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What can be done to secure widows' land rights under customary land tenure?

1. Introduction

To rebut society's misconception that "women do not own land under customary land tenure" different regions (Lango, Teso, Acholi and Bunyoro) and different tribes (the Alur, Aringa and Lugbara) wrote down their customs in the book they call Principles, Practices, Rights and Responsibilities (PPRR). The custom states: "All persons born in or married into a family have rights to customary land". For the management of family land, these same customs state: "Heads of families [defined as "a married man, a widow, unmarried woman, and a divorced woman"] hold land in trust for the family and have the rights to allocate land to members of their families and to protect land rights of women and children from trespassers". The customs further say "The widow becomes head of family after the death of her husband". It is therefore clear that there are a number of ways that women do hold land rights under customary tenure. This paper examines whether or not the custom is being followed, and why. The paper will then recommend ways that women can secure their land rights in families.

2. Are families respecting women's land rights as per their documented customs?

Information on the above comes from research carried out in 2015 and 2016 by the Land and Equity movement in Uganda (LEMU) amongst 720 widows. The widows comprised 512 who are supported by the Catholic Church in Ngetta in Lango and 208 widows supported by the Catholic Church in Soroti, Teso. The findings of the two pieces of research are the same: widows' land rights are under attack and the customs are blatantly abused.

The Ngetta (in Lango) research amongst 512 widows shows that widows acquired land through various (and sometimes multiple) means:

- Inheritance (63.9%)
- Clearing bush land not yet owned together with their husbands (17%)
- The purchase of land together with

their husbands (11.7%)

- Land given as a gift (5.5%)

- Don't know how they got land (1.6%)

182 (36%) of the 512 of widows in Lango reported that one year after the death of their husbands some of their land was grabbed, with 84 of these 182 widows (46%) naming brothers in law as the land grabbers. The loss of land has reduced their land acreage. Out of 512 widows, 91(17.8%) have 0 to 2 gardens while 180 (35.2%) have 3 or 4 gardens only.

Out of the 512 widows in Lango, 425 (83%) widows reported that they are still living in their marital homes; 72 (14.1%) widows were forced to return to the maiden homes; 7 (1.4%) widows remarried and 7 (1.4%) were denied land rights by both the marital homes and maiden homes and would have become landless if they or their children had not bought land for them.

Most widows state that their lives are worse after the death of their husband. In Lango, 306 (59.8%) widows say their life is much worse after the death of their husbands.

The Soroti research of 208 widows had similar findings. Most of the widows inherited land from the parents of their late husbands with only 15.6% buying land. Other key findings are as follows:

- 43.2% of the widows reported having land in conflict, mainly with close in-laws (in 75.4% of the cases)
- 38% of the widows were forced out of their marital homes
- 40.4% of the widows have been assaulted, mainly by brothers in law
- In circumstances where land had been lost by widows, over 50% was lost to either to land disputes (34.2%) or land grabbing (16.4%)
- 62.3% of the widows still live in marital homes; 15.9% have returned to maiden homes; 21.9% live in other places.

Land taken from widows has reduced the average land that is held by each widow to 4.3 acres, which translates on average into 1.1 acre to be allocated to each child. For 85% of the widows, land conflicts started within 6 to 12 months of the husbands' death. As in Lango, 159 (76%) of the widows report that their living condition is worse after their husbands' death.

3. So why is there so much abuse of land rights of widows in families?

Returning, then, to the suggestion that women's land rights are insecure because "custom does not allow widows to own land"; this paper asks why the documented customs directly contradict that statement? If custom did not allow widows land rights why would widows fight for their land rights under the understanding that they are entitled to those rights? Customs are those things that continue over time because they

are "socially acceptable". If dispossessing a widow was "socially acceptable" would the widows not pack their bags and return home peacefully immediately after the death of their husbands, accepting this as their custom? Why do they instead suffer beating, threats, insults, intimidation and in some cases death? If customs did not allow widows to own land, why would the land grabbers use strategies of assault, accuse widows of killing their husbands, of being a witch, or blocking her pathways etc?

In my opinion, it is because the land grabbers know it is not acceptable by custom, are ashamed of their actions and hide behind other reasons to justify their illegal acts. They also use accusations so as to remove any social support that the widow would have to protect her land rights. The real reasons they grab land are because the traditional and state protective systems are weak and so the land grabbers' greed and illegal actions win. Without the clans and the Police working together to deter land grabbing and working together to protect the land rights of widows, no amount of sensitization and empowerment of widows on their rights will improve their situation.

4. How can widows land rights be better protected?

The recommended means by which widows land rights can be better protected are as follows:

Clan protection - the documented customs state: *"the clan of the deceased husband shall appoint a man to protect the land rights of a widow from trespassers but the land rights of the widow shall not pass onto the officer appointed to protect the widow"*. The research found that some of the clans are not protecting widows' despite the custom.

