

# Legal Protection on Women's Property Rights as Panacea to Poverty Reduction and Environmental Sustainability in Uganda

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## Abstract

*The exclusion of women from owning and inheriting land in Uganda through Customary law and discriminatory practices has continued to generate debates among scholars. The practice has provided basis for women's economic dependability on men and their exclusion in decision making process in the Uganda society thereby increasing their poverty level and harsh economic condition. The writer relies on historical and content analysis methods to examine the provisions of the 1995 Constitution of Uganda in conjunction with religious ethics, the 1998 Land Act and international human rights norms on women's property rights. The paper analyses the provisions of law and religion on women's property rights, the challenges facing women's property rights and how law and religion can guarantee the protection of women's property rights. The paper examines how the protection of women's property rights serves as measure for poverty reduction and environmental sustainable in Uganda. The paper establishes that inclusion of co-ownership clause in the Land Act will promote women's participation in decision on land matters and that religion practices will guarantee equality of women with men. The paper demonstrates that lack of clear legal definition of women's property rights and the continued application of outdated laws impede their protection, exposes them to poverty, leads to low agricultural productivity and it creates environmentally unsuitable farming practices in the country.*

**Keywords:** *Discriminatory Practices, Environmental Sustainability, Poverty Reduction, Women's participation, International Human Rights Norms*

## Introduction

Land is significant resource for sustainable livelihood, poverty alleviation and environmental sustainable in rural communities and human development. Majority of African rural women play prominent role in agricultural production. This makes the aspects of law, statutory machinery, cultural norms and local practices that influence their access to productive resources and land very necessary. Therefore, one of the means through which people escape poverty in rural and agricultural communities is access to land.<sup>2</sup> Property rights means inalienable ability of individuals and groups of individuals to obtain, possess and utilize property at their discretion as long as their activities do not violate the inalienable human rights of others as outlined in various international human

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<sup>2</sup> Lastarria Corhiel, JA Behrman, Meinzen Dick and AR Quisumbing, *Gender Equity and Land: Toward Secure and Effective Access for Rural Women*, *Gender in Agriculture*, 117, SPRINGER 2014,

rights instruments.<sup>3</sup> Agarwal<sup>4</sup> describes land rights as claims that are legally and socially recognized and enforceable by an external legitimized authority be it at village level, institutions or some higher- level judicial. The Constitution of Uganda and Land Act provide that both men and women have equal rights to own land/property either as individuals or jointly with other people. The Constitution provides that all land in Uganda is owned by the people of Uganda and vests attendant rights in the people in accordance with the four formally recognized land tenure systems.<sup>5</sup>

Among many cultures in Uganda, most or all property belongs to men, even if their wives have it before marriage or she bought or paid for it. It is important for women and men to know that they can own property severally or jointly, before, during and after marriage.<sup>6</sup>

There are no laws prohibiting women from owning property. Traditionally, women do most of the agricultural activities but they do not own family land in Uganda. It is estimated that women own only about 7% of agricultural land. The high rate of female labour in agricultural sector in Uganda has its origin in the colonial period when the patterns of agricultural production were altered fundamentally in order for men to meet the European production needs. The introduction of taxes, coupled with the systematic denial of access to local markets in some areas, forced male household members to migrate in order to earn cash working at colonialists' plantations or the colonial enterprises.<sup>7</sup> Withdrawal of male labour force from domestic food production has serious implication for the divisions of chores within the African households as colonial reposed the sole responsibility for subsistence production upon women.<sup>8</sup>

Land generally belongs to the family or clan and is held by men, although, women may have the right to live or farm on it. In addition, discriminatory laws governing inheritance result in the vast majority of women being excluded from land ownership.<sup>9</sup> Women are unable to own or inherit land due to restrictive practices under customary land tenure or are not economically endowed to purchase land rights in the market. In general, customary practices in some rural areas of the country continue to override statutory law

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<sup>3</sup> C. Immaculate, *Land Rights and Gender in Uganda: Widows' Journey to Justice in Kapchorwa District*, MASTER OF ARTS IN DEVELOPMENT STUDIES, 20, The Hague:the Netherlands, 2015.

<sup>4</sup> B. Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia*, 235, Vol. 8, Cambridge University Press, 1994.

<sup>5</sup> Art 237 (3), Constitution of Republic of Uganda, 1995.

<sup>6</sup> INTERNATIONAL CENTRE FOR RESEARCH ON WOMEN AND UGANDA LAND ALLIANCE, *Property Rights and Family: A Training Toolkit*, 2010, <https://www.icrw.org/files/images/Property-Rights-and-Gender-A-Training-Toolkit-Property-in-Marriage-and-Family>, (last visited Jan. 1, 2021).

<sup>7</sup> G. Barbara, *Caught between Customary and State Law: Women's Land Rights in Uganda in the Context of Increasing Privatization of Land Tenure System*, [https://omokoro.uk/wp-content/uploads/Diplomaarbeit\\_BarbaraGarber\\_01.pdf](https://omokoro.uk/wp-content/uploads/Diplomaarbeit_BarbaraGarber_01.pdf) (last visited Jan. 10, 2021)

<sup>8</sup> J. Koopman, *Women in the Rural Economy: Past, Present and Future*, African Women South of the Sahara, NY: Longman Sci. Tech. Jour., 3-22, (1995).

