



Gender Transformation & Empowerment



IDENTIFYING THE UNFINISHED TASKS

LEGAL, POLICY AND CONTEXTUAL ANALYSIS OF VIOLENCE AGAINST
WOMEN AND GIRLS AND WOMEN'S LAND RIGHTS

2015

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Acknowledgment

In 2014, Uganda Women's Network (UWONET) with support from OXFAM developed a legal, policy and contextual analysis of violence against women and girls and women's land rights with the goal of popularizing the key issues highlighted. The Publication is also an advocacy tool to engage with government and communities in Northern, North Eastern and National level.

While the publication was widely appreciated as an advocacy tool, there was demand for its simplification for a more effective community level engagement, hence the development of this report.

This publication was developed with support from the OXFAM Uganda Country office as a key output under the Women's Leadership project, Phase II.

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Introduction

Background

Uganda Women's Network is leading the "Uganda Women First" Coalition with support from OXFAM through a project to encourage members of society to speak out against violence and encourage women leaders to address violence against women and promote women's land rights in Northern and North eastern Uganda. The project identified the two biggest challenges that prevent women from enjoying their rights

- ❶ Unequal access, ownership and control of property by women violence against women.
- ❷ The project is aimed at finding ways of preventing violence against women economic injustices, and land abuses suffered by women in the North and North Eastern part of Uganda and land.

This publication therefore is aimed at supporting the project implementation by doing the following:

- ❶ Analyzing Uganda's laws and policies to determine whether they are in line with international standards and gender responsiveness.
- ❷ Identifying gaps and strengths with regard to protecting women and girls against violence and land rights abuses;
- ❸ Documenting global and regional discussions that revolve around violence against women and women's land rights.
- ❹ Highlighting gains, opportunities and obstacles faced in advancing women's land rights and violence against women in the last two decades; and
- ❺ Proposing practical ways in which violence against women can be prevented and women's land rights can be protected such as amending existing laws and policies and ensuring that existing laws are implemented, Literature, In coming up with this publication or information several persons and organizations selected by UWONET.

This publication shows that Uganda has made some positive steps in preventing violence against women and promoting land rights such as passing laws and policies that recognize rights of women. the major short fall is that laws and policies have not been applied in a way that allows women and girls to enjoy their rights in a practical way.

A lot of work still needs to be done at the level of increasing “answerability” for implementation and enforcement of the laws and policies. This means that the government organs responsible should be able to provide accountability and demonstrate how the law has been implemented to protect women from violence and promote their land rights. The law should not only remain on paper. Answerability is needed in areas such as:

Budgets—how much is actually allocated to support violence prevention and promotion of women’s land rights? Are there programs and are these programs funded adequately?.

There is need for clarity on which institutions are tasked with preventing violence against women and promoting women’s land rights. The achievements and challenges faced by these institutions should be documented as well for further engagement for instance, staffing levels to staff attitudes, to staff capacities to address issues of violence against women and land rights? Also, what is the level of institutional coordination around these issues? Are the institutions functioning as they should?

Service provision—are services available and adequate to meet the needs in order to prevent violence and promote women’s land rights? Are there service standards and guidelines and are these known and adhered to?

Political will and ownership—is there awareness and ownership of these issues at the highest political levels within the institutions supposed to implement and enforce the laws against violence and promotion of women’s land rights? Does such ownership and accountability exist at the level of Parliament? When and how is impunity addressed when enforcement and



implementation falls short? How are best practices documented and replicated? officers and offices which wield political power such as the Parliament must be aware of the issues relating to violence against women and women's land rights and should be part of the solution through legislative reforms among others

Uganda's Land System

In Uganda, Land rights can be enjoyed under four tenure systems of holding land¹;

- ① Customary land tenure
- ① Free Hold Land Tenure
- ① Lease Hold Land Tenure
- ① Mailo Land Tenure

Majority of the Land in Uganda is held under Customary Land tenure system recognized women's vulnerabilities because of their dependence upon men and for a long time proactively provided for the protection of their land rights in both their maiden and matrimonial homes. This was because land was communally owned which allowed both men and women to access and enjoy benefits over. The safeguards which ensured women's tenure security have largely been weakened because of; increasing land scarcity, rapid population growth and increasing individualization of land rights.

Additionally, male family members that are supposed to hold land on behalf of and the entire family have increasingly turned themselves into individual land owners, gradually depriving weaker family members of their rights in family owned land.

