

## Challenges and opportunities in inheritance rights in Uganda

### Summary

- Ugandan statutory law contains some progressive as well as constraining elements for the protection of spouses' and children's inheritance rights. Opportunities exist to address limitations through the revision of Uganda's Succession Act, and in allocating budget resources to implement provisions of the laws, such as the existing prohibition against evicting a widow or orphaned child from their residence.
- Extensive policy advocacy, debate, media coverage and public awareness campaigns have generated important progress on awareness of some laws, which is expected to affect practices, including recognition of the property and inheritance rights of spouses.
- Strategic litigation pursued by NGOs has provided judicial precedents for the recognition of women's property rights that are not yet established in legislation.
- Poor progress in the decentralisation of administrative and legal services (e.g. district land tribunals) has stymied implementation of progressive provisions in the law (e.g. Alternative Dispute Resolution mechanisms) leaving NGOs reliant on foreign donor funding to fill in the gaps.
- Important opportunities exist in piggybacking on HIV and AIDS outreach initiatives to provide information and advice on inheritance rights and planning.

### Introduction

Inheritance is a major means for the transfer, or exclusion from the transfer, of people's accumulated physical capital. The transfer of physical assets from the parent to the child generation can provide the start-up material for the younger generation's more independent future livelihoods and economic productivity (Fafchamps and Quisumbing, 2005). However, exclusion from assets inheritance can exacerbate vulnerability to chronic poverty and the intergenerational transmission of poverty (Bird *et al.*, 2004).

In many countries, inheritance laws and customary practices exclude individuals, and specifically women and orphaned children, from inheriting the property (including land, housing and other productive resources) that they had access to while their husbands or fathers

were alive (see Cooper, 2008 and 2010). This has been linked to economic decline and poverty traps (Bird *et al.*, 2004; Human Rights Watch, 2003; Strickland, 2004). Reforming statutory and customary systems can address gender discrimination in inheritance practices (Benschop and Sait, 2006; Bird *et al.*, 2004; Davies, 2005; Mutangadura, 2004; Rose, 2006). This is happening in many Sub-Saharan African countries, with several states recently amending their statutory laws, and rights-based organisations taking various initiatives to improve equity in inheritance practice. Nevertheless, much remains to be done to address the links between inheritance rights and practices and poverty.

This Policy Note presents findings from a five country study commissioned by the Chronic



Poverty Research Centre, which explored how inheritance is practised to enhance or prevent socio-economic equity and opportunities. Policy Notes for Ghana, Kenya, Mozambique and Rwanda, a working paper and a policy brief of key cross-cutting themes are available at: <http://www.chronicpoverty.org/publications/details/challenges-and-opportunities-in-african-societies>. Data were collected through interviews with representatives of governmental and non-governmental agencies working specifically on

issues related to inheritance and property rights, as well as a review of research and policy literature.

Who is included and excluded from inheriting particular assets depends on legal property rights, as well as cultural norms concerning social roles and relationships. This Policy Note addresses how Ugandan law currently affects property inheritance, the challenges and opportunities in existing law reform, and the issues surrounding how inheritance is governed and practised in people's lives in Uganda.

### Box 1: Background on Uganda

Uganda has a population of over 32 million people, with 13 percent living in urban centres. The population is predicted to double in the next twenty years, increasing population density and pressure on the land. After independence in 1962, Uganda experienced civil war and the dictatorships of Idi Amin and Milton Obote. Current President Yoweri Museveni seized power in 1986. A 2005 amendment to the Constitution legalised multi-party democracy and removed Presidential term limits. The next national election is due in 2011.



An estimated five percent of Uganda's population is internally displaced due to conflict in the north of the country. The northern population is also the poorest in Uganda with poverty prevalent at 61 percent. Land disputes during displacement and upon return have continued to rise in regions such as Acholi sub-region. Approximately one million Ugandans are infected with HIV/AIDS.

Between 70 and 80 percent of Ugandans are engaged in agriculture (approximately 83 percent women and 71 percent men). Coffee is the main export revenue earner. In the 1990s, there was significant economic growth averaging seven percent annually, and poverty decreased from 56 percent in 1993 to 31 percent in 2005/06. GDP per capita (adjusted for purchase power parity) was US\$ 1,300 in 2008. Foreign donor assistance to Uganda is equivalent to approximately 50 percent of government expenditures and 10 percent of GDP.

