules require that a divorced woman or her family repay the bride price to the husband's family in order to formalize the divorce. These factors contribute to the fact that many women are not welcomed home in the event that they divorce, particularly if they bring their children with them.

Cohabiting women

A cohabitating woman is especially vulnerable under customary rules, under which a cohabitating woman is not allocated any rights to her partner's land. If her relationship falls apart, a cohabitating woman will be forced to return to her natal home with her children, where she may find that her rights to natal land are denied (albeit wrongly) by her brothers or other family members. Cohabitation is an increasingly common practice in Uganda, and presents a serious challenge to women's land tenure security.

Women in Polygamous Unions

A married woman may also become vulnerable if her husband takes a second wife. To provide land for the new wife, a husband will generally take land from his first wife's parcel.[48]

Under Islamic law, widows are allocated one-eighth of their deceased husband's property. In the case of polygamous marriages, all widows will share this one-eighth allocation with their co-wives. Thus, in a situation where there are two wives, each wife will be able to claim a right to one-sixteenth of the property.[49]

Similarly, under the Succession Amendment Decree 22/72, where a customary husband dies intestate, all surviving wives are to divide amongst themselves the allocation for his surviving spouses.[50] Under section 27 of the Succession (Amendment) Act, upon the death of an intestate husband, "each wife will inherit his share in the matrimonial home that they shared together, and the household property therein, and the surrounding residential land." The remaining property is to be divided among the surviving wives according to when the property in question was acquired, such that the first wife inherits the intestate's share of any property that becomes matrimonial property prior to the intestate's second marriage, and so on for each subsequent marriage.[51]

IV. Endnotes & Citations

Endnotes & Citations

¹ The World Bank, Food and Agriculture Organization, and International Fund for Agricultural Development (2009) *Gender in Agriculture Sourcebook*, The World Bank: Washington, DC.

² Ministry of Finance, Planning, and Economic Development, Population Secretariat website. *Available at:* <http://www.popsec.org>.

³ Forum for Women and Democracy (2012) Gender Policy Brief for Uganda's Agriculture Sector, *accessed at* <http://www.womankind.org.uk/wp-content/uploads/downloads/2013/06/FOWODE-Gender-policy-brief-for-Ugandas-Agriculture-sector.pdf>; Tripp, A. (2004), "Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda," 7(4) *African Studies Quarterly*. *Available at:* <http://asq.africa.ufl.edu/previous-issues/volume-7/issue-4/>.

⁴ Amrita Kapur (2011) "Catch-22": The Role of Development Institutions in Promoting Gender Equality in Land Law – Lessons Learned in Post-Conflict Pluralist Africa, 17 *Buff. Hum. Rts. L. Rev.* 75.

⁵ *Id.*

⁶ The Constitution of the Republic of Uganda 1995, Art 237(3).

⁷ Land Act (No. 16 of 1998), Part II.

⁸ Mailo tenure is a quasi-freehold tenure system established in 1900 by the British colonial government to reward colonial agents and remains a relatively secure system of tenure, particularly in the Central region. The Land Act 1998 treats mailo almost identically to freehold tenure, except that mailo tenants cannot use their rights to the detriment of customary tenants, bona fide or lawful occupants on that land (UN-Habitat (2007) A Guide to Property Law in Uganda, United Nations Human Settlements Programme: Nairobi).

⁹ Constitution, Art. 26(2)(b).

¹⁰ Land Act, Cap.227 (1998) (Uganda).

¹¹ The Land (Amendment) Act (2001) (Uganda). This amendment made minor changes to section 98 to allow an extended time limit for courts to dispose of land disputes pending before them prior to the entry into force of the 1998 act.

¹² The Land (Amendment) Act (2004) (Uganda). This amendment introduced extensive changes to certain provisions of the Land Act (1998). Where relevant to this legal analysis, these changes are referenced in footnotes. The 2004 amendment changed, repealed, or added the following sections: 1, 3-9, 14, 28, 30-34, 37-41, 52, 57, 59, 63, 64, 68, 74-87, 89, 91, 93, 95, miscellaneous amendments, and amendments to the Registration of Titles Act (1924).

¹³ The Land (Amendment) Act (2010) (Uganda). This amendment introduced extensive changes to certain provisions of the Land Act (1998). Where relevant to this legal analysis, these changes are referenced in footnotes. The 2010 amendment changed, repealed, or added the following sections: 31, 32A, 35, 59, and 92.

¹⁴ The Land (Amendment) Act (2004) sections 2 and 3.

¹⁵ Giovarelli, R. (2006), "Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property," 4 *Seattle J. for Soc. Jus.* 801.

¹⁶ Asimwe, J. (2001), "Making Women's Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses," 4(1) *Yale Human Rights and Development Journal* Article 8. Available at: <http://digitalcommons.law.yale.edu/yhrdlj/vol4/iss1/8>.

¹⁷ Uganda Ministry of Lands, Housing and Urban Development, National Land Policy, Approved Draft February 2013.