<sup>9</sup> *Women's Rights in Uganda: Gaps between Policy and Practice*, 2009, <https://www.fidh.org/IMG/pdf/uganda582afinalpdf> (last visited Jan. 5, 2021).

in recognition and enforcement of women's property rights, abating unnoticed land grabbing at family level. Attempts to redress this situation by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use and acquiring spouse consent to transactions involving family land in the 1995 Constitution of the Republic of Uganda and Land Act, Cap 227 of 1998 have not been effective due to failure in implementation and enforcement. While the Land Act Cap 227 caters for spouse to some extent, it does not tackle the land rights of widows and divorcees.<sup>10</sup>

Obstacles to land ownership, particularly in a traditional mostly agrarian society, has huge economically empowered. To cater for this trend and curb the widespread dispossession of women, activists have campaigned for reforms to Ugandan property laws to provide for spouse to be deemed co-owners of family land, that is, land on which the married couple lives and depends. However, there is not seem to be any near prospect for further amending the Land Act which was amended in 2004. To provide that spousal consent is required in writing for the sale of family land on which the family resides or depends.<sup>11</sup> If this trend continues unabated, it will aggravate poverty level among women and it will have negative effect on environmental sustainability because women that contributed large labour without allowing them to reap the fruits of their labour may down tools and leave large parcel of land uncultivated. Therefore this study examines legal frameworks for the protection of women's property rights, causes of women's property rights violations, poverty reduction, environmental sustainability and discriminations against women's property rights.

### **Legal Frameworks for the Protection of Women's Property Rights**

Ugandan government has made effort to address gender discrimination existing in land access and ownership, acknowledging that women's inadequate control over livelihood assets such as land or environment, remains one of the root causes of poverty and lack of environmental sustainability.<sup>12</sup> The government put in place gender responsive legislative and policy frameworks strengthening women's land rights and prohibiting customary practices that denying women access to ownership or occupation of land.<sup>13</sup>

One of the main arguments frequently brought forward in favour of security of women's access to land is that, there is direct link between women's land tenure security and poverty reduction. Accordingly, it is claimed that in an environment of secured property rights, agricultural productivity lends to be positively affected as women are likely to invest in the land they are cultivating, knowing fully that their investments will be

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<sup>10</sup> The Uganda National Land Policy. 2013, p. 25.

<sup>11</sup> International Centre for Research on Women and Uganda Alliance, pp. 22-23.

<sup>12</sup> Francis, Sylla, Antonio and Simon, *Strengthening Women's Land Rights and Security of Tenure for all on Customary Land Settings*, WB CONF. ON LAND AND PROPERTY: THE WORLD BANK, 9 Washington DC, 2015.

<sup>13</sup> Tripp, *Women Movements, Customary Laws and Land Rights in Africa: A Case of Uganda*," AFRICAN STUDIES QUART., 2004.

rewarded.<sup>14</sup> This view was supported by international donors like World Bank. It argues that neglect of women's rights to land is not justified as the literature provides, no evidence of inferior efficiency by women farmers, indeed, a research from Cote d'Ivoire for example, demonstrates that women efficiency is not significantly different from that of men.<sup>15</sup> Therefore, attention to women's land rights will have far reaching economic consequences where women are the main cultivators, where out – migration is high, where control of production activities is differentiated by gender.... Greater control of assets by women often translates into higher levels of spending on children's education, health and food.<sup>16</sup>

Instead of simply granting women the rights to land on the basis of them being humans, the World Bank chooses to justify the promotion of women's land tenure security with social and economic reasons placing the emphasis on the positive impacts on the society as a whole. The strong focus on the economic benefits derived from the protection of women's land rights in areas where women are the main cultivators inevitably raises the question whether the World Bank sees no need to emphasis on women's rights to land where they are not the main cultivators as the economic benefits are not going to worth it.<sup>17</sup> Basing argument in favour of women's land rights on the economic efficiency of female agricultural labour, may be a valid point within an analytical framework where economic growth and poverty reduction are inherently linked.<sup>18</sup>

Through international human right law, even though, in strict legal sense, the right to land does not constitute a human right as such, it is critical for the realisation of other human rights granted under international law such as right to life, food and livelihood without discrimination.<sup>19</sup> Alden<sup>20</sup> even goes far to say that security of land tenure is arguably the most important human right of those who need land to survive, having no other means of production.

One of the core principles embedded in most human right instruments is the principle of non-discrimination which set significant standards for the elimination of gender-based inequalities.<sup>21</sup> It was first embedded within the Universal Declaration on Human Rights,

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<sup>14</sup> A. Kapur, *Two Faces of Change: The Need for a Bi-Directional Approach to Improve Women's Land Rights in Plural Legal Systems*, INT. DEV. LAW ORG., 2011, <https://www.idlo.int/publications/WP2-Mozambique.pdf>. (last visited Jan. 9, 2021)

<sup>15</sup> World Bank Report, 2003, p. 58.

<sup>16</sup> *Id.*

<sup>17</sup> B. Englert, *The World Bank and Land Rights in Africa: An Analysis of the Policy Research Report on Land PRR, 2003.* Occasional *Id.* Paper Series No. 3, Department of African Studies, University of Vienna, 2005.

<sup>18</sup> Ingunn, I, et al., "Human Rights, Formalisation and Women's Land Rights in Southern and Eastern Africa." Study Women's Law, No. 57, Institute of Women's Law, University of Oslo, Norway, 2005, p. 34.

<sup>19</sup> *Id.*, p. 18.