## Opportunities and challenges in policy

Statutory law reform is a complicated and lengthy process in Uganda, particularly when legislation affects issues entwined with longstanding social norms and customary governance, such as women's rights and land rights. The legislature is widely regarded as patriarchal and is dominated by the firm grip on power that President Museveni has held since 1986. The national legislature has 332 seats, of which 215 are elected by popular vote and 104 are nominated by special interest groups, which include 79 seats for women, and five each for disabled people and youth. Uganda has received large infusions of foreign financial assistance linked to indicators of progress, although the effectiveness of this aid and Uganda's achievements are often questioned (Adam and Gunning, 2002).

Ugandan civil society is active, particularly in response to the challenges of HIV and AIDS, as well as women's rights. Non-governmental organisations focusing on women's rights and land rights are active in policy debates. Several social and legal services are provided by NGOs, as discussed under the section below on 'Opportunities and challenges in practice'. Women's, children's and land rights NGOs note that international agreements and reporting are crucial to influence policymaking in Uganda. For example, the Shadow Reports provided to the United Nations and African Union raise opportunities for public awareness and policy advocacy in Uganda.

The reach of statutory law remains limited in Uganda because of challenges of access and deference to customary governance and



localised practices. Nevertheless, legislation is still considered critical especially in protecting property and inheritance rights. A recent review (Rugadya *et al.*, 2008:i) commissioned by the Ministry of Justice concluded that 'Law reform is a key recommendation arising out of a review of both land and family justice administration.' The laws provide a standard for action on the ground, indicating what rights are supposed to be acknowledged in people's lives, and a final recourse if claims can be pursued through the courts. In some cases where statutory laws are absent or indeterminate, Uganda's common law judicial system has set critical precedents.

## Constitution of Uganda (1995)

Uganda's Constitution contains an important chapter pertaining to the protection of human rights with relevance to inheritance, including (a) the right to equality and freedom from discrimination, (b) protection from deprivation of property, (c) the right to privacy of a person, home and other property, (d) the right to a fair and public hearing; (e) the right to marry and 'equal rights in marriage, during marriage and at its dissolution', and (f) a right to just and fair treatment in administrative decisions.

The Constitution also specifically provides for the rights of women and children, stating that:

- 'Women shall be accorded full and equal dignity of the person with men. Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited.'
- 'the law shall accord special protection to orphans and other vulnerable children.' Specifically, it instructs: 'Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.'

Non-discrimination clauses in the Constitution have been used by women's rights organisations to challenge other existing laws such as the Divorce Act and the Succession Act. Precedent-setting legal challenges have added pressure on the legislature to amend existing laws related to marriage, divorce, the penal code and inheritance.

The Uganda Constitution recognises four land tenure systems: customary, freehold, mailo, and

leasehold. It states that 'On the coming into force of this Constitution (a) all Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and (b) land under customary tenure may be converted to freehold land ownership by registration'.

A Constitutional provision which is also included in Uganda's Land Act (Rugadya, 2007) guarantees that 'the lawful or bona fide occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land'. This provision has caused much dispute and conflict because of overlapping land rights on the same piece of land between statutory tenants (lawful occupants and bonafide occupants) and registered land owners (mailo /native freehold owner).

## Succession Act (1972)<sup>1</sup>

The Succession Act, which governs intestate inheritance (inheritance when there is not a will), is currently under revision by the Law Reform Commission of Uganda. Reforms will need to address the Constitutional Court's ruling in 2007 that some content in the Succession Act is unconstitutional due to discrimination based on sex, and is therefore, void. The revision is also an opportunity to address other important legal issues and increase public awareness on issues such as the rights of cohabiting partners, and the responsibilities of legal guardians of minors. However, as civil society organisations have learned through experience with the recent Domestic Relations Bill, contentious policy reform can take many years and it is necessary to be strategic on advocacy and in expenditures of time and money.

