

What land rights do people have under the rules of customary tenure?



**Land and
Equity Movement
in Uganda (LEMU)**

"Making land work for us all"



**NORWEGIAN
REFUGEE COUNCIL**

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We can only help people defend their rights if both they and we know what rights people have. There are many misconceptions and myths about who has what land rights under customary tenure. Because too often we don't know what rights people have, we fail to recognise when they are being violated. The following is a brief summary of land rights in the north and east of Uganda. Customary principles for the rest of the country have not been written down, though there is reason to believe that in most respects they are similar to the code we describe here. It should be stressed that this summary does not reflect an opinion on what rights people ought to have, but gives the rights that actually do exist, according to the recognised customary authorities and, therefore, as recognised by State law. Failure to observe these rules thus constitutes a breach of State law.

The fundamental 'basic law' is that everyone has land rights. Without land, no-one could survive in an agricultural society. Customary principles are intended to establish where you claim your rights (e.g. if it is from your father's clan or your mother's, from your parents or from your husband's family). They are not there to decide whether or not you have land rights – everyone does, whatever their situation. There is no caste-like system with an excluded class.

Land is family land. It is held in trust by the head of the family for the benefit of the family – including for future generations. Many questions of land rights therefore concern who is regarded as the head of the family. However, this does not mean determining who owns the land: the land is not the personal property of the family head.

It is the responsibility of the clan to ensure that the family head exerts the power of trusteeship properly, respecting the rights and interests of all. This is most obvious in the case of a land sale. The clan must verify that the family as whole has consented to the sale and that the family head can continue

to provide for the family after the sale. Even the interests of any future children will be considered ("will there be enough land for them to farm?") before the clan consents to any sale.

The land belongs to the whole family as family land. There is no principle that land can be forcibly allocated between family members, so a husband and a wife cannot argue that they should each be allowed to do as they wish with part of the land.

A man becomes a family head on marriage. His new family (i.e. himself and his wife) must be allocated land by his parents on their marriage, though it is possible for parents to allocate land to their children before they marry. A man is not entitled to a second allocation should he marry a second wife.

Children are usually given land to use before they marry, but this falls short of full allocation. The parents have the right to take the land away, though in time 'allocation' can be established through use. When a girl marries, she leaves her parent's clan and joins her husband's clan and the couple receive land from his parents.

If a man dies leaving a widow, she takes on the role of head of family, and is responsible for all the family land. Her children have the same rights to land as they did before their father died, i.e. they will be allocated on marriage, though the widow may choose to allocate to grown up children before marriage if she wishes. The late husband's family (i.e. brothers, parents) have no claim over the land, since the land belonged to the family of himself, wife and children and this family continues to exist.

In many cases, a widow may choose to take a 'protector' as appointed by the late husband's clan. Whether or not this man lives with the widow, he has no claim on the land of the widow's family. If the widow takes a partner

from outside the clan, he also will not have any claim over the land. If she has children after her first husband dies but without re-marrying, the children are members of the same family, and they have the same rights to the land as do the children of the husband. If she remarries outside the clan, then she leaves the clan of her first husband to join the new husband's clan, and she will claim her land rights there. The land of the first husband would then belong to the children, including the children born to the widow before she remarried. A widow also has the right to return to her parent's home, where she has a right to reclaim the land rights she forwent when she married.

If a woman is divorced, then she becomes a family head and re-joins the clan of her parents (her 'natal clan') and has rights to land from their land. If they are alive, they must allocate land to her. If they are deceased, then a brother must ensure that she has an allocation from the land. Usually, the ties to a particular brother are through the bride price. When she was married, the bride price paid for her would often be used by one of the brothers to marry in turn, and this brother would be the one to give her land. Any children belong to the clan of their father, and have land rights from him and not from the mother. The divorced woman is the head of a family of one (herself, not the children) unless she has further children after divorce and without remarrying. (This can be a difficult matter if she leaves while the children are small and if they stay with her.)

An unmarried woman is considered a family head whether or not she has children. She is therefore entitled to an allocation of land from her parents for her family. If the father accepted paternity and paid 'a fine', then the children are recognised as being of the father's clan and claim land rights from him and not from the mother. If he refuses to accept paternity by paying the fine, then the children are of the mother's clan and claim

their land rights from her.

The case of separated women is difficult. Formal divorce involves returning the bride price or an agreement to divorce by the parties and the clans. If a woman is not formally divorced, then she remains of the husband's clan and without land rights from her natal clan. The children of a separated woman remain in the family of the father and claim land rights from him and not from the mother. (Again, this can be a difficult matter if the children stay with her, e.g. because they were very young when she left or because the father threw them out with her.)

If parents both die while children are unmarried then they cannot be considered heads of family and yet the inheritance is theirs. Someone from the clan, usually an uncle, must take on the role of their guardian, and they will guard the land for the children. However, they have no rights over the land, except that they would usually be allowed to farm the land since they are providing for the children. No sale of the land by the guardian should be allowed, even in return for supporting the children. The clan could approve a sale in exceptional cases, e.g. to pay for expensive medical care for one of the orphans.

It can be seen that the actual application of the broad principle that 'everyone has land rights somewhere' is complex, and depends upon knowing in detail the situation of the individual and families concerned – and knowing in detail how customary law works. Without understanding these details, it is impossible to help people claim their legal rights. It is to be hoped that other partners can take forward the work of advancing the understanding of how land rights work in the customary principles and rules of other communities in different parts of Uganda.

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