<sup>20</sup> Alden W L., "Land Rights Reform and Governance in Africa: How to make it in 21<sup>st</sup> Century." Discussion Paper, United Nations Development Programme. 2006. <<https://www.elaw.org/system/files/wily.ladrightsreformarticle.pdf>>

<sup>21</sup> Ikdah I., "Go Home and Clear the Conflict: Human Rights Perspectives on Gender and Land in Tanzania," in Englert B and Daley E (eds). *Women's Land Rights and Privatilisation in Eastern Africa*. Oxford Publishers, 2008, pp. 40-60 at p. 47.

1948 and was reaffirmed in Vienna Declaration and Programme of Action, 1993. Article 18 of Vienna Declaration explicitly identifies the eradication of gender-based inequalities as a priority objective of the international community. Of the Conventions pertaining to human rights, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) pays attention to women's rights and entitlements. The preamble of CEDAW recognises the general importance of gender equality, stating that: 'the full and complete development of a country, the welfare of the world and course of peace require maximum participation of women on equal terms with men in all fields.' Art 16 of the Convention explicitly addresses the issue of land reform. Paying particular attention to the situation of the rural women. Art 16 (2) includes the rights to equal treatment in land and agrarian reforms as well as in land resettlement schemes.

Of particular relevance to women's land rights in the Africa's context is the Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa (AFPRW) as adopted by African Union in 2003.<sup>22</sup> Arts 15 (a) and 19 (c) of AFPRW explicitly address the issue of land rights, emphasising the state's obligation to protect women's access to and over productive resources such as land and guarantee their rights to property. All these are means of alleviating poverty among women.

Regarding the land reform proponents of the human rights based approach take generally positive stance towards land titling and formalisation of property rights as a way to protect women's rights to land. It is however recognises that if legal reform is to benefit all members of society equally, the state needs to take into account existing gender inequalities inherent in property relations on the ground and provide protective legislation where required. Setting out certain standards and guidelines that are ideally to be translated into national law, the international human rights framework is supplied to provide policy makers with guidance necessary to master the complex process of privatisation. Core importance is thereby attributed to the premise of affording women equal right in law.<sup>23</sup>

### *Provisions of Constitution*

Constitution of Uganda, 1995 is the first step in the ongoing reforms that have significantly strengthened protection of women's property rights under the formal framework. Article 237 (1) of the Constitution provides that land in Uganda belongs to the citizens of Uganda and shall vest in accordance with the land tenure systems provided in this Constitution.

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<sup>22</sup> Englert, above n. 16.

<sup>23</sup> Ikdahl, above n. 20, p. 56.

Article 31 (2) provides that parliament shall make appropriate laws for the protection of rights of widows and widowers to inherit properties of their deceased spouses and to enjoy parental rights over their children.

Art. 32 (1) provides that notwithstanding anything in this Constitution, the state shall take affirmative action in favour of marginalised groups 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.

Art. 32 (2) provides that laws, cultures, customs and traditions which are against the dignity or interest of women or other marginalised groups to which clause (1) relates or which undermine their status, are prohibited by this Constitution.

Art. 33 (1) Women shall be accorded full and equal dignity of the person with men.

(2) The state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

(3) The state shall protect women and their rights taking into account, their unique status and natural maternal functions in society.

(4) Women shall have the rights to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

(5) Without prejudice to Art 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition and custom.

#### *Protection of Women's Property Right under Land Acts, 2010 and 1998*

Section 22 of Land Act, 2010 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 conceived of the 'held of the family, most typically a man in Ugandan society as the recipient of the title.' Section 27 forbids the application of customary law where it denies women the right to own and/or occupy land.

Section 28 of Land Act Cap 227 of 1998 prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land as well as decisions that impose conditions violating constitutional provisions protecting women.

Section 39 (1) of Land Act provides that no person shall sell, exchange transfer, pledge, mortgage or lease any land, 'on which the person ordinarily resides with his or her spouse and from which they derive their sustenance' except with the prior consent of the spouse.

At the same time, section 39 (5) states that consent shall not be unreasonably withheld.

Where this is the case, it is possible to appeal to land tribunal which has the power to dispense with the consent. Section 39 (6), with the aim of ensuring that the consent is freely given without coercion. Sub section (3) stipulates that the land owners' spouse has

to personally communicate their consent to the responsible Parish Land Committee. The consent clause is designed to protect the rights of family remembers from abuse of

trusteeship at sale. As a result, the sale of a land by a husband without the written consent of his wife is legally invalid.

In compliance with the principle of affirmative action in favor of vulnerable group as embedded within Arts. 32 (1), and 33 (5) of the 1995 Constitution of Republic of Uganda, the Land Act introduces quotas for women's representation. Accordingly, section 48 (4) holds that, at least, one out of five members of the Ugandan Land Commission shall be female, while section 59 (3) requires that at least, one third of the members of a District Land Board shall be women. Similar requirements apply to Land Committees as stipulate in sections 66 (2) and section 48 of Land Administration.