The existing Succession Act accords more rights to lineage heirs than to married spouses. It outlines the categories of people that should inherit particular percentages of a male property owner's estate:

- 75 percent is allocated to 'lineal descendents' who are his sons in patrilineal communities and sons of his sister(s) in matrilineal communities.
- 'Wives' receive 15 percent of the estate in equal shares.
- Nine percent of the estate goes to 'dependent relatives', who may include a spouse, a child under 18 years or a child over 18 years who is wholly or substantially dependent on the deceased parent, or siblings, parents, grandparents or grandchildren who were also dependants on the deceased.
- If there is no wife or dependants, the allocated portions are distributed among lineal descendents.



- If there are no lineal descendants, the wife or wives receive 50 percent and the dependent relatives 49 percent.
- The 'customary heir', usually a male recognised by the rites and customs of the tribe of the deceased person, should always receive a token one percent of the estate.

Beyond these, there are additional provisions for protecting the inheritance rights of spouses and children. For instance, the law states that any spouse or child who cultivated, farmed or tilled any land adjoining a residential holding owned by the deceased prior to his or her death retains the right to use that land as long as he or she continues to be resident. There is also a provision against eviction, or attempts to evict, a residential wife or child and offense of this is punishable with a short period of imprisonment and/or a fine. The Court is granted the power to order a payment out of the estate for the maintenance of dependants under the age of 21.

The right to retain the matrimonial home, however, only extends to male children under 18 years of age and unmarried female children under 21 years of age. When a widower remarries, he may retain the matrimonial home; for a widow, this right is terminated if she remarries. This restriction on a widow's rights render uncertain her control of the property, and hence undermines her use of the property for sale, mortgage, collateral, etc.

The Succession Act also states that a father may appoint a guardian for his child in his will. If the father dies without a will the law states that a guardian will be appointed to 'act jointly with the mother' from the following categories in order of priority: the father or mother of the deceased man, brothers or sisters of the deceased, brothers and sisters of the deceased man's father, the deceased man's mother's brothers, or the deceased man's mother's father. There are no provisions for a mother's rights to sole guardianship or appointment of a guardian of her children.

## Marriage laws

In October 2009, the Uganda Law Reform Commission introduced a draft revision to legislation concerning marriage and divorce. The proposed law would govern Christian, Hindu, African customary and Baha'i marriages, and a separate law will address Muslim marriages.<sup>2</sup> Proposals include:

- recognition of cohabiting partners of more than two years as legal spouses<sup>3</sup>;

- provisions that matrimonial property (home and other properties) shall be owned in common and distributed equally if the union is dissolved;
- the abolishment of bridewealth or dowry payments as a prerequisite to marriage and non-refundable upon marriage dissolution;
- the prohibition of 'widow inheritance'; and
- in cases of polygamous marriages,<sup>4</sup> a husband and his first wife shall own in common the matrimonial property they acquired before the husband married the second wife.

Marriage and Divorce Acts and the Customary Marriage Registration Act are relevant to inheritance, particularly in cases of intestate inheritance, as they stipulate how a spouse is recognised and is eligible for a portion of a heritable estate. At present, a marriage is legal if it is registered with an administration office (e.g. *Gombolala*) within six months. If a marriage is not registered but the couple has witnesses to their marriage, there may be some protection under the administration of an estate, however, a spouse's (usually a wife's) claim may be weakened without a marriage certificate. Currently, there are no legal provisions to determine what should happen to property that a cohabiting couple jointly acquired.

An earlier draft law on marriage and divorce (which did not recognise polygamous unions) was opposed and rejected by President Museveni. The current draft is also already highly contentious; the Catholic Church, which is very influential in Uganda (42 percent of Ugandans identify as Catholic), has opposed this draft legislation because it would legally recognise divorce and cohabiting (unmarried) unions.

## Children's Statute (1996) and OVC Policy

The protection of children's inheritance rights is not specifically addressed in either the Children's Statute or the National Orphans and other Vulnerable Children (OVC) Policy and Strategic Programme Plan. Instead, the OVC Policy priorities include financial support to households, ensuring children's nutrition, development psychological support for OVCs and ensuring access to education. It does not designate property protection as a policy priority. Under the Children's Statute, Local Councils (LCs) are responsible for child protection. Lack of resources to implement the protection provisions of the Children's Statute is repeatedly raised as a major concern.