In the 1990's, Uganda underwent a major land and legal reform process where law and policy makers made a conscious effort to redress gender-based imbalances existing in land access and ownership and put in place gender responsive laws and policies aimed at safeguarding and strengthening women's rights in land.

While laws governing rights over land have never been more favorable to women in Uganda, the situation on the ground is still far from satisfactory. Abuse of women's land rights is particularly widespread in the rural areas where women are frequently denied access to land by members of their own families.

In Uganda, like in many parts of rural Africa, land is the primary source of daily livelihoods. Land, more particularly, agriculture is the most productive asset; accounts for:

- ① 43 percent of the national GDP,
- ① 80 percent of employment

¹ Article 237 of the Constitution, Section 2 of the Land Act.

- ① 85 percent of export earnings.
- ① 80 percent of the agricultural labor force, where majority of women are employed
- ① 80 percent of food and cash crops.

Studies² show that only a few women enjoy secure rights to the land they till. The fact remains that control and ownership of land is mainly concentrated in the hands of men, leaving many women and girls dependent upon male family members for access.

Gender Based Violence and Violence Against Women

Violence Against Women: A broad umbrella term, defined by the United Nations as:

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. It includes many different forms of violence against women and girls, such as intimate partner violence, non-partner sexual violence, trafficking, and harmful practices such as female genital mutilation.”

The Uganda Demographic and Health Survey (UDHS) of 2011 shows; – domestic violence stands at 56 per cent, just a four per cent drop from 60 per cent in 2006.

- ① The 2013 Uganda Police Crime report showed that domestic violence and defilement were the highest crimes in the country.
- ① The 2013 Annual Crime and Traffic Road Safety Report highlights, 3,426 cases of domestic violence; and 9,598 cases of defilement.
- ① In 2012, the same report highlighted 8,076 defilement cases 2,793 and domestic violence cases were reported. This however does not show prosecution and conviction rates, for which statistic, one would have to rely on court records.

Despite the fact that Uganda has passed several laws in response to gender based violence including the Domestic Violence Act 2010, the Female Genital Mutilation Act 2010, and the Trafficking in Persons Act 2010. The number of women who experience gender-based violence in comparison to men remains unacceptably high. The government needs to apply these laws because violence against women does not only affect an individual, it affects development of families and the country. The effects of GBV are enormous and may lead to;

- ① Reduced economic productivity at all levels and
- ① Increased risk of acquiring HIV and AIDS.
- ① Trauma and psychosocial problems, health and legal challenges.

2 OXFAM Study entitled ‘Securing Women’s Land rights in greater North’ was finalized in September 2013

The persistence and prevalence of VAW is a violation of women's rights and limits women's enjoyment of their rights and effective participation in development processes.

Progress on Women's Rights: The General Context

Uganda is recognized all over the world as a country that promotes women's rights. Uganda has made progress in promoting gender equality and empowering women economically, socially and politically. This is evidenced in the following ways:

1. A Pro-women/ gender Constitution:

The recognition of the rights of women in the Uganda Constitution including the guarantee of equality. It outlaws discrimination and obliges the State to take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom in order to redress the imbalances or inequalities which exist against them.

2. Gender Sensitive Legislative Reforms:

Various laws that have been passed which promote and protect the rights of women, among them the Land Act, the Domestic Violence Act, the Anti-Trafficking Act and the Employment Act and the Female Genital Mutilation Act.

3. Affirmative action in politics for Women's Leadership

This has enabled many women to participate actively in politics both at national and local council level. This affirmative action takes the form of a quota system where each district elects one woman representative. In 2012 a woman was elected speaker of parliament for the first time in the history of Uganda. Further one in three of the members of the Ugandan cabinet are women.

4. Gender Parity in Primary School Enrollment (50/50)

Girls have closed the gap with boys in enrollment in primary education largely on account of Government's introduction of Universal Primary Education in 1997³. For the first time in Uganda more girls than boys were enrolled in primary school in 2010. Further government policy of giving girls 1.5 points at the entry in University ensured that the number of girls who qualified for government sponsorship for University education increased tremendously. Unfortunately this positive trend slowed down in 2012; there were still only 85 and 79 girls for every 100 boys enrolled in secondary and tertiary education respectively.⁴

3 Millennium Development Goals Report for Uganda, September 2013 by Ministry of Finance, Planning and Economic Development, pg 21

4 Ibid, pg 20

Despite the progress in promoting gender equality, gender gaps still exist which need to be addressed.