Section 3 of Registration of Titles Act, 1924 specifically disclaims any intention to limit the application of law 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 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 would be shared. This often leaves the wife vulnerable to dispossession on the face of strong societal pressures and presumption that men are the true owners of property.<sup>24</sup>

#### *Religious Ethics*

There is Marriage and Divorce proposed Bill that protect the property rights of women in Islamic Marriage in Uganda. Under the Bill, since 2014, a married woman would have the right to property she got before 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 include the gift (Mahr) given to her by her husband at the time of marriage. The husband has no right to take it away from her. A Husband and wife can however acquire property together during marriage.<sup>25</sup>

Allah says in Qur'an:

O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness, that you are not allowed to take away part of the gift (mahr) you have given them, unless they commit open illegal sexual intercourse. And live with them honourably. If you dislike a thing and Allah bring through it a great deal of good.<sup>26</sup>

He further says:

Men are the protectors and maintainers of women, because Allah has made one of them to excel the other and because they spend (to support them from their means). Therefore, the righteous women are devoutly obedient

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<sup>24</sup> Leslie H., "Women's Land Rights in Uganda." Centre for Women's Land Right, 2014, p. 5.

<sup>25</sup>*Id.*, p. 6.

<sup>26</sup> Al-Niasai 4: 19.

(to Allah and to their husbands) and guard in the husband's absence what Allah orders them to guard (eg, their chastity, their husband's property)...<sup>27</sup>

In Christianity, man and woman have rights to own property either jointly or individually. Each has the responsibility to take care of his/her property and manage it correctly. Property obtained after marriage is considered jointly owned unless the wife or husband states otherwise or unless it is recorded as individual property. The man and woman have the responsibility to look after each other. Each spouse has the right to look after the other.<sup>28</sup>

The protection granted to women was further strengthened by the legal recognition of customary tenure given that the customary provisions safeguarding women's claims in land now have full judicial force in state land and are to be upheld also by the state courts, provided that they are not violating any rights granted by the Constitution.

### **Poverty Reduction and Environmental Sustainability**

Poverty alleviation requires process that will enable people to improve their potentials and performances and to allow them to take responsibility of their affairs.<sup>29</sup> The Central Bank of Nigeria<sup>30</sup> defines poverty as:

“A state where an individual is not able to cater adequately for his or her basic needs like foods, clothing and shelter; unable to meet social and economic obligations, lacks gainful employment, skills, assets and self-esteem; and has limited access to social and economic infrastructure such as education, health, portable water, sanitation and consequently has limited chance of advancing his or her welfare to the limit of his or her capabilities.”

Law plays major role for advancing women's property right and gender equality. When a society is governed by the rule of law, with an accessible and just legal system, women can flourish, contribute to the system and improve its future generation. An effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development. Discriminatory traditional rules and practices against women continue to override the statutory laws in the enforcement of protection of women's rights.

Statutory law provides greater protection for women, allowing for female inheritance and land ownership. Although it trumps customary law in theory, statutory law is less

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<sup>27</sup> *Id.*, 34.

<sup>28</sup> Women's Rights in Uganda: Gaps between Policy and Practice, 2009, p.19. <https://www.fidh.org/IMG/pdf/uganda582afinalpdf> (Last visited Jan. 20, 2021)

<sup>29</sup> H. Gondi., *Poverty in Social Context. The Tenth Africa Training Course on Local and Regional Development Planning and management, Module 3: Panel on Poverty Reduction UNCRD and AICAD*, 2005.

<sup>30</sup> Central Bank of Nigeria, *Strategies for Improving Poverty Alleviation Programme in Nigeria*, PUB. OF THE CEN. BANK OF NIG. (1999).



utilised and practiced. This is especially true in rural communities where ignorance of statutory law is compounded by high illiteracy rates and inaccessible courts. Thus, even where women may have the statutory rights to administer estates, access and control of customary law is severely limited.<sup>31</sup>

Achieving sustainable development require addressing inequality between men and women in the distribution of resources such as land. Since Uganda is Agricultural economy, land is the major productive asset for both nation and the majority of households. Over fifty percent of Ugandan GDP and almost all export earnings come from the agricultural sector which produces cash crops for exports, food for subsistence and sale and raw materials for local and foreign industries. Women supplied seventy percent of Ugandan agricultural labour and sixty percent of labour for cash crops such as coffee, cotton and tea.<sup>32</sup>

Lack of ownership of land by women retards development and contribute to poverty because land in most families belongs to men, many women do not have security of tenure and her tenure depends on the (male) access giver. Most women have little control over household decision-making, particularly in relation to economic activities such as what crops to grow on farm, how to use the income accrue from the sale of family crops and any transaction relating to land.<sup>33</sup>

Facilitating women's access to the means of production and co-ownership of family holdings can be a panacea for poverty reduction and environmental sustainability. In particular, co-ownership would promote women's participation in decision-making about the use of land and income accrued from property. It would also provide security of tenure which would create incentives for women to improve and invest in land use and development. These improvements in land use and investment in developing land have the potential to increase agricultural productivity, GDP and improve conditions for environmentally sustainable farming practices in Uganda.<sup>34</sup>

## **Causes of Violatons and Discriminations Against Women's Property Rights**

Abuse of women's land rights is particularly wide spread in the rural areas where it is common for widows to be chased away from their matrimonial land, for divorced and separated women to be denied access to land in their maiden homes and for married women to be dispossessed of their land by their husbands.<sup>35</sup> Women's access to land

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<sup>31</sup> A. Jacqueline, *Making Women's Land Rights a Reality in Uganda: Advocacy for Co-ownership by Spouses*, YALE HUM. RIG. AND DEV. JOUR. 4 (2-18), 2014.

<sup>32</sup> Paradigm Consult and Policy Analysis and Advocacy Center. *Co-ownership of Land by Spouses*, 2000.

<sup>33</sup>*Id.*, p. 25.

