



Landlessness

Poverty eradication and landlessness

The vast majority of Ugandans will continue to depend on agriculture for many years, and policy for eradicating poverty in Uganda therefore depends on transforming the profitability of land. The Plan for the Modernisation of Agriculture envisages both technical and marketing improvements – but either way, the ability to advance economically will depend upon one key factor: how much land a family owns.

Many poor families in rural areas already have too little land to meet their own needs, depending largely on daily labour opportunities for survival. Several studies have reported that the problem of semi-landlessness is increasing, as people are caught in a poverty trap: inadequate land holdings create a shortage of money which is relieved by selling small pieces of land

Creating a land market without landlessness

Government wants a land market, so land can be bought by those who can invest, for the economic development of the country. However, poverty eradication is impossible if landlessness becomes widespread. Can this be reconciled?

Problems of poverty and landlessness have many causes and cannot all be solved by any single policy measure. Far more needs to be understood about the scale of the problem and the processes leading to landlessness. All actors, in and outside Government, can contribute to improving our understanding

Recent research in Northern Uganda has revealed one of the mechanisms by which landlessness is slowly being created. This problem can at least be tackled in a straightforward way.

A land problem or a problem of poverty?

Landlessness is not simply an inevitable result of population pressure. Previously,

land was owned under rules of customary tenure which incorporated the concept of 'stewardship'. A landowner managed a land holding not only for himself, but also on behalf of his wider family. Family land was a social security system, and great care was exercised before allowing a sale of land to ensure that those who depended on the land for their survival – including women and children – would not be left destitute.

Over time, the rules of customary tenure have weakened, as has the power of the clan authorities to enforce them. At the same time, Government policy has been aimed at making it easier to buy and sell land, in the hope that this will mean that land is owned by those who will use it most productively. These two factors have brought about changes in how land ownership is seen. The notion of stewardship is disappearing, as is the belief that ownership comes with responsibilities. Now, many men are claiming that family land belongs to them as individuals, that wives no longer have rights to land, and that they have the right to sell land without consulting anyone else – all claims which have never been made before under customary rules. Many men are now selling family land without consulting their families, and they are using all or part of the proceeds for their personal consumption – not for investing in their families' welfare.

Government policy on land sales is intended to help people who cannot use land productively to sell it, at the same time enabling a more skilled farmer to take over the land. It was never intended to encourage sales where individuals deprive families of their traditional rights, or to support a process where wives and children are left in greater poverty and landlessness.

In theory, land law says that no sale which takes place without a wife's consent is valid. However, the law is simply not working. In practice, the wife's consent is never asked for.

Ensuring her consent would not stop all land sales. Again and again women say that they agree to a sale of land when the money is used for the family – to meet an emergency need, to pay for education, to pay bride price, or for some investment. These are sales of very small plots of land: they do nothing to help bring about commercial farming.

How to protect families rights to land?

Three mechanisms are readily available for helping families to protect their rights in land from sales made in the interests of just one individual. Two of these only need the application of existing law; the third would involve new legislation.

If the wife had equal ownership rights to the husband, neither would be able to sell the land without consulting the other. Decisions would more often be made in the interests of the family rather than in the interests of an individual. This is what has been called 'co-ownership' and it is the strongest possible defence of women's rights – not just from land sales, but also as widows. Some people feel that co-ownership would change custom in a threatening way. For this reason, it is easiest to introduce it where families have already chosen to have some form of title or certificate of ownership, including 'certificates of customary ownership'. The names of the wife(s) would automatically be entered as owners of the land. The disadvantage of this mechanism is that it would require a new law.

A second protection mechanism is through the institutions of customary tenure. Traditionally, the clan system was the safeguard of a wider family's interests in land. Sales were allowed where it was necessary or would benefit the whole family, but not for the benefit of one individual. Giving proper recognition to customary land administration, with the LC system and the District Land

Tribunals working together with the clan system, would be a simple and cheap mechanism for protecting rights. This is actually implementing the Land Act properly, since it stipulates that the rules governing customary tenure should be the people's traditional rules. This mechanism can be used on unregistered land – the vast majority of land in Uganda.

The consent of a wife to any land sale is already necessary in law, and it accords closely with the traditional protection for women. However, it is not being applied – simply because no-one was given the duty of applying it. Policy has so far ignored unregistered land, and transactions are not recorded anywhere. If sales had written agreements filed with the sub-county recorder, and if a consent form were a mandatory part of such an agreement, then a wife's consent could easily be verified. No change in the law is necessary – only the will to apply it. The law applies both to unregistered ('customary') land and registered (titled) land. It is a simple way to protect families on unregistered land.

The outcome?

The result of using any or all of these three mechanisms would be:

- Land sales would still be made where the family considered these in their best interests.
- Those looking to buy land for commercial farming would not be affected, since the sales affected are of very small plots.
- Women and children would be protected from destitution where the husband wanted to appropriate all the land rights for himself –and then to turn them into cash for himself.

If none of these three mechanisms are employed, the likelihood is a growing number of families will become landless and destitute.

This paper is one of a series of discussion papers written by Land and Equity Movement in Uganda (LEMU) under the Danida Human Rights and Good Governance Legal Aid Basket Fund. The paper is intended to help inform both policy makers and a wider public.

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**Land and
Equity Movement
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