## Land Act (1998), Land Amendment Act (2004) and Draft National Land Policy

A 2008 study commissioned by Uganda's Ministry of Lands, Housing and Urban Development states:

'Land in Uganda is increasingly becoming a problem for the poor people, with shortage of land being the second most important cause of poverty, after health. But perhaps one of the key concerns with regard to land use in Uganda relates to women's land rights, particularly denial of inheritance, inability to prevent sales by men, disincentives to development of the land they occupy, disinheritance of widows, etc.'  
(Premium Consulting Ltd, 2008:iii)

Presently, about 50 percent of most Ugandan households' wealth is in the form of land (Rugadya *et al.*, 2008).<sup>5</sup> In Uganda, land ownership is categorised into customary, mailo, freehold and leasehold ownership.<sup>6</sup> Results from Uganda's National Household Survey (UNHS) 2006, show that the majority of households (70 percent) access customary land while 23 percent access mailo land. The Land Act has several provisions to protect people's land rights, be they customary or freehold, and in particular the rights of women, children and persons with a disability. The law dictates that every spouse shall in every case have a right to use the family land (where he/she resides and where the family derives sustenance), and requires a spouse to give or withhold consent to any land transaction. This provision, however, only applies to married couples and not cohabiting couples.

Women's rights organisations have long lobbied for the automatic co-registration of land by women and men. In 1998, intensive lobbying resulted in the inclusion of a 'consent clause' that requires the consent of spouses and children before land transactions. However, the Land Amendment Act of 2004 removed the need to acquire the consent of children, with reason that it was expensive to administer. Children's

rights to land remain at risk at present with important consequences for orphaned children's inheritance.

As set out in the Constitution and in the Land Act Amendment (2004), there are many affirmative action provisions for land administration in Uganda. At least one third of the members of district land boards (which facilitate land registration and transfers) must be women and at least one member of a Land Committee must be a woman. There are also provisions for decentralised administration: each district is required to have a District Land Office as well as a District Land Tribunal. The Land Amendment Act (2007), which was passed in 2009 after heated debate and divisions along political party lines, contains provisions to punish those who take part in illegal evictions of lawful tenants, and to give tenants the first option of buying a piece of land if a land owner opts to sell it.

Uganda's National Land Policy was tabled in 2009 after regional stakeholder consultations and iterative drafting by a Land Policy Steering Committee with representatives of civil society led by the Ministry of Land. It sets out to establish clear, prescriptive principles for the implementation of strategies (e.g. for gender mainstreaming, provisions to protect people living with HIV and AIDS), including policy guidelines to protect the rights of access, ownership and inheritance rights for women and children. Specifically, it states that the government should amend statutory law to ensure women and orphans can inherit family land.

It is likely that Uganda's Land Act will have to be amended following passage of the National Land Policy. Therefore, there is a potential opportunity to re-introduce a provision for automatic co-ownership of land by spouses, which remains a priority issue for women's land rights. The enduring challenge is that political will is required for passage of the National Land Policy as well as future amendment of the Land Act.



## Opportunities and challenges in practice

*'Across the board, whether someone is legally married or not, even when your rights are clearly outlined in law there are major challenges because it starts with relationships in the family.'*

This quote from a key Ugandan civil society leader refers to the weak extension of legislation into people's lives and the strong grip of local interpersonal politics and social conventions. Ugandans experience legal dualism, as both statutory and customary laws<sup>7</sup> simultaneously prevail, especially in family and land matters. This section reflects on the options Ugandans turn to when faced with family and land disputes.

### Localised dispute resolution

A recent study commissioned by the Ugandan Ministry of Justice and Constitutional Affairs (2008) reveals that 'Land and family conflicts are the most prevalent forms of livelihood disruption to many households and individuals' (Rugadya *et al.*, 2008:ii). Its findings are important to understanding how extremely prevalent localised and personal land conflicts are for Ugandans. A survey of 3,574 Ugandan households found that the prevalence of land conflicts at the household level was high (34.9 percent), and highest among child-headed households (41 percent) and only slightly higher among rural households (36 percent) compared to urban households (33 percent).<sup>8</sup> Land conflicts involved disagreements over tenure and management, especially with regard to boundaries (32 percent), disputes about ownership (19 percent) and land transmission, occupation and trespass as well as fraudulent transactions. Inheritance and succession disputes account for 16 percent of land conflicts and illegal occupation at 12 percent. However, when questioned specifically on family disputes (rather than land disputes), 34 percent of child-headed household reported 'asset stripping/grabbing' and 22 percent reported succession and inheritance conflicts.