Women continue to face constraints related to access and control of resources such as land. In 2009, data from Ministry of Lands, Housing and Urban Development showed that women only own 20 per cent of registered land.⁵ Available evidence also shows that men control virtually all household resources and income obtained from the sale of agricultural produce (Ministry of Finance, Planning and Economic Development 2008)⁶. This means that majority of women who provide about 70–80 percent of labor for agriculture lack access to the benefits accruing from their efforts.

Gender inequalities in access, control and ownership of land varies in the different regions of the country. There are also more inequalities between rural and urban incomes, these gender disparities exist due to high poverty levels, low literacy rates, negative cultural practices and institutional weaknesses which have constrained the development process.

Gender based inequality limits economic growth and increases poverty levels⁷

Regarding employment, women are concentrated in the lowest paying sectors, which are linked to their low levels of education. Fifty percent (50%) of the employed women work in the three lowest paying sectors compared to 33% of men (2002/03 and 2005/06 UNHS). The Education sector is the largest employer of women. Seventeen percent (17%) of the estimated 523,000 women in paid employment are in the teaching profession. On the other hand women make 58% of the estimated 7.3 million workers in agriculture. Overall, there is limited employment of women in skill-based industries and this constrains further women's income potential. Studies have established that addressing gender inequalities and formal sector employment would increase the GDP growth rate by 1.2% annually (NDP 2010).

5 The Social Development Sector Investment Plan 2011/12 to 2015/16, pg 17

6 Ibid, pg 17

7 Ibid, pg 18

Customary Law and Women's Rights

Culture re-enforces oppression against women and discrimination. These negative practices include:

Bride price. The practice of bride price in Uganda is widespread and accepted as the cultural norm. Bride-price consists of a contract where material items (often cattle or other animals) or money is paid by the groom to the bride's family in exchange for the bride (Hague et al., 2011). The custom of haggling and bargaining a price objectifies women, worsening their subservient position in a traditional patriarchal setting that cements/perpetrates gender inequality and their subordinate status in society.

Ugandan women are socialized to believe that marriage is the most important aspect of a woman's life and that ownership of land is a threat to a happy marriage. Owning land brings power, and the fact of women having power disturbs social order, stability, and tranquility. Many Ugandans, mostly men, have argued that women who own land are "big headed" and the only way to restore them to their proper size is by taking away their land and transferring her property rights to her husband. Other customary practices which reduce women's security on land are polygamy and giving of bride wealth. Bride wealth is commonly viewed as making a woman a man's property and this implies that she can have no claim to her husband's land and property. Gifts given to the wife and property acquired by the wife during marriage are also considered the husband's property.



Uganda's highest court has ruled parts of practice unconstitutional, paving the way for a greater protection of women's rights. The Supreme Court of Uganda in a 6–1 decision rules that a man does not have the right to claim repayment from his spouse's family if the marriage ends. Some of the chief justices expressed their reasoning for the ruling;

“the refund of bride price connotes that a woman is on loan. This compromises the dignity of a women.” Chief Justice Bart Katureeba

Widow inheritance. Wives are usually sent away from the home with no property at all upon death of her husband and refusal to be inherited. According to custom, females marry into the clans of their husband. The clan allocates customary land to the man upon his marriage. The matrimonial home is usually built on customary land and is regarded as the husband's property until he dies, at which time ownership of the property reverts to the clan. Customary rules exclude women and girls from belonging to the clan because they are not members of the clan, hence they cannot be allocated land that belongs to the clan. Women neither belong to their families' clan nor do they belong to their husband's clan. As such women are denied the opportunity to own land by both their families and their marital clans. As a result women are denied all opportunities to own land from childhood to widowhood. This has led to widow eviction on death of the husband or forced widow inheritance

. Women's attempts to control and own land are resisted and disapproved of by the clan and the community as misbehavior. A woman who purchases land is seen as having ill intentions either to run away from her marital home or for use as a place to entertain other men.

Gaining power through land ownership is deemed deviant, because only *“improper”* women are not satisfied with what their husbands or other male relatives can provide them. *“Proper”* women take whatever is given to them with gratitude and teach their daughters to do the same.

