

# Women left holding the bag: Irresponsible clan Governance is the cause of land rights abuse of women and children.

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**11<sup>th</sup> March, 2015**

## 1. Introduction.

Broadly speaking, customary tenure in Northern and Eastern Uganda is very similar to that of West Nile and Bunyoro. In summary, land is for all family members – one must belong to a clan in order to have family land rights. If there is no acceptable marriage, the clans determine to which clan children born out of marriage belong. The custom says: All persons born in a family, married into a family, given land as a gift, or genuinely and legally purchasing land under customary tenure have rights to customary land. The land is then managed in trust by heads of family, who are married men, unmarried adult girls, widows, and divorced women, on behalf of all family members. Children have rights to land by birth. All children, boys and girls born to a family have the right to allocation of their father's land and the right to own their allocated land, as well as the right to pass it to their children. Because children have birth rights to land even before they are born, the clan protects against the sale of land without family consent. This is the most important restriction because it protects the rights of vulnerable members of families and ensures that land remains in the family to protect their livelihoods and safety.

## 2. Land rights, good behaviour and Immorality.

Custom recognizes that, in the context

of family relationships, relationships may be either socially acceptable or socially unacceptable. Acceptable relationships include marriages where dowry is paid and then a husband and wife produce children. The land rights of these wives and their children, especially male children, are the safest, as they are not significantly under attack today. Unacceptable relationships, however, include those where a woman produces a child outside of marriage. In these cases, the clan of the mother offers the clan of the father opportunities to: **a)** do the right thing and marry the woman he impregnated, or **b)** do the second best thing and pay a token compensation for the pregnancy, take charge over his child, and give the child his clan name. If he refuses both options, he is “punished” by denying him charge over the child forever (unless he changes his mind and claims the child by pursuing one of the above options). In those circumstances, the child takes the clan of the mother. Customs view children as “gifts” to the family to increase the family size and to keep the lineage for the future. Today, there is a great number of land rights abuses towards unmarried women and their children because the clans are failing in their responsibilities to hold the biological fathers and their clans accountable for taking charge over children born outside of marriage. Instead of performing their duties, some clans are now calling for a change in land rights law/custom and want “children born to unmarried girls

to have land rights from their biological fathers.” The question to ask then is: if a biological father refuses to do what custom expects him to do – marry the girlfriend or claim the child by paying compensation to the mother’s clan, how effective will the proposed change in the law be for the biological father to give the child born out of marriage land rights? What is likely to happen – and it is happening - is that the child and the mother will be denied land rights by both the parents of the girl and the parents of the biological father, making them landless and destitute. This proposal to change the current law, which carries significant momentum in the North, East and West Nile, is flawed for the following reasons:

- It rewards a wrong doer (the man who impregnates a girl outside of marriage) with charge over the child.
- If the man has denied his responsibilities towards the child, how will the clan prove that he is the one who impregnated the woman? The clans still need to exert pressure on the man and his clan to accept responsibility. Leaving the burden on the woman or on the child when he grows up, clearly signals that the clan is weak and not responsible.
- During breastfeeding, if the man and his family reject their responsibilities, where will the woman go to live?
- If the law changes to say a child born out of marriage belongs to

the biological father who refuses to take responsibility for the child, the implication is also that the mother has no land rights to her maiden home. This is directly contrary to the current law, which says that unmarried women get land rights from their fathers.

- When could the mother of a young child leave the father of her child’s home, when he is not her husband or boyfriend?

Advocacy for a change in the position on rights on the non-marital father is not well reasoned – it is a guise for men, the managers of customary tenure, to be discriminatory and absolve themselves of their responsibility to protect women and children. The state should not allow them to succeed. This weakening of clan enforcement mechanism which is becoming increasingly common, will lead to a class of landless women and children when families of both the unmarried woman and man deny responsibility. Unfortunately, rather than the state and other stakeholders understanding these social processes and stopping them (by holding the clans accountable), many continue to say the problem is customary law which, they say, prevents women from owning land. The police compound the problem by saying that, according to Children’s Act, children belong to their biological fathers. However, the Children’s Act does not discuss land

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rights. Even if it did, the question still remains: how would someone prove that the child is biologically the father's if he denies that he is the father? Unless the clans and state actors work together to implement the three step process for **a)** establishing the intention of the biological father to marry the girl, **b)** paying compensation to the girl's father so as to claim clanship of the child **c)** recognizing and implementing the Principles, Practices, Rights and Responsibilities (PPRR) written by Lango, Teso and Kumam on land rights, and now being written by some of the tribes in West Nile and Bunyoro, the risk to women's and children's land rights will get progressively worse until it is completely eroded.

### **3. Marriage and widowhood.**

Customary law places a high value on marriage and presumes that it will never break or end till the death of a wife or husband. If a wife dies, her husband remarries, and if a husband dies, a clan member is chosen by the widow to take her husband's role in helping her with work, acting as her companion and producing more children with her. The woman remains the owner of the land, and she remains under the protection of the clan.

The role of a wife inheritor was more of "duty" to protect and support the widow, than pleasure. Today, the behaviour of the inheritors has changed to be more abusive and more exploitative of the widow, with

the clans watching from a distance without protective action. The clans are also sending strong signals of rejecting children born to widows and are tending to hold her accountable for them.