The same study found that the most common first recourse to resolve these disputes was through Local Council Courts (LCCs or LCs), which function as the district access points of the state judiciary. Approximately one-quarter of people chose to first approach clan and other community leaders, while one of every five land conflicts went unreported to any dispute resolution body. Several other studies<sup>9</sup> show

that dispute resolution choices are influenced by an individual's physical proximity to a dispute resolution body, an understanding that it is a 'legal requirement to go there', and familiarity with how these options actually work.

The majority of people in the study rated the land justice system to be fair, and that LCs or clan leaders are effective in resolving the disputes brought to them. However, corruption at the local level is also widely acknowledged. While LCs are positively evaluated, their adherence to the principles of human rights, ethical conduct and gender sensitivity are commonly found to be poor. Women, men and youth included in a study of land and family conflicts (Rugadya *et al.*, 2008) said that LCs are biased against vulnerable groups, promote nepotism, are corrupt and engage in bribery. Eighty-eight percent of those who sought land justice were asked to pay un-receipted payments (*ibid*). As the researchers comment, corruption and illegitimate demands for money slow the justice process and bribery can bias outcomes in favour of those who pay (*ibid*).

The police are well positioned in terms of physical presence and infrastructure to provide access to legal protection and enforcement. However, studies have found that the highest number of cases abort at the police due to corruption as well as the many technical procedures involved in the filling of forms and taking of evidence which directly affect the perception of affordability (Rugadya *et al.*, 2008). NGOs consistently identify police, and particularly the existing Family Protection Units in police stations, as an opportunity to expand rights awareness, protection and enforcement; however, more capacity building – and in particular, attitudinal shifting – is required to realise such change. Along with the need for 'cultural change' among members of police, is the need to address practical challenges to their work, such as unreliable salaries and transport.

There are key recommendations on the obstacles in access to justice in Uganda that emerge from relevant research (Joint Survey on Local Council Courts and Legal Aid Services in Uganda, 2006 and Legal Aid Baseline Survey and Needs Assessment, 2004, cited in Rugadya *et al.*, 2008). These include:

- high costs of litigation;
- clients' and service providers' lack of awareness of laws and rights;
- difficulties in using the formal justice system (e.g. language comprehension);



- negative attitudes and orientation of personnel in the justice system, including discrimination based on gender, age, health and economic status;
- lack of co-ordination among legal aid service providers; and
- breakdown of the justice system in war-affected areas.

Given that Local Councils, family, clan leaders and the police are often the first recourse for land and family dispute mediation, it is critical that capacity building with these local arbiters is prioritised along with providing additional access to local administrative and legal aid services. Coordination within the justice system is another priority for reform, as there are currently multiple options and procedures for dispute resolutions. Monitoring and reporting of service quality are important opportunities for influencing accountability.

Land tribunals, which were provided for in the 1995 Constitution and the Land Act 1998, are another option for dispute resolution. District land tribunals were set to act as the highest authority for appeals in districts before cases can be taken to the High Court in Kampala. Land tribunals have powers equivalent to courts of law, but procedures are supposed to be simpler (e.g. less legalistic) and therefore more accessible. However, by the time the mandate for land tribunals expired in November 2006, complex jurisdictional and litigation procedures had developed, and approximately 6,000 cases were left pending (Rugadya *et al.*, 2008). The land tribunals were generally ineffective and expensive (Joint Survey on Local Council Courts and Legal Aid Services in Uganda, 2006). Immediate re-operationalisation and improvement of the land tribunals have been recommended by analysts as, despite these setbacks, they are potentially the most viable land dispute resolution institutions for Ugandans to use.

