



Gender Transformation & Empowerment



A house of a widow with disability torched because of a land wrangle in Awach Sub County, Gulu District

DYNAMICS OF CONFLICT ON WOMEN'S RIGHTS TO LAND UNDER CUSTOMARY TENURE: EFFECTIVENESS OF LEGISLATION

A POLICY BRIEF:

Focus on Acholi Sub-Region

INTRODUCTION:

Women's land rights are protected under Uganda's 1995 Constitution and the Land Act of 1998, which defines the types of land ownership that are legally recognized. Both clearly spell out women's right to access and own land whether individually or with others. The Land Act also seeks to protect women's rights by including their recognition and consent before any transactions involving family land. Customary

tenure practices are also required to involve women in significant land decision making.

Custom is a very powerful force that has a deep bearing on women's access to land. Cultural practices in most parts of Uganda hold women not as equal partners to men, but as subordinates. Given that custom is deeply entrenched in most of Ugandan society today, irrespective of what the legal provisions are, it is customary practices that determine whether a woman



UN JOINT PROGRAMME ON GENDER EQUALITY
Supported by UKaid from the Department for International Development

will actually have access to land. In light of this, even if the law provides for women's ownership of land, customary practices may prevent the claim over any such right. Much as ownership of land is statutorily allowed, she may be discouraged from asserting this right. An unmarried woman may use her family's land (usually held in her father's name) but may claim no permanent use or ownership rights to the land. Upon divorce or death of their husbands, women can be denied property rights on their land and homes.

Despite the protections provided in the law, the patriarchal

nature of the various ethnic communities in Uganda makes it difficult to implement some of these laws in real practice. Many women have been denied access to and inheritance of land in cases of divorce, death of husbands or fathers and women with disabilities suffer double discrimination in this regard. There are low levels of awareness about the land laws among women and this hinders them from claiming their rights.

The National Land Policy 2013 in article 9, recognizes the obstacles women face in accessing and owning land, "Land use is primarily an activity

of the women folk, who are unable to own or inherit land due to restricted practices under customary land tenure or are not economically endowed to purchase rights in the market". In stating this, the policy is cognizant that despite the 1998 Land Act and the Constitution proscribing discriminatory practices against women in land ownership, occupation and use, and further requiring spousal consent to transactions involving family land, men have routinely ignored these prescriptions and in the event of widowhood and divorce, these laws are hardly applied.

THE DYNAMICS OF CONFLICT AND WOMEN'S LAND RIGHTS

Northern Uganda experienced over 20 years of conflict followed by 5 years of post-conflict reconstruction. Today, Northern Uganda makes up approximately one-third of the entire national population suffering from chronic poverty.¹ During the war in northern Uganda, many people were displaced from their land and after the war, the resettlement and return of Internally Displaced Persons to Northern Uganda has led to increased conflict over land. As a result, women's accessibility to land has become very complicated by the subsequent land disputes that tend to have characterized the resettlement process to date.

If women's enjoyment of their rights to land is limited during times of peace, their enjoyment of these rights during conflict

'If women's enjoyment of their rights to land is limited during times of peace, their enjoyment of these rights during conflict situations is nearly prohibited. In addition to loss of land rights during conflicts, conflicts draw men away from their communities and require women to perform all functions of the head of the household, which is particularly difficult under wartime conditions, where access to food, water, labour and transport are obstructed'.

1 The second chronic poverty report on Uganda, Is anyone listening? August 2010, The Chronic Poverty Research Centre

situations is nearly prohibited. In addition to loss of land rights during conflicts, conflicts draw men away from their communities and require women to perform all functions of the head of the household, which is particularly difficult under wartime conditions, where access to food, water, labour and transport are obstructed. As a result of violence associated with conflict, women often have to flee their homes and lands. As refugees or internally displaced persons, women lose their access to land and property rights as traditional systems and mechanisms that protected women land rights are eroded. Women who return to their homes post conflict either face the same lack of access as they did pre conflict, or, particularly if they are widowed, single, or if their spouses are missing, women returnees are often confronted by male relatives who rely on custom and power to deny and usurp women's claims to land. Women are increasingly rendered homeless during conflict and post conflict reconstruction.²