Land in Uganda is normally passed on through inheritance, traditionally through Traditional patrilineal descent – the male line from father to son.. The culture of inheritance along male lines is dominant in rural areas in Uganda. Therefore it is the male members of the clan who decide who inherits the Deceased property and who administers the estate with a preference for male heirs over female heirs.

Olweny Paul, an area Counsellor and the Secretary of the Mediation Team said that such land grabs from widows are common because once a woman's husband dies the other men in her husband's clan start looking at the land as if it is vacant as they do not consider a woman a proper person to own hand. If a widow prefers to remain on

that land, she must be inherited. He emphasized that this practice of land grabs from widows is wrong and such persons who do not have land should approach clan leaders to allocate them land.

Daughters inherit land only in exceptional circumstances, when there is no suitable male heir or when the father dies intestate. Where women do inherit land, they typically receive only a fraction of their brothers' shares and often have to share a single parcel with other female heirs. Women are regarded as being unable to own property in their own right, and as mere trustees for male kin. Because of this common perception, on the death of a wife there is usually no property

In many cultures, there is a strong preference of boy to girl education and heavy and unequal sharing of domestic responsibilities which limits women's participation and engagement in leadership and decision making spaces. Overall, women account for only 37% and 29% of the public and private sector employees respectively 2009–Gender and Productivity Survey Analytical Report). The lower than average representation of women in these categories is partly explained by women's lower education attainment and to some extent, time demands attributed to reproductive activities as well biases in employment.

At household level, women's participation in decision-making is also minimal. Only about 51% of women participate in making major household purchases and overall, men believed that a husband should play the major role in making major household decisions (UDHS 2006).

Given the situation of women in Uganda, it is very important that in order not to further discriminate against them, development interventions and initiatives should take into account the disparities that women still face and work towards mitigating rather than aggravating them.

The African Union (AU) Framework and Guidelines on Land Policy in Africa

This is also a regional instrument adopted by the African Union in July 2009. The Framework and Guidelines provide an overview of the historical, political, economic and social background of the land question in Africa. It also elaborates on the role of land as a valuable natural resource for attaining economic development and poverty reduction.

The AU framework and guidelines seeks to:

1. Ensure agricultural investment and promote economic growth without weakening development of different groups.
2. Recognize the need for land policies that support a wide range of economic, social and political objectives including the prevention of conflicts and conflict resolution through mutually acceptable dispute mechanisms.
3. The AU Framework and guidelines urge African governments to pay attention to the status of land administration systems, including land rights, delivery systems and land governance structures.
4. They call for adequate budgetary provision to land policy development and implementation.
5. The framework and guidelines provide for the development of tracking systems and mechanisms to enable governments learn from past successes and setbacks in order to make adjustments to existing laws and policies in order to best tackle emerging challenges. The framework and guidelines recommend that the government develop land policies for further development of land related sectors; recognition of the role of local and community land administration; harmonization of local and national land administrative structures and laws; recognition that women's land rights need to be strengthened through specific mechanisms; and balancing of pro-poor priorities with market orientation.
6. The framework and guidelines recommend that government takes measures to ensure that in its dealings with land, women and other vulnerable groups are not marginalized due to prevailing market conditions.. g) the framework and guidelines also recommend that in formulating policies several parties should be consulted. Such as civil society organisations, representatives from women and small scale farmers.

7. The AU framework and guidelines explicitly recognize that patriarchy dominates social organization of society and discriminates against women in ownership and control of land resources. The guidelines also acknowledge the role that national land law has played cementing.
 - ① The system of patriarchy i.e. by conferring title and inheritance rights along male lines on the assumption that women can and should access land through their husbands or male children.
 - ① The framework and guidelines recognize that enjoyment of women's land rights are further limited by the fact that most African constitutions make provisions of equality in written law (statute) subordinate to religious and customary law which discriminate against women.
 - ① The AU guidelines encourage activists to lobby their governments to remove age-old practices in traditional and cultural systems which discriminate against women. The guidelines further encourage activists to publicize and document the relationship between state and traditional/cultural systems and their impact on women's rights.
 - ① The framework and guidelines are not legally binding, but African states have made commitments with regards to women's land rights, which can be used to reinforce adoption and implementation of provisions of the AU framework and guidelines at national level.

CEDAW defines discrimination against women as *“...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*

As a party to CEDAW, Uganda has committed itself to take steps to end all forms of discrimination against women and to ensure that women in Uganda are not discriminated against in all spheres.

CEDAW specifically requires protection of the rights of rural women.

