

How can women's land rights be best protected in the National Land Policy?



*Land and
Equity Movement
in Uganda (LEMU)*

"Making land work for us all"



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Uganda recognised four different land holding systems, each with its own rules, and each bestowing on owners different rights and responsibilities. This means that the situation for women's rights is quite different for each tenure system: the rights which women can claim in land are quite different, administrative and legal arrangements for protecting those rights are different, and women face different threats to achieving fair rights in each case. Under freehold (and mailo), if a man's name is on the title, then the wife and children can legally be deprived of all rights. Under customary tenure, land is owned by families and so it is much easier to protect women's rights. With leasehold, conditions regarding the rights of spouses and children could be built into the lease conditions, though this has not been the practice. It is clear that in such a context, the policy cannot look for one single solution for the protection of women's rights. Different policy guidelines will have to be formulated for each tenure system.

Even within a single tenure system, e.g. the customary system, not all land is considered the same. The rights of women on land are different depending on whether it is land which a couple was allocated by parents, land which they inherited or land which they bought. The National Land Policy (NLP) needs to reflect this.

Specific recommendations for policy

Within customary tenure, ownership is based on the principle of trusteeship under the head of the family (i.e. a married man, a widow, an unmarried mother or a divorced woman. There are no child headed families as far as land is concerned, since a clan member should always be designated as their guardian, holding their land in trust for them.) The National Land Policy needs to address the occasions when women's land rights are most under threat. This is either when the principle of trusteeship is being ignored, namely when the 'owner' wants to sell land for his own benefit; or when a woman risks losing her right to become the head of a family (and trustee of the land), i.e. at widowhood, and at divorce or separation.

The 'consent clause' already protects the rights

of family members from abuse of trusteeship at sale, at least in theory. Protection can only be made effective, though, if some authority (e.g. LC1 or sub-county chief) is given the responsibility to verify written consent, and this also entails that all land sales, even of customary land, be documented. Customary law gives the clan responsibility for verifying the consent of all the family members since the land always belongs to the family, not one individual). Both procedures should be followed, e.g. the LC1 or sub-county chief verifying both written spousal consent and documentation that the clan leaders verified family consent.

Since customary land is family land, and since family heads act as individual trustees and not owners of personal property, it will be difficult and indeed inappropriate to impose the concept of 'co-ownership'. Instead, a formal process is needed for confirming the principles of 'individual trusteeship within family ownership' in customary law. The National Land Policy should encourage the documentation of 'customary land law' or 'the principles, practices, rights and responsibilities' (PPRR) as they have been called, for all areas. A process is then needed to verify that every code respects the principles of women's land rights. The 'basic law' of customary land law in Uganda is that everyone has land rights, and the PPRR establish where you claim rights (e.g. from the father's clan or the mother's clan) and not whether you have a claim to land rights. Only after it is established that the codes are constitutional (i.e. non-discriminatory) should they be formally accepted by the State and allowed to be disseminated, thus giving them the force of law and enabling customary authorities to be held to account for implementing them.

Under customary tenure, problems of women's land rights come from violation of customary law (the 'PPRR') rather than from a lack of rights under PPRR. The National Land Policy therefore needs to tackle a breakdown of implementation rather than an inherently discriminatory code.

The customary law of each people must give the responsibility to some authority for enforcing respect for their own PPRR. (In the north and east of Uganda, this is the responsibility of the

clan.) The National Land Policy should give them that authority, but insist that responsibility comes with accountability. Customary authorities should have a legal obligation to ensure that the principles of protection (of wives, widows, divorcees, children, etc.) enshrined in their PPRR are implemented. This one measure alone could transform the situation for the majority of women.

Land rights violations are usually gradual: borders are progressively encroached; fields are taken one by one. Women's rights – especially widow's rights - can best be protected by a land administration that makes borders very clear and gives families some form of documentation of ownership. The simplest way to do this within customary tenure is to have a public process of planting specific trees on land boundaries, drawing maps indicating ownership – including the names of all family members, not just the head of the family - and keeping copies with the owners, customary authorities and either the LCs or the sub-county chief. In this way, a wife's interests in land are recorded on a map, and the widow will have the family map indicating all the land under her authority. Trees along boundaries will help prevent encroachment, since, as recognised boundary markers, cutting them would constitute a criminal offence.

Although formal legal rights under freehold tenure are the same for all land, in practice in Uganda this is not, or should not be, the case. Because of the costs and difficulties of administering titles, especially when allocating land to children or on death, much inherited family land is titled in the name of one brother, with the understanding that the land is for family. Here, too, automatic co-ownership would create problems, as this would give the title-holder's wife (the family's sister-in-law) all rights in the land if the title-holder were to die. All the other brothers and their wives would lose out. It is proposed that a process be initiated of facilitating families to document their 'living' land rights and to attach these to the titles as encumbrances. A decision will be needed as to how to proceed where a title holder refuses to consider granting any rights to other family members. Under current law, he cannot be forced to do so, but since the Registration of

Titles Act is being reviewed, it may be possible to consider options.

Where the title of the land was correctly transferred at allocation or inheritance, a decision on co-ownership is needed. Should titled land brought into a marriage by each party remain their individual property or should marriage entail that all property is to be shared?

It is important not to forget community land under customary tenure. There is usually no women's representation on the (village) management committees of the common property resources such as grazing land. The National Land Policy could insist on women's representation on these committees. The National Land Policy should also promote the formal institutionalisation of these arrangements through the establishment of legally recognised Communal Land Associations (CLAs), where the law already provides for a minimum representation for women. In customary principle, the interests of each household or family would be represented in a communal land holding. Because State law does not recognise families as 'legal persons', it is simplest to avoid the danger of the (usually male) household head representing only his own interests in the CLA by stipulating that men and women should individually have to be members of any CLA. (This would be in line with the Constitution of Uganda, which forbids discrimination against women.) The National Land Policy should also insist that all CLA constitutions respect the rights of women. It is the responsibility of the District Land Registrar to approve every constitution before the CLA can be recognised, and they should be given clear guidelines on the acceptable standards for gender fairness.

The law is currently unclear on the extent to which the executive committee is legally bound by the CLA's constitution. Since it will be practically impossible to get redress through civil litigation should a committee act against the interests of members and against the CLA's constitution, the law should explicitly say that any action by the committee which is not authorised by the CLA constitution is invalid.

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The Position Paper of LEMU on the National Land Policy - Draft 3

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Books

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