Widows' land rights are more secure when the parents in law are still alive,

and some protection may derive from the parents in law. However, if they too are dead, then often the brothers in law exploit the vulnerability of the widow. Some clans are also unhappy with widows who refuse to be inherited, or who pick an inheritor from outside the clans, even though their written customs allow this.

In addition, there are circumstances where clans are not considering the children of widows (whether born when the husbands are alive or after the husband's death) as "clan children". Instead, the children are viewed more and more as the "widows" children, making it easy for the clan to allow brothers in law to grab the widow's land.

There are many cases that show that clan protection of widows' land rights would improve widows' security of tenure. During the dissemination of the research to 49 widows in Soroti on 15th December, 2016, the testimony of one widow confirms this: *"My brothers in law consistently wanted to sell my 2 plots for taking back his children to school, yet my own children were also still at home. So I used the power within me to mobilize support from the clan members to fight off my brothers in law until my brother in law gave up interest in my land"*.

Police protection – S. 92 of The Land Act 1998 states: *"a person who willfully and without the consent of the owner occupies land belonging to another person, commits an offence"*, which renders land grabbing a crime. The Police should buy and read the PPRR books so as to understand the customs on land rights of widows and the responsibilities of the clan and then engage the clans to use this section more often to protect the widows' land rights in accordance with the Land Act.

Widows need to fight for their land rights

- Due to the threats that accompany land grabbing attempts, and lack of support from clans, research shows that widows usually give up their land rights in exchange for "peace". However, research also shows that the land grabber often comes back to grab more land from the widow. The solution for the widow is therefore to fight. This is possible, as by the testimony of a widow: *"When my husband died, I was taken back to my maiden home where I lived for about five years, but when I realized that I had land rights in my marital home, I summoned my courage and fought for my land until I got my land back and I am now living there happily"*.

Husbands and wives should plant boundary trees, draw sketch maps and document names of their family landowners in a Family Land Rights and Lineage Tree (FLR<).

The research in Lango shows that 48.4% of the widows have planted boundary trees and 4.9% have drawn sketch maps of their land. In Soroti, 38% of the 208 widows protected their land by planting boundary trees, but only 9% by use of signed sketch maps. If these three actions are taken when the husbands are still alive, it would make land grabbing from widows by brothers in law more difficult because the clans, the neighbours, the Police and the courts would have better documentary evidence and witnesses to testify to the land rights of the widows.

Widows to buy the PPRR books – The research in Soroti shows that 60% of the widows know their land rights under customary land tenure. It was discovered in the Lango research that 69 (13.5%) widows reported to have bought the Principles, Practices, Rights and Responsibilities (PPRR) book and twenty-five 25 of the 69 (36.2%) widows who bought the PPRR said they have used it in solving their land disputes. Given the untrue and very common statement that "women do not own land under customary tenure", widows in Lango, Teso, should purchase the PPRR to claim and defend their land rights. Other development actors, especially women's advocates and government courts in these regions should do the same.

Ministry of Lands, Housing and Urban Development to design family land titles

– A form of title which suits the way land is owned and governed under the customary land tenure system does not currently exist. If one was designed to ensure:

- i) the names of all family members were entered or attached to the title; **and**
- ii) the laws governing customary tenure was enacted to govern this title. (The law under customary land tenure is that family land is ***held in trust***, and that all family members and the clan must give family consent if land is to be sold, rented or mortgaged. This should become state law to govern family land titles issued under customary land tenure system); **and**

iii) the clans' responsibility to protect land rights and land from irresponsible sales was recognized by state law, **and**

iv) a land registry for customary land tenure was designed with the involvement of the traditional institutions;

then the land rights of widows and all family members, would be much improved. The family land titles would give security of tenure to widows and remove the fear that families have that individual land titles to widows can lead to the families losing the family land should a widow remarry. Most importantly, it would make land grabbing from widows by brothers in law impossible. A customary land registry would keep a copy of the title which can provide vital evidence of land rights.

5. Conclusion

Those who continue to say customs do not allow women to own land are giving the land grabber a weapon by which to continue hurting widows and other women: the unmarried, the divorced, the wife. Some traditional institutions have written their customs down, which disagree with this position, and recognize widows' rights.

Which way should we go now - continue to assert the distortion that customs does not allow women to own land, or purchase the PPRR books, read and implement them to uphold the customs that protect and give widows and other women land rights? Should we not work together to end the abuse of customs rather than continue to blame custom? As Land and Equity Movement in Uganda, an NGO that supports and promotes customary land tenure we believe that customs are based on the values of love, peace and inclusion. Dispossessing a widow, who is most vulnerable at the death of her husband, cannot be custom but is instead an abuse of customs brought about by greed and ineffective protection systems. We encourage all widows, women and development actors to read this paper and to act on the proposed recommendations. We encourage you to do the same.

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