Inclusive Land Rights: Tackling Legal Pluralism to Reduce its Effect on Ugandan Women

SHERINA TIBENKANA, POLICY ANALYST • 28 NOVEMBER 2019

Summary

Land is a form of wealth and basic resource for agriculture which is the backbone of Uganda’s economy. According to the Uganda Bureau of Statistics: Agricultural Sector, Gender Statistics Profile (UBOS), agriculture employs about 69% of the population, of which over 50% are women (UBOS, 2012). However, there is a gender gap in land ownership, use and control. Women’s land rights are constrained by the legal plural system which
results in the adoption of policies that hurt women. This policy brief explores this tension created by legal pluralism and proposes measures to promote gender equality in land rights.

Background

In Uganda, agriculture is the main economic activity which contributes about 26% of the country’s GDP and employs approximately 69% of the population, of which 50% are women (Ali, 2015). However, there is an agricultural productivity gap which is estimated to be at 10.3% (UBOS, 2012). Studies show that the gender productivity gap is partly due to gender gaps that exist in accessing and using agricultural inputs, especially land (Hill and Vigneri, 2011). Land is a key resource in agricultural production and yet, according to UBOS (2013), women own only 28%. The World Bank Group; Women, Business and the Law (WB), indicated that women’s property rights are constrained by the legal system which is pluralistic in nature (WB, 2018). Legal Pluralism refers to the application of different sources of law, including formal and informal laws. The different sources of law are usually in conflict with each other, creating tensions which hurt women’s land rights. Therefore, the removal of these constraints faced by women would work to end the gender gaps in agricultural production and promote women’s land rights.

Challenges Created by Legal Pluralism to Women’s Land Rights

In Uganda, similar to other sub-Saharan African countries, land is mostly acquired through marriage and inheritance. The World Bank provides guidance to understand women’s land rights by analysing the constitutional equality guarantees, the marital property regimes as well as the inheritance property regimes (World Bank, 2015).

**CONSTITUTIONAL GUARANTEES AND MARITAL PROPERTY REGIMES**

According to the Constitution of Uganda, marital property regime determines the allocation, ownership and management of property between spouses during marriage and at its dissolution through death or divorce. Though the Constitution provides for women’s property rights during and after marriage regardless of the marriage regime as long as it is recognised under the laws of Uganda, different marital property regimes determine property allocation. Most marriages in Uganda are customary, polygamous, and not registered, hence not recognised under the law which denies women of their property rights. Additionally, upon divorce, women lose personal property rights even if they were the owner of property before marriage. Studies by Women, Business and Law revealed that in the case of the death of the male spouse, the widow is only entitled to residential rights over the residence in which she resided before the demise of her husband, and this right ceases in cases of remarrying, contrary to the widower’s rights (WB, 2016, p.13) (Mwenda and Mvuba, 2004). Mwenda and Mvuba’s findings (2004) also found that even when the widow does not remarry, the land is

---

1 According to the laws of Uganda, there are five forms of recognized marriages; customary marriage, Mohammedan marriage, church marriage, civil marriages and Hindu marriages. However, most marriages are customary and polygamous and not registered.
normally grabbed from her by the deceased husband’s relatives. According to the Food Security and Governance land Fact Sheet (2016), about 75% of Ugandan land is held under customary land tenure. Customary norms grant land ownership to men in their roles as the heads of the family whereas married women and daughters enjoy secondary rights through their husbands or fathers. Islamic law allocates only one-eighth of the estate to a widow or widows in case of a polygamous marriage.

**INHERITANCE PROPERTY REGIMES**

Another way women can acquire property is through inheritance. According to Women, Business and the Law (2016), the law does not give equal inheritance rights to widows. This position was emphasised by Mwenda and Mvumba (2004) whose findings indicated that the Succession Act, which is meant to provide for the management of the deceased’s estate by the surviving spouse and children, was unjust. The Act infringes on women’s rights to inherit property by providing for different shares to be inherited based on sex. Although the Act provides for making wills, few people make wills due to the superstitious belief that making a will brings untimely death. (Mwenda and Mvumba, 2004). Fortunately, the Succession Act was successfully challenged in the constitutional court though it is yet to be amended (Constitutional Court of Uganda, 2007).

**Policy Recommendations**

**ENFORCE CONSTITUTIONAL HIERARCHY**

The Constitution sets out the hierarchy between the guarantees of equality against the right to enjoyment of culture which should be enforced by lawmakers and courts.²

**INTEGRATE CUSTOMARY LAWS INTO STATUTORY LAWS**

It has been argued that the solution is not the elimination of customary law, but to integrate and harmonise the two systems so that the formal legal frameworks mirror, legalise and oversee the customary norms. Customary norms should be allowed to evolve and develop by drawing from the rich cultural values. The law reform should provide for co-ownership of marital property by spouses, land formalisation and titling rights (Loft, 2010).

**STRENGTHEN RELATIONSHIPS BETWEEN CUSTOMARY AND STATE STRUCTURES.**

The current structures and all the proposed approaches cannot promote rights of women unless the linkages between the customary and state structures have been strengthened (Ubink, 2011). The linkages should recognise and respect traditional, culture and customs, limit the potential for such traditional violations of

---

² CONSTITUTION, chap. 4, art. 11(1) (1992) (Ghana). Courts have enforced equality guarantees by interpreting the statutory laws against the customary norms by relying on the repugnancy test which permits application of customary law only in so far as it is not repugnant to justice and morality. Examples include the Constitutional Court of South Africa, the Constitutional Court of Uganda declared the provisions of the succession Act unconstitutional.
women’s rights and foster the establishment of the rule of law as principles (Pimentel, 2011). Ultimately, there is a need for a compromise between the application of customary norms and the realisation of the fundamental principles of human rights (Ndulo, 2011).

**CODIFY CUSTOMARY LAW**
All customary laws should be codified and all the discriminatory practices should be removed. In her study, Tamar (2016) found that codification of customary laws had improved the status of women’s rights in different countries like Namibia, Kenya and Tanzania. She, however, cautions that codification must comply with human rights, be rooted in community engagement, focus on core values and be a process for customary law’s ongoing development (Ezer, 2016).

**CREATE PUBLIC AWARENESS**
The fight for equality needs to move to the courts and, in order for the courts to interpret the law in such a way that gender equality is advanced, there is a need for social movements to put pressure on the courts and society to act in the interest of gender equality (2011). There is also a need to improve access to courts so that women can bring claims based on discrimination thereby giving courts an opportunity to reform the law (Muna, 2011).

**INVOLVE WOMEN’S SOCIAL GROUPS**
It should be acknowledged that women, too, do not believe that they have the right to own land through inheritance just as men do. These women should be engaged through community outreach programs to know their inheritance rights.

**EMPOWER COMMUNITIES TO ADOPT PROGRESSIVE APPROACHES**
Leaders should be sensitised to the troubles caused by the application of such harmful traditional practices and empowered to develop community by-laws and ordinances which would protect women’s land rights. Subsequently, there should be a concentrated effort to widely disseminate these by-laws.
References


Muna Ndulo (2011), African Customary Law, Customs, And Women’s Rights, 18 Indian Journal Of Global Legal Studies, 87, 92 available at: https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1437&context=ijgls: (last accessed on 25.11.2019)


Tamar Ezer (2016), Forging a Path for Women’s Rights in Customary Law, 27 Hastings Women’s Law Journal, 80 available at: https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1366&context=hwlj (last accessed on 25.11.2019)