Problems with other land administration mechanisms, which could provide clarity of property rights for reference in inheritance claims, have also not achieved in practice what was initially intended. The Land Act 1998 provides for the appointment of Land Committees in each parish, gazetted urban area and city division. These were intended to be comprised of four local people (including at least one woman) with some knowledge of local land matters. The main function of each committee is to determine, verify and mark the boundaries of customary land within the locality when an application for a certificate of ownership is made. However, the area

land committees have never been formed because they have not been allocated funds. In addition, sub-country land recorders that are supposed to keep a register on customary land transactions and occupancy, are not functioning at all; as a result, records of ownership, transactions and dispute resolutions are deficient in Uganda. Aside from this, the Land Registry is criticised for fraudulent and ‘back-door’ practices, being disorganised, ineffective, outdated, and using dilapidated systems that lead to the loss of data (Baseline Evaluation Report, 2007, cited in Rugadya *et al.*, 2008) – it is estimated that 60 percent of the records in the register is currently out of date (Rugadya *et al.*, 2008). Clearly, such conditions undermine the provisions for accountability set out in statutory laws, such as obtaining consent of spouses for land transactions.

Research shows that approximately 90 percent of Ugandan land owners do not have any form of certificate of land ownership<sup>10</sup> (UNHS, 2006, cited in Rugadya *et al.*, 2008). This indicates an extensive gap between statutory and administrative expectations for establishing land rights through land titling.<sup>11</sup> Yet, despite some distrust on the land titling processes (Adoko and Levine, 2007), studies indicate that many land owners desire ownership certificates, (UNHS, 2006) primarily to avoid conflicts with neighbours, to protect land from theft, and in some cases, to secure loans (Adoko and Levine, 2007).

## Administration of estates

Other administrative procedures related to property and inheritance systems are also performing poorly. Uganda’s Administrator General Act, enacted in 1933, gives powers to the Administrator General (AG) to facilitate the management of a deceased person’s property. A person’s death is supposed to be reported to the AG’s office to oversee the procedures for estate distribution. Research into these cases (Ssonko and Bogere, 2007) found that between 1986 and 2005, 50,000 succession cases were handled by the AG’s office, however, only eight percent of these were completed. Between 2002 and 2005, less than one percent of the 92,675 inheritance cases reported for administration oversight were reconciled and brokered. This indicates a very low level of effectiveness in resolving inheritance cases.

Research (Ssonko and Bogere, 2007) on the administration of estates by the AG’s office indicates other key issues. First, the majority of cases filed with the AG are by male property owners, and only a



few are with wills. Second, many testate cases (with written wills) are arbitrated by the AG's office because these wills are with inadequate content. This reflects a need to provide support in writing wills so that it can be effective. Third, the majority of the AG cases were filed in Uganda's Central region (where Kampala and Entebbe are located) indicating disparities in regional access. Moreover, these cases concerned the estates of people who were formally employed or had sizeable land and other property holdings. These findings indicate that rural and poor Ugandans are not using the AG offices and are instead seeking more localised arbitration (e.g. family or clan leaders, Local Councils, etc) for their inheritance cases.

The study by Ssonko and Bogere (2007) also found that the majority of deceased individuals had left behind widows. Under the Succession Act, widows only receive 15 percent of an estate, which raises the question if this is adequate support. The research found that on average, 26 percent of estates went to dependants, the majority of whom are brothers and sisters of the deceased. Sons were found to inherit more land than daughters; while daughters were likely to inherit more money than sons,<sup>12</sup> and in testate cases, more females were bequeathed land and the marital house.

## Public education and outreach

The effectiveness of statutory laws is limited by the lack of public awareness. In Lango, northern Uganda and in Teso, eastern Uganda, for example, research has found that almost no one is aware that statutory law states that a wife must sign her consent to the sale of any land on which the family depends (Adoko and Levine, 2007). Several different types of approaches have been instigated by NGOs and the Uganda government to improve public education of rights and procedures. Foreign donor support has been critical to these initiatives.

Land Rights Information Centres, hosted by local NGOs with funding from international donors, for example, were established to try to provide improved access to land rights awareness and procedures. These centres provide public counsel on rights as well as dispute resolution. The Apac Land Rights Information Centre in Northern Region, for instance, which opened in 2005, handled 186 cases in 2007 (101 registered by men and 85 by women), which included cases of families' and neighbours' land disputes, harassment of widows, and trespass and resettlement of customary land. Similarly, the Luwero

Land Rights Information Centre in Central Uganda handled 56 land cases (20 from women and 36 by men) in 2007. Despite this activity, most of Uganda's decentralised Land Rights Centres have now closed due to lack of financial resources, although there is some interest to revive them.