¹⁸ Id., sec. 1.2.3, p.7; sec. 3.8, paras. 112 & 113, p.31; Sec. 4.2, para. 122, p.33; Sec. 4.9, p.41. Section 4.9 is the major section confronting discrimination toward women in Ugandan land and succession law.

¹⁹ Registration of Titles Act 1924, sec. 9. Article 237(4)(a) of the Constitution provides all customary rights holder with the right to obtain a Certificate of Customary Ownership. Procedures for the issuance of such certificates for communal, individual, and family applicants are provided in the Land Act 1998, section 27. *See also* UN-Habitat, *supra* note 8, at 15.

- ²⁰ Khadiagala, L. (2002), "Negotiating Law and Custom: Judicial Doctrine and Women's Property Rights in Uganda," 46 *Journal of African Law* 1-13.
- ²¹ Various laws apply to each type of marriage. These include: The Marriage Act 1904 (Cap. 211, Laws of Uganda); the Divorce Act 1904 (Cap. 249, Laws of Uganda). The Hindu Marriage and Divorce Act 1961 (Cap. 250, Laws of Uganda); the Marriage and Divorce of Mohammedans Act 1906 (Cap. 252, Laws of Uganda) governing all marriages and divorces between Muslims. The Customary Marriages (Cap. 248, Laws of Uganda) Act of 1973 recognizes customary marriage as a legal type of marriage, including polygamous marriages, and establishes a uniform system of registration of customary marriages.
- ²² FIDH (2012), "Women's rights in Uganda: gaps between policy and practice," available at <http://www.fidh.org/IMG/pdf/uganda582afinal.pdf>.
- ²³ The Land (Amendment) Act (2004)(Uganda). Section 38A.
- ²⁴ Id. section 38A(3).
- ²⁵ Law Advocacy for Women in Uganda vs. Attorney General of Uganda, Constitutional Petitions Nos. 13 /05 /& 05 /06, [2007] UGCC 1, April 4, 2007. Available at <http://www.law.georgetown.edu/rossrights/docs/cases/lawa.html>
- ²⁶ Succession (Amendment) Decree 22/72, sec. 28.; see also Asiimwe, J. and O. Crankshaw (2011), "The impact of customary laws on inheritance: A case study of widows in Urban Uganda," 3(1) *Journal of Law and Conflict Resolution* 7-13.
- ²⁷ Asiimwe, F. (2009) Statutory Law, Patriarchy and Inheritance: Home ownership among widows in Uganda, African Sociological Review 12(1):124-142.
- ²⁸ Succession (Amendment) Decree 22/72, sec. 2(1).
- ²⁹ Asiimwe, supra note 27 at 4.
- ³⁰ Bennett, V., G. Faulk, A. Kovina, and T. Eres. (2006), "Inheritance Law in Uganda: the Plight of Widows and Children," 7 *Georgetown Journal of Gender and the Law* 451.
- ³¹ Succession (Amendment) Decree 22/72, sec. 46(B)(2) and 2(8)(a).
- ³² Bennett et al, supra note 30.
- ³³ Doss et al. (2009), "Women, Marriage, and Asset Inheritance in Uganda," Working Paper No. 184, Chronic Poverty Research Centre.
- ³⁴ Asiimwe, supra note 16.
- ³⁵ ICRW and ULA (2010) Property Rights and Gender A Training Toolkit: Property Rights in Marriage and Family.

³⁶ *Id.*

³⁷ In Uganda, it is customary for the family of the prospective husband to provide payment to the family of the prospective wife, or “bride price.” In one study, bride price was commonly cited by individuals as the reason why women should not have property interests when married. (Giovarelli *supra* note 15).

³⁸ Adoko, J. and S. Levine (2005), "A Land Market for Poverty Eradication?: A Case Study of the Impact of Uganda's Land Acts on Policy Hopes for Development and Poverty Eradication," LEMU, June 2005.

³⁹ UN Habitat, *supra* note 8 at 33.

⁴⁰ Land Act 1998 section 3.

⁴¹ Adoko and Levine *supra* note 38; UN-Habitat *supra* note 8.

⁴² Adoko and Levine, *supra* note 38.

⁴³ *Id.* In fact, some view this move towards privatization of customary tenure as a chief aim of the Land Act, which has been criticized as being hostile to customary tenure. However, section 39 of the National Land Policy deals with these criticisms directly, and lays out recommendations for strengthening customary tenure.

⁴⁴ Principles and Practices of Customary Tenure in Acholiland, Acholi and English version, June 2008.

⁴⁵ *Id.*

⁴⁶ UN-Habitat, *supra* note 8 at 40.

⁴⁷ Adoko et al (2011) Understanding and Strengthening Women's Land Rights Under Customary Tenure in Uganda.

⁴⁸ *Id.*

⁴⁹ Bennett et al, *supra* note 30.

⁵⁰ Succession (Amendment) Decree 22/72 (1972), section 28.

⁵¹ Succession (Amendment) Act section 27(1)(B).