In almost all instances boundaries and rights to land were not documented before the conflict. Consequently, competition for and conflict over ownership, access to and control of land continued. In this environment, women's ability to access land or assert their land rights was almost impossible. Women have lost their social networks through which they accessed land. Returnees and widows are among those that have found it particularly hard to re-establish these networks. Returning women also find that land they previously had access to has been legally acquired by

'Even married women are susceptible to land rights abuse. Women's vulnerability stems from power imbalances and possible domestic violence within her marital home'.

other parties, leaving them landless. Additionally, many of the elders who would traditionally enforce women's access to land were killed in the war. Also, as a result of war, the traditional systems and power of the remaining elders have been severely eroded.³

As land conflicts intensify in this region, the situation for women and their right to land seems to be getting worse. Gender and socio-cultural factors compounded with the aftermath of the two decades of civil war in Northern Uganda has made the struggle for women's rights to land more difficult.⁴ Women in Northern Uganda, especially single women, widows, divorced women and women with disabilities suffer disproportionately from the lack of control over land and its proceeds. This challenge is embedded in certain religious and cultural norms, attitudes and practices such as discrimination against women with disability, belief that women are not supposed to own land, the practice of widow inheritance, and payment of bride price. Women are also made more vulnerable because they do not know their land rights and they lack the means to effect their rights which has worsened with low/poor enforcement of the laws to protect their land rights. This lack of control over land and its proceeds increases women's vulnerability to Gender Based Violence.

In Northern Uganda the majority of land ownership is under the customary tenure system and is typically passed from one generation to another. This type of land ownership is guided by

2 The Right to Land and Justice for Women in Africa, African Women's Land Rights Conference Report (May 30th to 2nd June, 2011, Nairobi, Kenya), pg 13
3 Ibid, pg 14
4 Notes from the Field: Securing Women's Land Rights in the Acholi sub-region in Northern Uganda. By Allison Tamer, (available on line)

informal rules that are reinforced by the Acholi traditional clan structure. This means that land is under the custody of clan heads (i.e., family heads) and elders, who are almost always men. Often times, male clan leaders refuse to grant their female relatives land ownership, as they believe that land should be transferred through male heads of household.

The customary land tenure system makes it difficult for women to navigate and advocate for their land rights. Many single women, widows, divorcees and separated women are denied land by their own relatives, and live, often with children to support, in misery and destitution. In a non-industrialized region with high unemployment, having nowhere to farm means no food on the table or money for children's school fees.

Even married women are susceptible to land rights abuse. Women's vulnerability stems from power imbalances and possible domestic violence within her marital home. Although Uganda's Land Act (1998) establishes restrictions on the transfer of land by a spouse without the written consent of a wife, not all women know of these rights or have the power or access to justice to fight against their husbands decisions. A husband may also pretend that he is no longer interested in his wife seeking a separation-long enough for him to sell their land. When a husband wants to take a second wife, he will generally take land from his first wife.

'When women are denied access to land and its proceeds, it further exacerbates land conflict, causes landlessness, and forces women to encroach on wetlands and forests thus causing environmental degradation'.

Armed conflicts often exacerbate women's existing problems of insecure land tenure and access besides generating new ones. In situations of high mortality of men during the war, the women who have survived have found it difficult to secure access to land that was formerly owned or jointly owned by the husbands or with other male relatives. This is because such women might be denied access to land by their in-laws or by other surviving male relatives. Women, whose previous access to land was through marriage but became widows, are left in a vulnerable position especially when the husband's relatives lay claim to the land.⁵

When deprived of access to, ownership and use of land, women are left without the means to create stable and sustainable livelihoods in the aftermath of the war. This has the effect of not only making women vulnerable to poverty but also reinforces and perpetuates their social, economic and political inequalities. As a result, many women may be compelled to seek alternative livelihoods outside agriculture wherein they are prone to exploitation such as working as maids, waitresses, sex workers or hawkers.⁶

When women are denied access to land and its proceeds, it further exacerbates land conflict, causes landlessness, and forces women to encroach on wetlands and forests thus causing environmental degradation. In laying claim to their land rights, women have been exposed to domestic and other forms of Gender Based Violence.