Other legal aid services are provided by NGOs and the government, although mainly in urban centres. For example, the Uganda Law Society's Legal Aid Project has seven legal aid centres and additional mobile clinics across Uganda. In 2008, these offices registered 7,090 cases (59 percent by men, 41 percent by women), most of which concerned land and property disputes. However, reflecting strain on existing capacities and procedures, of these 7,000 cases, more than 3,000 were filed in court and only 258 were concluded, while 2,791 cases were addressed through Alternative Dispute Resolution (ADR), of which only 406 were resolved.

NGOs also impact on administrative initiatives, such as encouraging birth, marriage and death registration. In 2008, FIDA hosted 48 Birth and Death Registration awareness sessions with 1,000 Ugandans participating throughout the country. Through these sessions, 600 children acquired birth registration, which is crucial to protect their rights, for parents' maintenance and for family inheritance. As well, as a result of making forms for writing wills available in Luganda language and English, FIDA received 200 completed wills to hold in their custody. Other organisations, such as The AIDS Support Organisation (TASO) also provide counselling on how to write wills and who individuals can turn to for assistance with inheritance disputes.

The extensive outreach resulting from HIV and AIDS awareness-building and voluntary counselling and testing initiatives provides opportunities for increasing people's knowledge of inheritance rights and practices. TASO, for example, has moved from the approach of Voluntary Counselling and Testing (VCT) to Household Counselling and Testing (HCT) which is a more proactive approach to addressing a range of family and household issues. Specifically, TASO's model seeks to arrange the second meeting (before the client is given ARV treatment) in the client's home to investigate the client's background and to set up a 'Family Support System'. Under the Family Support System, issues about what may happen to family members and how the family might organise themselves are discussed. Opportunities to discuss succession planning arises through this. Other NGOs use a Memory Book approach which





is a participatory exercise for HIV+ individuals; this includes recording information about a person's background and preparing for the future. Through this exercise, parents can make implied or explicit wills to protect their children's property and livelihoods.

Certainly, some NGO activities have been stymied because these clashed with local customary ideas and practices. Data collected in Eastern Uganda, for example, show that there are very few people who make wills, despite NGOs' efforts to highlight their importance (Adkoko and Levine, 2007). In addition to wills being perceived as 'preparing for death', another important point highlighted in this study was that wills are rarely set in a context of customary land law:

'Wills are thus seen as an individual matter, not witnessed or approved of by family heads or clan elders. As a result, wills are easily ignored and people reported that they have little confidence they will be respected. The lesson is clearly that wills are not a 'stand-alone' solution, although they may have a role to play within a broader based framework for protecting land rights.' (Adoko and Levine, 2007: 8)

## Practical partnerships

'A partnership could exist where the state management systems holds the clan system accountable to protect the rights of the vulnerable categories of people.' (Adoko and Levine, 2007: 23)

The Land and Equity Movement in Uganda (LEMU) has proposed 'a new paradigm in the struggle for women's land rights' based on 'a gender analysis rooted in the local culture, with protection enforced from within the village' (LEMU, 2008: 3). According to LEMU, the notion that customary practices are obstacles to realising women's land rights is a false starting point and is counterproductive. LEMU prefers to promote recognition that customary systems provide

for women's land rights, but that in many present circumstances, these rights are violated. LEMU advocates an approach that focuses on harmonising commonalities of norms and complementarities of practice between statutory and customary systems. With an estimated 80 percent of land in Uganda under customary (or 'indigenous') governance, and widespread administrative challenges in the state's current legalistic approach, LEMU argues this is the pragmatic approach:

'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.' (LEMU, 2008: 3)<sup>13</sup>

LEMU's on-the-ground work seems to demonstrate that 'small practical steps' can yield binding results. For example, a recent project that focused on walking the land with inhabitants to determine agreed boundaries, and planting trees to mark these boundaries, was successful in meeting people's interests to mark these clearly, and to provide opportunities to discuss rights and expectations. Another project involved publicising (e.g. through radio broadcasts) instances wherein individuals violated customary principles of ensuring shared access to land and property, to demonstrate that an individual's actions do not necessarily reflect his or her cultural system. Such innovation and adaptation to local circumstances may be fruitful; evaluating measures of success in such approaches will be important and will require complex monitoring of experiences on the ground.

