



Policy Discussion Paper 1: Protection and land rights

Protection – in traditional and State law.

In most parts of the country, land is passed from father to sons: a woman's rights to land are guaranteed, if she marries, through her husband, as she effectively joins his clan. If he dies, her children inherit his land, but her rights as a widow are protected through her own children, and through her late brother's family. Traditionally, in many places, one of her late husband's brothers would provide a more formal protection role for her place within the clan by giving her the status of his wife: this practice is now dying out because of the fear of spreading AIDS. Because the family's land was customarily administered through the clan system (giving rise to a widespread misconception that all land is owned by the clan), it was the clan which protected the rights of orphans. Clan elders ensured that the orphans' families looked after their interests in their late parents land, rather than exploiting them.

When the State law gave legal recognition to this system, extra protection measures were added. A woman could often not control what happened to her family's land, and could be threatened by a husband who wanted to sell land, but without considering the interests of the family in using the money – e.g. abandoning them and using the money to marry someone else. Now, the law says that if a man wants to sell the land on which the family relies, he has to obtain his wife's written consent – otherwise the sale is invalid. This applies to all land in the country, not only to land with formal title. The law also says that though customary rules should apply to land which is owned under 'customary tenure' (i.e. where there are no titles), such rules are not allowed if they go against the Constitution – e.g. by discriminating against women.

In theory, Ugandan women enjoy legal protection of their land rights that should be the envy of women in most countries. But what is happening on the ground?

The reality: things are falling short

The clan control over land has progressively eroded over decades: men are now selling land without the clan elders protecting the women. Where sales are to pay for school fees or bride price for a son, the women rarely object: but too often, the man sells land without even informing his wife, and uses much of the money for drink or taking a girlfriend.

All of these sales are legally invalid, since women have not signed their consent. But the sales continue, usually administered by the LC1s. Why are LCs not stopping the sales? Most do not know that the sales are illegal. Others believe that men owned the land traditionally, so a wife cannot object. This is against the law, but nothing is being done to stop it.

Why is this allowed to happen?

When customary land (without title) is bought and sold, no-one has to register the sale or fill in any documents. People only write the agreements that they wish. Government has not given anyone the responsibility of checking that the woman gave her consent to a sale. As a result, no-one checks and no-one acts. Parliament tried to protect women, but its wishes have been frustrated.

Not all the blame rests with the State apparatus. The clan elders are often failing in their traditional duty to protect women and children. They find they have little power to stop abuses of women's and children's traditional rights, or, sometimes, they simply take the man's side – there are even cases where the elders themselves are the ones exploiting the vulnerable.

What can be done?

At the moment, neither the state protection nor the clan protection are working, because they are not working together. Clan power is weak,

Policy Discussion Paper 1: Protection and land rights

because people now go to LCs to sort out land matters – especially if they feel that the elders would block what they were trying to do. If the two systems worked in harmony, women and children could be properly protected.

State protection could be guaranteed if, for every land sale, there were standard forms which had to be filled in and filed at the sub-county or District. The consent form could be a part of such a form, so where it was missing, the sale could not be recorded. The authorities should make sure that everyone understood that this meant that the sale had not been completed.

The state could support customary protection (in line with the State's own law) if it gave judicial force to the elder's protection. Where the elders blocked a man from denying a woman her land rights, the LCs and courts could insist that this decision is binding. (In fact, the law says that this is exactly what they should do, but people – including the LCs – don't know that). If the clan's decision were binding (e.g. with appeal to a District Land Tribunal), then the elders could be held accountable for protecting the vulnerable in accordance with their own traditions.

The rights of widows

A worse situation faces widows. Greed for land is increasingly causing families of a dead man to exploit a widow's position, throwing her off the land – with or without the children. This situation is now the norm, rather than the exception – but some clan elders continue to believe that their rules protect the rights of widows. Sometimes they try to intervene – but their judgements are ignored by those greedy enough.

The state has not been active in defending widow's rights. Although the law gives them a

small part of the inheritance (15%), no-one has stepped in where this is not happening. Few widows have the money or knowledge to go to court. When they have done and won cases, the judgements may simply be ignored and the widow chased away with violence. The LCs, the police and judiciary have treated this as a civil matter and not interfered, giving a green light for others to behave the same way.

A way forward?

- Statutory registration of all land transactions, with a consent form as part of the documentation.
- A clear legal obligation on a specified officer (e.g. sub-county land recorder) to verify consent forms.
- Reviewing the roles of the LC1s in administering land matters. Training in land law for all those involved in land administration.
- Giving traditional institutions the legal authority to manage land under customary tenure.
- District Government, the structures for District land administration (District Land Tribunal, LC3 committees, sub-county recorders) to work to support the role of customary land administration in protection.
- The judicial system to recognise that chasing a widow off her land is theft – a criminal offence, and not a civil matter.
- The police and judiciary to be proactive in protecting rights, e.g. pursuing those who ignore court rulings for contempt of court.
- The District Governments, NGOs, churches, and other to get involved in protecting rights – through documentation, lobbying, sensitisation and support to District structures.
- Revisiting the co-ownership clause.

This paper is one of a series of discussion papers written by Land and Equity Movement in Uganda (LEMU) intended to help inform both policy makers and a wider public.

For more information on land or on LEMU's work, please contact: LEMU, POB 23722 Kampala, tel: 041 576818 077856212; LEMU@utlonline.co.ug or visit us on www.landinuganda.org