Article 14 demands that States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. This calls upon Uganda to recognize the economic contribution rural women make to ensure survival of their families. Further, the Convention mandates state parties to take steps to ensure that rural women benefit from the provisions of the Conventions.

Article 14 of CEDAW requires State Parties to take the necessary steps to eliminate discrimination against women in rural areas. This is aimed at ensuring that women in rural areas benefit from rural development equally with the men.

The Land Act protects women's land rights and interests in land. Section 27 of the Land Act makes it clear that decisions that deprive women, children or person's with disability access and ownership of Land are null and void. Such decisions are of no consequence under the law because they violate the Constitution. Further more, Section 39 of the Land Act prohibits any person from dealing with family owned land without consent from their Spouse. While Section 38A of the Land Act explicitly protects the right of a spouse to have access to and live on family land during the subsistence of marriage.

Protection of Women's Land rights has been enhanced by the fact that the law recognizes Customary tenure as a means of legally holding land. The Law therefore upholds rights of women enshrined in customary law so long as these customs do not contravene the Constitution. The the customary provisions safeguarding women's claims in land now have full judicial force in state law and are to be upheld also by state courts, provided that they not violate any rights granted by the Constitution.

In order to improve service delivery and ensure proper implementation of the new law on the ground, the Land Act also set up an ambitious structure of decentralized land management institutions.

Providing for the establishment of

- ① District Land Board,
- ① District Land Offices and Registries,
- ① Sub County Area Land Committees and
- ① District Land Tribunals.

It is however unfortunate to note that many of these structures are not functional.

Despite these attempts to redress this situation by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use, and requiring spousal consent to transactions involving family land in the 1995 Constitution and the Land Act Cap.

227 have not been effective due to failure in implementation and enforcement. The various laws relating to land such as the Constitution and the Land Act have not been effective in protecting women's land rights because they have remained on paper and very little progress in implementation, While the Land Act offers some protection to a Spouse, it does not address the issue of land rights of widows, divorcees and children⁸.

Strategic litigation in respect of the Divorce Act (Cap 249) and the Succession Act (Cap 162) nullified sections of these laws that were not in consonance with rights of women and other vulnerable groups. These landmark court decisions are yet to be translated into law.

8 The Uganda National Land Policy, February 2013, pg 23

The National Land Policy further prescribes specific strategies to ensure that constitutional rights and obligations with regard to gender equality are upheld, particularly around reforming customary laws and practices⁹.

Customary law has laid implications for Ugandan women on their rights over land and housing which depend significantly on the quality of their personal and social relationships, primarily with their intimate partners and to a lesser extent with other kinship groups. A number of factors, including the weakening of the institution of marriage and increased scarcity of land, have contributed to the deterioration of women's rights under the customary framework¹⁰.

Although Uganda's statutory laws grant men and women equal rights to land and other property regardless of their marital status, application of these laws has been mired by a number of factors¹¹.

- ① First, legal pluralism that stems from the recognition of both customary and statutory land tenure in the Constitution and the Land Act results in multiple conflicts between customary and statutory laws, which are often not mediated by statutory provisions as prescribed in the Constitution.
- ① The application of statutory laws is further complicated by a number of factors, including lack of knowledge of the laws and the high costs of legal action to administer an estate.
- ① The weak institutional capacity of the legal system, particularly in rural areas, also prevents Uganda's laws grant both men and women equal rights to land. However enjoyment of these rights by women is hindered by a number of factors;

While marriage is essential in prescribing women's property rights, Parliament has failed to pass the Marriage and Divorce Bill,

A law that would spell out rights of men and women both during marriage and at its dissolution. The Bill defines matrimonial property and explains the rules that apply to property acquired during marriage. The Bill also recognizes that contribution to matrimonial property can be monetary or non monetary.

These provisions were aimed at entitling women to their fair share of property in marriage and upon divorce. The law also sought to provide some level of protection of property rights, to men and women in cohabitation. Without a clear law on women's property rights in marriage, many women are left vulnerable.

9 Ibid, pg 23

10 Gender, Land and Assets Survey in Uganda, at pg 3

11 Ibid, pg 3

However, through the National Land Policy, Government has committed itself to “ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage and at succession without discrimination.”¹²

. Widows are a category of vulnerable women who suffer when there is a clash between statutory and customary law as regards protection of their land and property rights. There is therefore an urgent need to amend the Succession Act to clearly spell out that widows have a right to inherit property.