This policy note was written by Elizabeth Cooper

## Notes

- 1 Succession Act Cap 139 as amended by The Succession (Amendment) Decree 1972 and the Administrator General's Act Cap 140.
- 2 There are currently four legal types of marriage recognised in Uganda: customary, Christian/civil, Islamic and Hindu. These are governed by separate laws: the Marriage of Africans Act; the Marriage Act; the Divorce Act; the Hindu Marriage and Divorce Act; and the Marriage and Divorce of Mohammedans Act.
- 3 It has been estimated that over 50 percent of unions between Ugandan men and women are not legally registered marriages.
- 4 Census data indicates that approximately 19 percent of Ugandan marriages (whether registered or not) are polygamous marriages (UNHS, 2006).
- 5 The extent to which land constitutes the value of household assets has declined in recent years: in 1992, land constituted 64 percent of household assets among Ugandans classified as 'poor' and 53 percent among 'non-poor' Ugandans, while in 2000, land constituted 56 percent of household assets for the poor and 48 percent for the non-poor (Kamusiime *et al.*, 2004).



- 6 Mailo tenure was created in a 1900 agreement between Great Britain and the Kingdom of Buganda in Uganda. Parcels of land were given to some individuals (royal family members and chiefs) to own in perpetuity. Local peasants previously living on the land were not recognised and became rent paying tenants. The owner of mailo land was, and is entitled to, a certificate of title. Freehold land tenure which grants land holdings in perpetuity was also established by agreements between Great Britain (and later Uganda Land Commission) and particular kingdoms in Uganda, church missionaries and academic institutions (especially western Uganda).
- 7 Adoko and Levine (2007: 35) assert in their study of land practices in Uganda that, "The term 'customary' is misleading, since it suggests that practice is rooted in history, whereas local 'customary' rules are rapidly evolving. A better term might be 'indigenous'."
- 8 The similar rates between rural and urban households are interesting because it is usually rural households that are the focus of land conflict studies. It is not clear from the study report whether urban households are reporting conflicts over urban or rural land holdings, as many urban Ugandans also have rural 'homes'.
- 9 A 1998 baseline survey on the operations of LCCs found that over 80 percent of the population utilises LCCs to settle disputes. Reasons for their use included accessibility in terms of physical proximity and technical demands, affordability, their 'user-friendly' and participatory style, and their effectiveness due to enforceable judgments (favourably compared to the more formal justice system). The Criminal Justice Baseline Survey (2001/02) similarly found that LCCs provide a favoured alternative to the procedurally complex, less accessible and expensive formal courts especially for the majority of rural poor Ugandans. The 2006 Joint Survey on Local Courts and Legal Aid Services in Uganda also found that LCCs are the most appealing among dispute resolution fora, followed by the police, traditional leaders, probation office and then the formal courts. Most users included in this study indicated that they conclude their matters through LCCs, and where this does not happen, they try to exhaust all other possible avenues before trying the formal courts if at all.
- 10 A review of 70,000 land records in Uganda to document the uptake of joint land titles among conjugal couples between 1980 and 2002 found an increase in joint titling, however, the percentages remain low: about 1.3 percent of all titles in 1980 were co-registered compared to 3.4 percent by October 2002. Women's ownership of titled land has risen from 12.4 percent to 16 percent in the same period. (Oxfam /FAO, 2003, citing Sabina-Zziwa)
- 11 Uganda's recent Poverty Eradication Action Plan (PEAP) and Medium-Term Competitiveness Strategy include objectives to improve security of land tenure and land registration. The multiplicity of land tenure systems and lack of ease and clarity in registration of land owners, with rights to sell or mortgage land, is widely regarded in Ugandan policy and business circles as an important deterrent to investment and economic growth.
- 12 Past studies have documented that among the Buganda who live in the Central region of Uganda there is a longstanding practice of bequeathing land to daughters (Mukwaya, 1953 and Southall, 1956).
- 13 LEMU argues in its public documents that it is a myth that women do not have land rights under customary systems of land governance. Commonly, women have rights of use just like men, while the head of a family was often expected to oversee management of the land to ensure equitable access. LEMU argues that the equating of household heads with ownership of land is wrong. Household heads and clan elders (often men) are more appropriately regarded as trustees or stewards than owners of land.

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