

Fighting the wrong battles? Towards a new paradigm in the struggle for women's land rights in Uganda

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December 2008

Gender equality: a liberation struggle or a colonial imposition?

There has long been an accusation that the battle for women's rights has somehow been a Western imposition on 'traditional African societies'. Paradoxically, this argument is often accepted by gender activists themselves, who struggle against 'traditional' practices which discriminate against women. It is the struggle for women's land rights that most clearly makes tradition the enemy. Sensitisation, changes in the law, the Constitution, all are evoked to counter traditions which discriminate against women, do not allow women to own land, and make women second class members of their communities, or worse. The fight for women's land rights is also the most important battle of all for Ugandan women. The security of their land rights is often tenuous, their rights enjoyed only at the mercy of their in-laws or their own brothers. Women who lose land rights are usually close to destitution, socially and economically: the threat alone keeps many more in subordination to their husbands or their in-laws.

Rural women are very vocal about the unfairness they see in the treatment of women, particularly of widows and divorcees. Traditional village leaders also regularly stress that 'their people' respect the rights of women in general and widows in particular, and how wrong it would be not to protect them. Of course, this is often not reflected in practice; but it is still significant because it accepts the point of principle that women have rights. This raises the challenge: if cultural leaders and women themselves believe that the protection of women's rights is part of justice, why is the struggle for women's land rights often portrayed as a struggle against local culture? Why have gender activists had so little success in mobilising grass-roots women to fight for women's rights? And why have gender activists attacked 'traditional practices' rather than enlisting indigenous beliefs about fairness as allies? The answer to these questions will help answer the biggest challenge: why, despite so much work on raising gender awareness, is the situation for rural women's land rights not getting any better?

Gender equality vs. Traditional culture

The conventional starting point in the battle is often the 'fact' that traditionally women are not allowed to own land. The aim is then to replace traditional systems of ownership ('customary tenure') with more 'modern' laws which give women rights. The 'best' way to do this, it is argued, is to help women get

titles to land. Titling land takes it out of customary rules: a woman with freehold title is fully equal to a man with freehold title. The State Courts can then protect her rights if a man tries to take control over her land. The objective then becomes to increase the number of women holding titles. The proportion of titled land owned by women (7%) is frequently quoted as an indicator of gender equality in land rights – a quite bizarre idea, for a country where over 80% of land is held without title, since it says absolutely nothing about the situation for the vast majority of women in the country.

The situation for this rural majority is not improving. Their land rights are frequently violated by members of their own families. We believe that the strategy has failed because it is based on a wrong premise, that according to custom, women cannot own land. As a result, we have fought the wrong battle - against 'tradition', instead of fighting for the cultural rights that women feel exist, but which are being violated. A central part of the campaign was for 'co-ownership', i.e. for land owned by a man before marriage to be legally considered the joint property of husband and wife on marriage.

This continued to be resisted by men, and in rural areas, the resistance comes because it is seen as giving a woman individual ownership over land, in a culture where all land is family land. Men and women who value the principle that land is family owned are told that their culture is discriminatory and backward.

The individual violations of women's rights are often treated in the same way. When a widow is thrown off her land by her in-laws, men and women are told that their culture is wrong, not that those who throw widows off their land are wrong. The widows themselves feel very keenly the injustices practised against them by their families or communities, but the denigration of their own culture leaves women feeling that somehow their own specific injustices are not really related to the agenda of the activists, that the abstract campaigns for equality, and against their own culture, that are being urged upon them are not the same battle as the one which they are fighting for, which is for their land rights not to be violated by land grabbers. Small wonder that the fight for their own rights is too often seen as foreign, or 'something from Kampala'.

Women's land rights in traditional culture

Why has the distortion so often been accepted? It rests upon a very common misunderstanding about how land under customary tenure is owned

and administered. There are some fundamental differences between these systems and the 'freehold' ways of thinking which are more common in urban contexts - that is held by people who are more familiar with the rules of a freehold system. With a freehold title, the person whose name is on the title is the land owner, and has all the rights to the property. Under customary tenure, land ownership is by families, not individuals. The head of the household would nominally be referred to as the 'land owner', but it is a common mistake to interpret this as meaning that he has all rights in the land, and that his wife or others only ever enjoys 'access' rights if he gives his permission. Ownership is stewardship, or a trusteeship, and it comes with the responsibility to protect the land itself, and to protect the land rights of all those with a claim in that land – all family members, including future generations. If a man dies leaving a widow, she assumes the role of head of family¹. However, there would be extreme resistance to regard the land as the personal property of the widow – just as it was never the personal property of her husband. She has the duty to allocate land to her sons and daughters-in-law at the appropriate time and to her daughters if they remain in their parents' clan because of divorce or not getting married. It is still common to be told that a widow 'holds' her late husband's land but that 'she is not really the owner' – because she cannot sell it. In fact, she can sell the land, with the permission of the clan, if there is a valid reason, which are exactly the same conditions facing a man who wants to sell land. The specific rights that the widow and her late husband held are exactly the same.