5 Challenges and Opportunities for Women's Land Rights in Post Conflict Northern Uganda, MICROCON Research Working Paper 26, Fredrick Immanuel Kindi; June 2010, at pg 5

6 Ibid at pg 6

WOMEN AND LAND RIGHTS

In Uganda, women are largely 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 many parts of the country continue to override statutory law in recognition and enforcement of women's land rights, abating unnoticed land grabbing at family level.⁷ Molded by society's patriarchal norms, these laws and practices give ownership of land to men or male heads of extended families, while women enjoy "secondary" rights in the form of access to and use of land through their husbands, fathers, brothers, or other male relatives.⁸

Attempts to redress this situation by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use, and requiring spousal consent to transactions involving family land in the 1995 Constitution and the Land Act Cap 227 have not been effective due to failure in implementation and enforcement. While the Land Act (Cap 227) caters for a spouse to some extent, it does not tackle the land rights of widows, divorcees and children.⁹ The National Land Policy prescribes specific strategies to ensure that constitutional rights and obligations with regard to gender equality are upheld, particularly around reforming customary laws and practices.¹⁰

The application of statutory laws is further complicated by a number of factors, including lack of knowledge of the laws and the high costs of legal action to administer an estate.

The implications for Ugandan women of the primacy of customary law is that their rights over land and housing depend significantly on the quality of their personal and social relationships, primarily with their intimate partners and to a lesser extent with other kinship groups. A number of factors, including the weakening of the institution of marriage and increased scarcity of land, have contributed to the deterioration of women's rights under the customary framework.¹¹

The situation for women in post conflict situations is made worse especially because the state justice system is inaccessible to them. They often have to rely on customary principles and interpretations of their land rights from mostly male clan heads or elders. Where in the past, land was held in trust for the family, over time the trust has been broken, with women's rights being both denied and abused. The tragedy of today is that in the context of the competition for land, the very people given responsibility to protect the land rights of women, people such as fathers, brothers, uncles, and male in laws, have now become the chief violators of these rights.

Women's land rights vulnerability under custom is exacerbated by the inherent fact of women's transience; women move from their maiden homes to their marital homes and sometimes back again. In a patrilineal system, women are viewed as a variable, and not a constant in family relations. So while on the one hand, the law purports to give women sure rights

7 The Uganda National Land Policy, February 2013, pg 23

8 Gender, Land and Assets Survey in Uganda: Gender Differences in Asset rights in Central Uganda, 2011 (Published by ICRW), pg 3

9 The Uganda National Land Policy, February 2013, pg 23

10 Ibid, pg 23

11 Gender, Land and Assets Survey in Uganda, at pg 3

in land, this does not address this patriarchal view of women.

Although Uganda's statutory laws grant men and women equal rights to land and other property regardless of their marital status, application of these laws has been mired by a number of factors. First, legal pluralism that stems from the recognition of both customary and statutory land tenure in the Constitution and the Land Act results in multiple conflicts between customary and statutory laws, which are often not mediated by statutory provisions as prescribed in the Constitution. The application of statutory laws is further complicated by a number of factors, including lack of knowledge of the laws and the high costs of legal action to administer an estate. The weak institutional capacity of the legal system, particularly in rural areas, also prevents effective enforcement and administration of the laws.¹²

Marriage is essential in proscribing women's property rights, but despite the fact, the Ugandan Parliament has failed to pass the Marriage and Divorce Bill, a law that attempted to clearly spell out men and women's property rights in marriage. The bill defined marital property and the rules applying to the ownership of property acquired during marriage, including the notion of spousal contribution – both monetary and non-monetary – towards improvement of matrimonial

Marriage is essential in proscribing women's property rights, but despite the fact, the Ugandan Parliament has failed to pass the Marriage and Divorce Bill, a law that attempted to clearly spell out men and women's property rights in marriage.

property. These provisions were aimed at entitling women to their fair share of property in marriage and upon divorce. The law also sought to provide some level of protection of property rights, to men and women in cohabitation. Without a clear law on women's property rights in marriage, many women are left vulnerable. However, through the National Land Policy, Government has committed itself to "ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage and at succession without discrimination."¹³