<sup>34</sup> Jacqueline, *Supra* note 31.

<sup>35</sup> Adoko J, Jeremy A and Racheal K., *Understanding and Strengthening Women's Land Rights under Customary Tenure in Uganda*, 2011, p. 4, [https://landportal.org/sites/default/files/2.\\_understanding\\_and\\_strengthening\\_women's\\_land\\_rights\\_under\\_customary\\_tenure\\_in\\_uganda](https://landportal.org/sites/default/files/2._understanding_and_strengthening_women's_land_rights_under_customary_tenure_in_uganda) (Last visited on March 10, 2021)

depends on their relationship with a male, usually, father, husband, brother or son. When such relation break due to death, divorce, separation or any other cause (s), women become vulnerable.<sup>36</sup> The National Land Policy acknowledges that Ugandan women are generally unable to own or inherit land due to restrictive practices under customary land tenure or are not economically endowed to purchase land right in the market.<sup>37</sup>

In agricultural sector, women contribute 83% of land labour force. Despite their economic contribution to national growth and environmental sustainability, only few women enjoy secured rights to land they till.<sup>38</sup> Women do not always share in the benefit of production, even though they may have done most of the work.<sup>39</sup> It was noted that the causes of land rights violations are diversely interlinked and experienced in various ways among widows are committed by different actors. Land conflicts can have a negative bearing on productivity and equity of female-headed households and widows, making them vulnerable and need to be looked into from social and economic perspectives for equity and protection of women's land rights and poverty reduction.

It is obvious that death is the first thing that triggers land disputes and violations of rights of access, use and control land. Widows experienced depression of their status after the demised of their spouses. Widows are vulnerable to land and property grabbing may take a form of gender based violence as widows are forcefully evicted or threatened from their matrimonial homes and land either by husbands' relatives, neighbours, traditional or clan leaders, making the widows unable to even take their own property.<sup>40</sup>

Boundary disputes, inheritance of family land, encroachment and land grabs are the main customary problems experienced by widow. Widow's situation is even worse if she has only female children. If she was considered to be stubborn, not loving the husband's relatives, lazy, indiscipline or bewitched her husband. It is worst if the widow had separated before the death of her husband. One of the clans blamed widows for their predicament. He said:

"Some widows created these problems for themselves. Immediately the husband passes away, some of them sell family land for their interest or even when they have problem to solve like school fees. If it does not clear to the husband's relatives, they feel bad and even allege her to have been the one who killed her husband so as to have freedom to do whatever she wants with the land."<sup>41</sup>

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<sup>36</sup> M. Rugadya, *Gender in Uganda National Land Policy: Issues, Theories and Policy Responses: Implications for Poverty Social Impact Assessment in Uganda*. MFRED, Kampala, 2007.

<sup>37</sup> Gender in Uganda National Land Policy: Issues, Theories and Policy Responses: Implications for Poverty Social Impact Assessment in Uganda.

<sup>38</sup>*Id.*

<sup>39</sup> *Supra* note 36.

<sup>40</sup> *Supra* note 36

<sup>41</sup>*Id.*

To compound to the neglect, the state neither acknowledges nor supports the role that customary authorities are supposed to play in land administration. Lack of resources is not the problem. It cost nothing to organise villagers to choose a tree that they will all recognise as a boundary marker and to encourage everyone to plant this tree. It cost nothing to encourage one to draw maps of their lands, marking their neighbours and getting their neighbours and their clan leaders to sign these maps. The state do not need to do this on ground, but it must set the policy lead that this will be supported and must make it clear that the tree will be protected as boundary marker by the law, that these maps will be respected in courts. The problem remains that governments, academics and the urban elites of the Non-Governmental Organisations have all inherited the prejudice against native and traditional culture from the colonial authorities.<sup>42</sup>

**Lack of Legal Aid Services:** Access to justice by women should not be restricted to the accessibility to lawyers and courts, it must include the assurance that rights and their correlative protection are recognised through formal and informal laws. It should also include access to institutions including customary/traditional one and clear simple and affordable procedures as well as efficient and accessible remedy for the violation or abuse of such rights.<sup>43</sup>

**Inheritance Norms:** This is one of means of acquiring access to property in rural and agricultural communities. However, women particularly widows still struggle to secure land as a result of existing pattern of asset inheritance in Africa and rural Uganda in particular. Women are not consider having right to own land in particular when they become widows. Even if they manage to possess one, they do not know the demarcations of their land because culturally, men are more involved on land issues than women.

Land right in patriarchal practices and customary norms cannot allow widow to get customary land title. Formal laws have limited impact in protecting women's right in a community where the traditional norms and practice hold sway. This is not unconnected to the fact that women are viewed as purchased property as a result of payment of bride price and therefore not entitled to own property.<sup>44</sup>

**Lastly, lack of Education:** Low literacy level in local areas and lack of knowledge on law, land rights and wills making or information on lack titling has implication to women not enjoying their land right in Uganda.

Protection granted women was enhanced by the legal recognition of customary tenure given that the customary provisions safeguarding women's claims in land now have full

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<sup>42</sup>G. Martin, *Rural Women Still Have Few Rights to Land in Uganda*, GUAR.WEEK.INT. EDI. 26 March 2009. <https://www.theguardian.com/katine/2009/mar/26/women-land-rights> (Last visited on March 10, 2021).