The government through the National Land Policy has committed to review and regulate customary law and practices relating to access to, ownership of land and succession to ensure that such customs do not prevent women and children from inheriting land as well as amending the Succession Act Cap 162 to provide for the right to succession and inheritance of family land by women and children.”¹³

12 The Uganda National Land Policy, February 2013, pg 24

13 Ibid, pg 24

Human Rights Commitments; Regional and International Obligations.

Uganda has ratified several international treaties that are relevant to the rights of women and girls. Uganda ratified several international treaties that protect rights of women and girls. This means that these Treaties are now part of our national laws. These include:

- ① African Charter on Human and Peoples' Rights (ACHPR),
- ① International Covenant on Economic, Social and Cultural Rights (ICESCR),
- ① International Covenant on Civil and Political Rights (ICCPR),
- ① Convention on Elimination of All Forms of Discrimination against Women (CEDAW),
- ① Convention Against Torture (CAT),
- ① Convention on the Rights of the Child (CRC)
- ① African Charter on Human and Peoples' Rights Protocol on the Rights of Women in Africa, commonly referred to as the African Protocol on Women's rights or the Maputo Protocol.

The Maputo Protocol; The Protocol guarantees several women's rights in the categories of civil, political, economic, social and cultural rights

These rights include:

1. The right to life,
 2. Integrity and security of person; 3. Protection from harmful traditional practices;
 4. Prohibition of discrimination and
 5. Protection of women in armed conflict.
 6. The right to health and reproductive rights of women
 7. Access to justice, among others.
- 13 The Uganda National Land Policy, February 2013, pg 23
- 14 Gender, Land and Assets Survey in Uganda: Gender Differences in Asset rights in Central Uganda, 2011 (Published by ICRW), pg 2

CEDAW:

In 2002, the CEDAW Committee expressed concern at the high incidence of violence against women. Such violence took the form of rape including marital rape, incest, sexual harassment in work places and other forms of sexual abuse of women. It called on the Ugandan government to address the *“persistent patriarchal patterns of behavior... and the existence of stereotypes relating to the role of women in the home and society... that perpetuate direct and indirect discrimination against women.”*

The Constitution of Uganda provides that *“women shall be accorded full and equal dignity of the person with men”* (Article 33(1). Article

33(2) further provides that *“the state shall provide the facilities and opportunities necessary to enhance the welfare of the women to enable them to realize their full potential and advancement.”* Article 33(6) provides that *“laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this constitution.”*

In 2002, the CEDAW expressed concern at the slowness of the law reform process, given the Constitutional provisions that promote equality between women and men and prohibit discrimination on the grounds of sex.

Has Uganda Domesticated these commitments?

1. The Uganda Constitution

Women and Men are equal before the Law

The Uganda Constitution provides protection; Women and Men are Equal before the Law.

Article 21 clearly states that, *“that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and shall enjoy equal protection of the law.”*

Non Discrimination based on Sex

The Constitution further states that

“No person shall be discriminated on any basis including sex” and it authorizes Parliament to enact laws that redress imbalances between men and women in order to bring about equality.

The Constitution recognizes specific rights of women including the right to full and equal dignity with men as well as equal treatment with men, including the right to equal opportunities in all spheres—political, economic and social.

The Constitution protects the property rights of all persons, and where that right is limited by compulsory acquisition, such persons are entitled to prompt payment of fair and adequate compensation.

Equality in Marriage: the Constitution guarantees equality in marriage between men and women, and such equality comprises decision making in the home.

Widow's Property Rights

The Constitution also protects the rights of widows to inherit the property of their deceased spouses and to enjoy parental rights over their children.

Access to Information

The Constitution guarantees the right of access to information in the possession of the State or any of its agencies, as well as the right to justice, including the right to a fair, speedy and public hearing before an independent and impartial court or tribunal.

At regional and international level, Uganda is signatory to 2 key instruments that spell out the rights of women, these are the Protocol to the African Charter on Human and People's Rights, on the Rights of Women (also known as the Maputo Protocol) – Regional Level and

1. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) – International level.
2. The Maputo Protocol calls upon States such as Uganda to;
3. Combat all forms of discrimination against women.
4. It recognizes the rights of married women to acquire their own property and administer and manage it freely.
5. It upholds women's right to equal benefit and protection before and under the law including effective access by women to judicial and legal services.
6. It calls for special protection of widows, elderly women and women with disabilities.
7. It calls upon States to ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs.