Fortunately, the "Principles, Practices, Rights and Responsibilities" (PPRR) have been written down by the customary authorities of the three largest groups in Northern and Eastern Uganda (the Acholi, Langi and Teso) making it a matter of fact what customary law said, rather than a matter of debate. These principles also make it clear that unmarried women have rights to land from their parents, and that divorced women have rights to their parents' land (or from their brothers). These principles are frequently not being respected: that is why LEMU argues that the real struggle is to establish the enforcement and not the abolition of customary principles.

¹This is certainly the case for Acholi, Lango and Teso tradition, and probably for many other communities.

This would involve a significant paradigm shift, but one which is necessary to bring about an improvement in women's lot.

It is worth exploring the implications of such a paradigm shift.

1. What is the focus of the debate?

Currently, the discourse revolves around the ideas of 'control' and 'access' rights to land, with the aim of bringing gender equality. The new paradigm would look at specific rights in practice and how they should be protected. Rights and responsibilities always derive from a social context: in Ugandan societies, women and men have more different roles than in the West. The new paradigm would accept these different roles, and would fight for equity, rather than equality.

2. Diagnosing the problem

The old paradigm was trying to fight bad customs and bad men. This needs a strategy of replacing community practice and community protection with State law and State protection. The new paradigm recognises that this is impossible. Implementation of protection for women's rights can only come with community acceptance. The problem is that the customary system is not working: this is a 'system' problem, and not due to any individual. Fixing the system and making it accountable becomes the new strategy.

3. What rights need protecting?

This will be the hardest shift for many. The current rights' paradigms are based on individual rights: this means that unless women have the same individual rights as men, it would be discrimination. Accepting the notion of culturally embedded rights means accepting that people (both men and women) have rights and responsibilities as family members. A person's rights change as their family situation changes, and men and women will frequently have different rights and responsibilities. This should not result in discrimination. A married woman claims land rights from her parent's in law, not her parents: her claim is made in a different place from her brother, but neither claim can legally be denied.

4. What are the practical solutions?

The old model looked to pass legislation protecting women and to empower women to claim those rights against their societies. Specifically, it also looked to help women to title as much land as possible either

in their own names or jointly with their husbands. The new model believes that claiming rights against one's communities will remain beyond the possibility of most individuals for a long time. Instead, women's rights and responsibilities in customary law need to be clarified. Customary authorities, who have been given the authority to determine land disputes by the State, need to be held accountable by the State for upholding their own principles. This necessitates finding ways of harmonising the customary and State judicial systems, so that they work together on agreed rights instead of against each other. The struggle will be as much for small practical steps as for changes in law: supporting cultural leaders in fighting the myths about women's land rights; making sure that customary and State courts uphold customary land rights in practice; helping couples to have their land boundaries marked, mapped and registered, so that all family members in future would have evidence of who owned which land.

5. Who is responsible for protecting rights?

Current strategies make women responsible for claiming their own rights and the State responsible for answering these claims. The new strategy would accept that neither of these premises is plausible: research already shows that women who are capable of asserting their rights do not suffer many violations, and that the State has utterly failed to enforce its own laws². Rights can only be defended by community structures – held accountable by the State. Customary protection comes from the family head, in the first place: an uncle does not inherit an orphaned nephew's land, but has the duty to protect it for him. If a widow chooses to take a 'protector' from her late husband's family, he does not have any claim to her land, but has the duty to help her defend it. The clan has the responsibility to exercise oversight (in Northern and eastern Uganda) and to step in if anyone is abusing the woman's rights.

6. How should we measure progress?

Instead of only looking to see more titles in women's names, which is only of relevance to urban and educated women, the new paradigm would measure progress by the actual situation of respect for women's rights as a whole. (This, of course, is much harder to measure, but would ensure that we spend

² LEMU will shortly publish its findings from several months field research on the state of land justice in northern and Eastern Uganda

our time looking at what actually matters.). What is important depends on different circumstances: in an urban context and for titled land, achieving co-ownership would of course remain of enormous importance, but it would not be the only thing which mattered.

7. Which women are best served by the paradigms?

The old paradigm was relevant only to urban women on registered land, and to those best educated and most able to claim rights. There will always be a place for these strategies because the struggle of these women is as important as any other women. The new paradigm is proposed as more relevant for the majority of Ugandan women – the rural, the less educated and those who see themselves as family and community members and not only as individuals.

8. Can the paradigm help improve women's rights?

This surely is the test of the different models. The current paradigms have not worked, because the violations of women's land rights in rural areas is as rampant as ever, and the belief in the principles that women have land rights is growing ever weaker. One weakness of the model is that it is drawn from an analysis that is foreign to the culture of those it is seeking to help. It therefore misses the responsibility which a community has for upholding protection, and instead places the duty to protect women outside the society – in the State Courts. This ignores the fact that the State justice system is already overwhelmed – Magistrate's Courts take long to reach any judgements in land cases and even then leave the responsibility (and costs) for effecting enforcement on the women themselves. The more practical paradigm is one surely that holds communities responsible for justice and rights which they accept as part of their culture. The State will always maintain its role in combating any specific instances where custom is fundamentally discriminatory, but as we have seen, these are not the major problems in relation to land law.

The new paradigm works on a gender analysis rooted in the local culture, with protection enforced from within the village. It is not naïve in expecting this to happen on its own – the current realities are evidence that the struggle will not be easy. LEMU believes, though, that the struggle can only be successful if we fight on the correct battlefield.