<sup>43</sup> Food Agricultural Organisation, 'Rural Women and Access to Justice. FAO Contribution to Committee on the Elimination of all Discrimination against Women CEDAW, 2013, p. 2.

<sup>44</sup> R. Giovarelli. *Customary Law, Household Distribution of Wealth and Women's Rights to Land and Property*, SEATTLE J. SOC JUST, 805-807(2005).

judicial force in state land and are to be upheld also by state courts, provided that they do not violate any rights granted by the Constitution.<sup>45</sup>

In order to improve service delivery and ensure proper implementation of the new law on the ground, the Land Act also set up an ambitious structure of decentralised and management institutions, providing for the establishment of District Land Board, District Land Offices and Registries, Sub-County Area Land Committees and District Land Tribunals.<sup>46</sup>

The nature and scope of land rights granted to individual family members are derived from their position within the family and therefore vary at different stages in life. In the case of women, marital status plays crucial role because it determines where and in which family a woman can claim lands.<sup>47</sup> Daughters and unmarried women have access to land in their maiden homes which they entitled to the use for cultivation. In most cases, nevertheless, the land used do not belong to unmarried girl but to the family as a whole. Immediately she got married and leaves her natal family, the land she cultivated reverted back to her family and reallocated to another user.<sup>48</sup> A woman moves to her husband's home where she is also allocated a piece of land to provide for herself and her children. The progressive commercialization of land has often been said to be particularly beneficial to women given that, ideally, market allocation is based on purchasing power and not along gender lines. Thus, option to purchase land, as argued, provides an avenue through which women can circumvent the customary mechanism of land acquisition that tends to favour men to own land in their own rights.<sup>49</sup>

However, the reality on ground differed. Despite the fact that the Ugandan Constitution provides for gender equality in respect to the acquisition and holding of land, majority of women in Uganda have not been able to benefit from the emerging land market.<sup>50</sup> This is because women often enter market without property, little cash income, minimum political power and large family to maintain.<sup>51</sup> In fact, women in most communities confirmed that with agricultural being their own source of income, they often lack the financial means to purchase land from the market. More so, in the case of married

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<sup>45</sup> Adoko and Levine, *Falling between Two Stools: How Women's Land Rights are not Lost between State and Customary Law in Apac District, Northern Uganda*, Nairobi: EAEP, Kampala Fountain Publishers, 2008, p. 103.

<sup>46</sup> Office of the Auditor General. "Value for Money Audit Report on the Functionality of Land Management Institutions in Uganda, 2011, p. 10. <<http://www.oag.go.ug/uploaffiles1305700704functionality%20of%20Land%20management%institutions%20of%20uganda.pdf>>

<sup>47</sup> Land and Equity Management in Uganda. "How can we Turn Legal Anarchy into Harmonious Legal Pluralisation? Why Interpretation is the Key to Legal Pluralism in Northern and eastern Uganda, 201, p. 3. <<http://www.land-in-uganda.org/assets/legalpluralismpaper.June.2011positionpaper.final.pdf>>

<sup>48</sup> Barbara G., "Women's Land Rights and Tenure Security in Uganda: Experiences from Mbale, APAC and Ntungamo." *Stichproben. Wiener Zeitschrift Fur Kritische Afrikastudie*, 2013, vol. 1, issue 24, pp. 1-132 at pp. 6-7.

<sup>49</sup>*Id.*, p. 8.

<sup>50</sup>*Id.*

<sup>51</sup> Tripp A M., "Women Movements, Customary Law and Land Rights in Africa: The Case of Uganda." *African Studies Quarters*. 2004, vol. 7, issue 4, p. 11.

women, it is usually the husbands who control the family income. Consequently, most of land purchased have been made by male family head.<sup>52</sup> In most cases, women considerably contribute to the land purchases undertaken by male heads of household providing both cash and labour. Nevertheless, their contribution is hardly ever formally acknowledged because sales agreement is usually in the names of the husbands where wives only listed as witnesses if at all.<sup>53</sup>

The situation for women and land right still terrible and seem to be getting worse. Land and Equity Management in Uganda (LEMU) has spent several years researching the grass root realities of women's land rights in Uganda and working with people to find appropriate solution to their problems. It has been found out that majority of widows suffer attempt by neighbours or relatives to grab their land and in a non-industrialised country with no urban employments, having nowhere to farm, means starving, children having no education and sick going untreated. Almost all divorcees and separated women are denied land by their brothers and often live with children to support, in mystery and destitution. Land grabbing is always in aggressive and unimaginably abusive and sometimes violent.<sup>54</sup>

Social judgment is another constraint limiting many married women in their attempts to enter land market because wives seeking to purchase their own land are often viewed as having the baleful intent of absconding their marriage and engaging other men.<sup>55</sup> This social pressure has led many women to conclude that as wives, they have no right to purchase land in their own names for their personal benefit.<sup>56</sup>

In view of reservations against married women buying land, it is not surprising that, it is mostly single women that have been able to avail themselves the advantage of land market, majority of women who have managed to purchase independently were widows, divorced or separate.<sup>57</sup>

Borrowing is another means through which women gain access to land particularly if they lack financial means to buy their own land. In many cases, women choose to enter into the so-called share cropping arrangements, meaning that, instead of paying rent in cash, agricultural produce harvested from the borrowed land is shared between the women and the land owner.<sup>58</sup> It should be pointed out that women entering into such

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<sup>52</sup> Barbara, above n. 47, p. 9.