At marriage, a wife changes her clan from that of her maiden family to take on the clan of the husband. She then cannot remarry within her husband's clan, because members of the same clan cannot intermarry. The death of her husband does not terminate her membership to her husband's family. If she wants to remarry, she needs to return to her maiden family first. To keep their families, widows have the option to pick new men as inheritors, rather than as husbands, to perform certain duties expected of them – i.e., supporting the widow and the children— without abusing her or depleting her resources. Previously, all clans lived together, and the inheritor would automatically come from the husband's clan. Today, because the Constitution gives freedom of choice and of association, and because the same clans no longer live together, the Lango, Kumam, Teso customary laws allow widows to pick an inheritor from within or outside of the clan. Unfortunately, choosing an inheritor from outside the clan is seen as "an insult" to the clan and is used as an excuse to chase away a widow. However, it is the clan's role to ensure that widows and their children are protected and not abused by anyone.

#### 4. Land rights of children.

According to customs, any child born to a widow by her inheritor belongs to the late husband and widow's clan (since there was no new marriage). Today, because of migration patterns, same clan families are not living together anymore. In one village, one might find 7 to 17 clans. The question is then, given this change in social context, may a widow pick any man to inherit her? The Lango, Teso, and Kumam customary rules say yes: she can pick any man to inherit her. But there is resistance and resentment to the widows who pick men from outside the clans. The land rights of children born to the widows by non clan members are even more vulnerable, and many of these children are denied land rights.

The second change is that Article 29 of Uganda's 1995 Constitution states that everyone has the freedom of association. The Constitution and even culture do not force a widow to choose an inheritor from her clan. However, some insist that this provision is not culturally correct and want the customary law to change to say the children born to widows through non-clan inheritors receive land rights from their biological fathers (the inheritors). This position is flawed because no marriage between the widow and the inheritor occurred to give the children rights to the widow inheritor's land. The children belong to and have rights to the land in the widow's

clan as the widow has not remarried to change her clan again.

The correct interpretation is that, since the widow is a member of the same clan as her late husband, and because the widow inheritor has not married her, the child they bear is a child born outside of marriage, and such children receive land rights from their mother, the widow. The clans must accept that state law is superior to customary laws if the laws contradict, or if customary law violates state laws. In these cases, restricting a widow's choice to a clan member is contrary to Article 29 of the 1995 Constitution.

#### 5. All girls will marry.

Customary law assumes that all girls will get married and not divorce or never return to the maiden home. This is the reason families do not allot land to their girls; it is not because girls do not have rights to land. Almost all families assume this always to be true. Unfortunately, many women today are not married. Some families, very unfairly, blame women for not getting married, forgetting the fact that men impregnate women and abandon them, and that it is the men who make the decision to ask a girl to marry them. Clans are also failing to hold the men and their families accountable. Today, clans in their customary laws want to reward the wrong doer who impregnates a woman outside of marriage and irresponsibly refuses to

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marry. In other words, by not holding the man who impregnates a girl out of marriage accountable, the clans are acting equally as irresponsible as the man who impregnates, and the woman, the child and in the long run, the family are the ones paying the price.

The irresponsibility of clans is worsening. This is why in 2009, when the customary laws were recorded in Lango and Teso, the rights of children and women of all categories were included in their customary laws. Ten years later, the male administrators of customary land want to change the “customs” to deny land rights to some women and children because they blame on them some social unacceptable behaviours and changes, (e.g., producing a child outside of marriage, increases of the population and reduced land acreage) and not on the clans inability to do what is expected of them as “social government” to protect women and children as well as uphold the integrity and the morality of their society.

## **6. A comparative analysis of women’s land rights in West Nile.**

In West Nile, the situation is likely to be worse for the following reasons:

- They are only just now recording their customary laws after 10 years of lack of clarity of customary land rights.

The clan systems in West Nile have not been operational because the structure that was once cultural was officially adopted by the state, which “fused” the clan system with the state system, resulting in the absence of “traditional” clan bodies which understand and defend customs. An example is the current land justice system in West Nile. To hear land cases, ad hoc elders are chosen. They then work with local councilors to mobilize and to provide security. There are no independent cultural institutions as there are in Lango, Teso, and Acholi.

- Unlike Lango, Teso, and Acholi, where there are predominantly only one tribe in the sub region, there are 8 tribes in West Nile – the Alur, Jonam Alur, Lendu, Kebu, Lugbara, Madi, Kakwa and Aringa and all have different languages, clans, and independent operations. Therefore, there has not been any clan organization at a tribal level or West Nile sub-regional level that could manage land and agree regarding what “customs” govern. Recording the customary laws in these circumstances poses real challenges for land rights of women and children who are not fully accepted within the conventional acceptable family relationships.

## 7. Conclusion.

The land rights' situation for women and children remains dire, and gets worse by the day in northern and eastern regions, but it is most likely to be worse in West Nile. Many women's rights activists believe that sensitization, empowerment, education, and titling for women are the only answer to women's land rights' abuses. We believe these are not sufficient to protect women's rights. We believe if all stakeholders understood that the abuses are not "customs," and that women and children are suffering because the social administrators of land governance are no longer working as a social government to punish social immorality and land rights abuses against women and children but are instead acting individually as greedy men and using excuses to grab land from people they should be protecting, the situation could improve.

Women and children are paying the price twice for the immorality of these men, and women and children are bearing the unfair punishment of being denied land rights of both families. We believe strongly that a society that preys on people needing protection has no future. We also believe the best way to reverse the trend is for all to agree the problem is an abuse of power, not bad customs that need changing. Accordingly, the state should recognize the responsibilities of the clans and groups should work with the State to hold the clans accountable to protect land rights, rather than to abuse them. The State and the Traditional Institutions also need to sit on a round table to harmonize their laws and ways. This is the spirit of the National Land Policy.

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