Widows are also a category of women that are among the vulnerable, and who suffer the clash between statutory and customary law, when it comes to protection of their land and property rights. Uganda is long overdue for an amendment to the Succession Act, in order to clearly spell out and protect widow's rights to inherit property. Here again, Government, through the 2013 National Land Policy, commits to "review and regulate customary law and practices in access to and ownership of land, thus ensuring that rules and procedures relating to succession do not impede transmission of land to women and children; as well as amending the Succession Act Cap 162 to provide for the right to succession and inheritance of family land by women and children."¹⁴

12 Ibid, pg 3

13 The Uganda National Land Policy, February 2013, pg 24

14 Ibid, pg 24

CONCLUSIONS AND RECOMMENDATIONS

The 20 years of displacement and stay in camps debilitated social norms and values as well as dislocated social networks that among others ensured protection of women and children. This has greatly undermined the customary tenure. Therefore, rebuilding the social and moral fabric of Acholi society would require integrating norms and values that have regard for women's rights and more firmly their rights to land. This implies involving women in customary structures so as to be relevant or keep abreast with their changing needs and role in post conflict.

The customary tenure has mechanisms of protecting women's access to and use of land in case of divorce, non-marriage or death of husband. It thus important that such protection mechanisms are explored and built upon to see that widows, divorced and women as a whole as well as other category of women facing land

related problems are enabled to re-access, use land, control and own land.

Despite the fact that the laws-both statutory and customary have some provisions to protect women's access and ownership rights to land, the perception and practice particularly by the traditional structures/systems as well as lower local government structures which are at the centre of resolving the increasing land disputes and land rights abuse particularly against women are still wanting.

There is need to look beyond legal and policy reforms and adopt broad based social change towards women's land rights. This would be through engaging in dialogue with the community leaders and traditional institutions to ensure women's land rights are protected and supported at this level.

We therefore recommend:

- Enhancing capacities of the traditional and lower level local government structures such as the Rwot Kwer, Area Land Committees and Court Committees which are playing a leading role in resolving the ongoing land rights abuses. The enhancement should among other things emphasise upholding, protecting and promoting women's land rights but also ensuring their fully functional with minimal challenges; there should be continuous capacity development activities for both formal and informal dispute resolution mechanisms.
- Government needs to regularly supervise the activities of these traditional forums of dispute resolution in order to ensure that their operations and rulings are in conformity with the established land related laws and practices of formal institutions especially in regard to protection of rights of the marginalised groups such as women.
- The process of customary land registration needs to be reinstated but considering all the necessary amendments such as instituting an independent customary land registry; ensuring registration of clans and all the structures there in that are crucial for handling land matters; serialising the certificates and more importantly ensuring consideration of women in the registration process.
- It is also important that the clan in terms of customary tenure should be considered as the 1st court of instance. In this case the role of the clan in managing household heads; protecting children, women and the vulnerable such as widows; sanctioning land sales; hearing land cases; managing communal land and protection of boundaries among others need to be strengthened and emphasised.
- There is need to widely disseminate the Principles, Practices, Rights and Responsibilities (PPRR) of Customary Land Tenure particularly the provisions on women's land rights and as well support it's (the PPRR's) implementation. This document should be the point of reference in resolution of land disputes and land rights abuses. It should be the basis of other stakeholders to engage on land issues.

- There is need to streamline documentation of the procedure and actual spousal consent in regard to decisions around land such as land sale and emphasising this as a crucial evidential requirement in the process of delivering justice.
- Strengthen the court system to follow-up on the judgements passed because some are not respected especially where the ruling is in favour of a woman; they are often thrown/ evicted off land even when the court rule otherwise.
- Hearing of land cases should be within the communities. This will mostly especially help women who many times may not be able to transport witnesses to court but as well it helps court to gather additional contextual information which couldn't be easily gathered out of the locality.
- There is need for increased access to legal services especially for women who are being overlooked and are at risk of marginalisation.

Contact;

The Executive Director

Uganda Women's Network

Plot 710, Block 216, Mirembe Close

Bbuye-Kigowa, Ntinda, Kampala

P. O Box 27991-Kampala, Uganda

Phone: +256 414 286 539,

Email: info@uwonet.or.ug

Website: www.uwonet.or.ug

Blog: <http://uwonetnews.blogspot.com>

Facebook: <http://www.facebook.com/uwonet>

Twitter: @uwonet