<sup>53</sup> *Id.*

<sup>54</sup> Martin, Rural Women Still Have Few Rights to Land in Uganda.

<sup>55</sup> Barbara, above n. 47, p. 9.

<sup>56</sup> Bikaako W and Ssenkumba J., "Gender, land and Rights: Contestations in Law, Policy and Practice in Uganda," in Wanyeki LM (ed). *Women and Land in Africa: Culture, Religion and Realising Women's Rights*, London, New York: Zed Books, 2003, pp. 232-277 at p. 255.

<sup>57</sup> Barbara, above n. 47, p. 12.

<sup>58</sup> *Id.*

informal arrangements are often faced with high level of tenure insecurity because the land owner usually has the power to terminate the contract at any time.<sup>59</sup>

Married women usually have no allocative power over family land, including the piece of land allocated to them upon marriage. In fact, there is an unvoiced assumption that the land used by them will automatically revert to their husbands or children upon their death. Only women who have purchased or titled land in their names can freely dispose of their land as desired.<sup>60</sup>

Land sales are increasingly taking place within the customary sphere. Since arable land is becoming scarce, the income derived from agriculture is often meagre to cover the basic household expenses. With the spread of HIV/AIDs, further adding to the burdens of poverty, sales of land in many cases, remains the only option to meet the urgent financial needs such as payment of bride price, school fees, medical bills and burial expenses.<sup>61</sup> Land sales are predominantly by male family heads due to the general belief that under custom, land belongs to men. In many districts in Uganda like Mbale, Apac and Ntungamo, husbands are relatively free to engage in land transactions of their wives or other family members.

With the increase in the individualisation of land rights, customary ownership has become increasingly confused with the western concept of individual land ownership.<sup>62</sup> Consequently, people who supposed to hold land in trust for the whole family have turned themselves into individual land owners, leaving weak members of the family without protection and vulnerable to land right abuse. This development has worked to the detriment of women particularly as they often lack both social and physical strength to successfully defend their claims over land.<sup>63</sup> To make the matter worse, the protection originally granted to women under customary law has been significantly weakened as in the face of increasing land scarcity, rising in land value and fierce competition for social norms are frequently abandoned in favour of personal aggrandisement.<sup>64</sup>

Under the custom, there is an inherent assumption that once married, a woman will stay on her matrimonial land for the rest of her life, as ideally, her interest on her husband's land is protected also upon widow through the customary institution of widow inheritance, widow inheritance is generally unheard of, the customary protection once

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<sup>59</sup>Adoko J., "The Impact of the Presumption that Women Do not Own Land, Women's Land Rights and Ugandan Land Act," 2002, p. 2. <[http://www.mokoro.co.uk/files/13/File/Iria/impact\\_of\\_presumption\\_women\\_do\\_not\\_own\\_land\\_.pdf](http://www.mokoro.co.uk/files/13/File/Iria/impact_of_presumption_women_do_not_own_land_.pdf)>

<sup>60</sup> Adoko, above n. 34.

<sup>61</sup>Adoko, above n. 44, pp. 101-120.

<sup>62</sup> Barbara, above n. 47, p. 14.

<sup>63</sup>*Id.*

<sup>64</sup>Adams M and Palm R., "Independent Review of land Issues, Eastern and Southern Africa." 111 (2006-2007), 2007, p. 59. <<http://www.sarpn.org/documents/d0002625/index.php>>.

granted to widows has largely been eroded.<sup>65</sup> However, some land grabbers abstain from using threats of violence and resort to more subtle strategies to force their victims off land. Sometimes, for instance, in-law may pretend to assist widow in the cultivation of her land and then at the time of harvest simply refused to return part of the land cultivated by them to her.<sup>66</sup>

The state is not protecting women's right because justice system is not available from local courts. Land and Equity Management in Uganda (LEMU) has identified many factors behind this. Court members are not trained in Customary Land Law. How can they uphold women's rights if they do not know in what form they exist? Courts are functioning without support or oversight. The lower court judges rarely make reference to evidence. Though, sometimes, guilty of bias or corruption, they often give judgment defending the right of women. However, land grabbers simply ignored their judgments. The courts do not know how to enforce their judgments and so shrug their shoulders and tell the victims to take their matters to a high court at their own expense. As this repeated, the victims eventually give up, unable to afford to proceed.<sup>67</sup>

Women's land rights will not improve until three changes happen.

- i. The attitudes toward customary law have to change both within the government and in the distant world of academic and Non-governmental Organisations (NGOs);
- ii. The government has to be proactive about improving the situation of justice system particularly in the rural areas; and
- iii. The conventional wisdom is that customary law, people's local cultural norms are both backward and discriminatory, treating women as possessions and denying rights.<sup>68</sup>

## Conclusion and Recommendations

The Constitution of Uganda stipulated that formal law prevails where it is in conflict with customary law provision. This seeks to ensure that statutory and constitutional protection 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 quality and non-discrimination provided in Article 33 as a result of the continued application of pre-1995

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<sup>65</sup>Wmebaza R and Sebina-Zziwa A., "Challenges to District Land Board in the First Four Years of their Existence: Reviewing the District Land Boards." Ugandan Land Alliance, 2005, p. 21. <<http://laug.org/new/wp-content/uploads/reviewing-landboards-1.pdf>>

<sup>66</sup> Land and Equity Movement in Uganda (LEMU) "Why is the Legal System Failing to Protect People's Land Rights?" Policy Document, 2009a, p. 2. <<http://www.land-in-uganda.org/assets/policybrief3-why-is-the-legal-systme-failing-to-protect-land-rights-26-9-2009.pdf>>

<sup>67</sup> Martin, Rural Women Still Have Few Rights to land in Uganda.

<sup>68</sup> Martin, Rural Women Still Have Few Rights to land in Uganda.

Ugandan statutory law; conflicting norms under customary law; and lack of political will to confront institutional discrimination.

Based on the legal environment prevailing in Uganda, victims of land grabbing should sufficiently cater for in terms of land rights protection and unimpeded access to justice. The newly established management institutions were designed to operate from district to sub-county level and should therefore be easily accessible to the majority of Ugandans, one would assume. Over ten years after the enactment of the land reform programme, the newly created system of land management is still far from functioning. Due to financial and human resources constraints, many of the prescribed administrative bodies are either yet being established or are so under funding and under staffed that they are hardly operational.<sup>69</sup>

Where land management often in place, their members lack the legal training necessary to adequately carry out the tasks at hand and therefore sometimes failed to properly apply the legislations meant to protect women's property rights.<sup>70</sup>

The state of Ugandan Land delivery system is currently poor. Corruption and bribery are common among local courts members. Absence of adequate skill and knowledge are other challenges inhibiting proper administration of the existing legislations meant to safeguard the women's property rights. In fact, when deciding cases, Local county courts often draw on a mixture of customary norms and statutory provisions and sometimes, bills not yet passed by the parliament are referred to. Selective application of different laws has put women at a great disadvantage, particularly in land related matters where local county court members are susceptible to the misconception of the customary land ownership as anywhere else.<sup>71</sup>

Furthermore, due to the fact that Local county court members are staff of local community, court members and conflicting parties are often familiar with each other and sometime even maintain personal relationships. In a male- dominated institutional environment, this has put women at a great disadvantage as the predominantly male court members are generally reluctant to rule against their male counterparts or meddle in their friends family problems.<sup>72</sup> It is therefore, common for women who want to report their husbands or brothers to local authorities to be told to go home to resolve the conflict amicably.<sup>73</sup> Even when court ruled in favour of a female plaintiff, this does not necessarily implies that her struggle is over because court often lack both the means and authorities

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<sup>69</sup> Ahikire J., "Cutting the Coat According to the Cloth: Decentralisation and Women's Agency on Land Rights in Uganda." Centre for Basic Research (CBR), Working Paper No.97/2011, Kampala CBR, 2011, p. 31.

<sup>70</sup> Barbara, above n. 47, p. 26.

<sup>71</sup> Adoko J and Levine S., "Land Rights: Where we are now and where we need to Go." A Review of Situation of Land Rights in APPAC District in Uganda, and of Opportunities for Land Rights Protection Work, Based on the Work of LEMU in (2003-2004), 2005a, p. 15. <<http://www.land-in-uganda.org/assets/land-rights-in-uganda-%20where-we-are-now-and-where-we-need-to-go-sep2005.pdf>>

<sup>72</sup> Ahikire, above n. 68, p. 31.

<sup>73</sup> *Id.*, p. 26.



to actually enforce their decisions.<sup>74</sup> Where a judgment is not respected, the affected woman has no alternative but to appeal to higher court and have the original suit restarted.<sup>75</sup> In view of common failure to uphold and protect woman's interest, it is not surprising that many women are hesitant to take legal action against those who deprived them of their land rights. Given that, the main perpetrators of land grabbing from women are family and clan members, the pursuit of land rights in courts is already risky venture because the majority of women going to state courts against a clan member is not just expensive but especially unacceptable.<sup>76</sup> Women taking a family member to court are not only face with a high risk of domestic violence but sometimes, they may be expelled from their communities or abandoned by their husbands.<sup>77</sup>

The international communities like United Nations, African Union, the African Commission Human and People's Rights, the European Union, the Commonwealth and other donors should support Ugandan government in its efforts to tackle the menace of discrimination and violence against women.

To eliminate the remaining discriminatory legislations including the Succession Act, need to be reformed urgently, implement all relevant decisions of the constitutional courts on succession, divorced and so on.

Lastly, there is need to strengthen effort to eliminate harmful practices and stereotypes that discriminate against women. A strategic action plan geared to achieving this objective must be put in place without further delay, involving both governmental and non-governmental actors.

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<sup>74</sup> Adoko, above n. 70, p. 15.

<sup>75</sup> Land and Equity Management in Uganda, 3.

<sup>76</sup> LEMU, "How Does Land Grabbing Happen?" (Policy Document, 2009), p. 2. <<http://www.land-in-uganda.org/assets/policybrief1-How-Does-Land-Grabbing-Happen-26-9-2008.pdf>>

<sup>77</sup> Eilor E and Giovarelli R., "Land Sector Analysis: General Family Issues and Land Rights Components." Final Report, the Government of Republic of Uganda. Grant No. PHRD/02/04. Rural Development Institute, 2002, p. 18. <[http://www.foodnet.cgiar.org/scrpd/docs&database/ifpristudies\\_ug\\_nonscrpd/pdfs/Land\\_Sector\\_Analysis-2002\\_Gender\\_Family%20issue%and%20landright%20component.pdf](http://www.foodnet.cgiar.org/scrpd/docs&database/ifpristudies_ug_nonscrpd/pdfs/Land_Sector_Analysis-2002_Gender_Family%20issue%and%20landright%20component.pdf)>