- a. *The Domestic Violence Act***; The Domestic Violence Act criminalizes marital rape and other forms of domestic violence and makes provision for appropriate penalties and civil remedies.

The Act defines domestic violence to mean acts or omissions that injure health, safety, life, limb or wellbeing of the victim. Such acts include physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

- b. *Government Policies; The main national government policies related to violence against women are***

1. The National Gender Policy (2007);
2. The National Gender Action Plan;
3. The Social Development Plan;
4. The National Equal Opportunities Policy and Action Plan;
5. And the National HIV/AIDS Strategic Plan.
6. The goal of these policies is gender equality and justice, women's empowerment and the elimination of discrimination.

In response to increased reports of violence against women and children, the government established Child and Family Protection Units in police stations and posts in Kampala to deal

with cases relating to the family and children, including violence against women and girls. A number of these units are now functioning in Kampala, and it is planned to expand this program throughout the country. These units are however facing financial constraints along with inadequate numbers of specialized police to provide redress to victims of abuse.

- c. Government Programmes and initiatives;** The Various ministries and departments that deal with gender issues have embarked on implementing several programmes including educational programs.

At the community level, the Ministry of Gender, Labour and Social Development undertakes the role of sensitizing communities. The Ministry of Gender, Labour and Social Development is sensitizing local communities on violence against women. This includes activities such as legal literacy sessions on issues such as

1. Women's political participation,
2. The right to inherit property,
3. Girls' education,
4. Gender-based violence,
5. The economic empowerment of women
6. And women's health and reproductive rights.

The Police is also undertaking community education in the areas of domestic violence, child abuse and violence against women. On its part, the Ministry of Health has developed a manual on the Clinical management of sexual and gender-based violence survivors.

The government has also put in place a number of measures to promote women's rights. Sexual and reproductive health issues are being addressed through several policies that include;

1. The National Health Policy;
2. The Health Sector Strategic Plan (HSSP III);
3. The National Strategic Framework for HIV/ AIDS;
4. The Population Policy; and
5. The Universal Primary Education.
6. Sexual and reproductive rights form one of the priority areas under the National Minimum Health Care Package.

The following stories further illustrate the nexus between violence against women and women's property rights

While the issues of violence against women and women's land rights have often been considered separately, they are interrelated. In practice, whenever women attempt to actualize their land rights, they are met with violence.

Additionally the eruption of violence in a home when family land is sold off is common. Often times, men sell off family land and then do not share the money with their wives for family upkeep. In some cases, husbands have disappeared after selling land, to return only when they have spent the proceeds, leaving women with the burden of feeding the family. Family feuds over land lead to widespread domestic violence. Increased domestic violence causes instability in families, which results in divorce, alcoholism and extra marital relations¹⁴.

Then her husband died in 2008, Harriet and her eight children endured abuse from relatives who wanted to steal her home and land. Before they could even lay his remains to rest, her husband's relatives demanded that Harriet vacate their home and leave her children and property with them, but she bravely refused. Realizing that she was no pushover, the relatives decided to cut their food supply by stealing or cutting down the crops Harriet grew to feed her family. Her brother-in-law moved into a house next to hers, from where he repeatedly harassed and verbally abused her. The local leaders and police failed to permanently resolve the situation. The threats reached a terrifying peak in 2013 when two of husband's relatives stormed the home late at night and violently hit the walls, causing the bricks to fall on Harriet's family inside. The relatives screamed threats and demanded that Harriet abandon the home. One of the relatives threatened to kill her and bury her where no one would find her.¹⁶ In the end, Harriet was helped to secure her land, by an organization called International Justice Mission.

In another story, Mary, a wife to Akosopheri, from Palisa, got married when she was 16 years old. Her husband was a shop keeper and she was a house wife. Mary says she and her husband were peaceful until he decided to get another wife, with whom he cohabited. When he got the second wife, her husband chased her out of the home and demanded that her father pay back the bride price which he had given when they got married (i.e. five heads of cattle). Mary says she and her husband bought land together during the subsistence of her marriage. She contributed money to the land by digging on other peoples land. However, at the time her husband chased her away, she could not lay claim over the land. Mary's husband did not allow

14 Beyond the Reach of the Hoe: The Struggle for Land and Minerals in Northern Uganda, by David Otim and Mugisa Police

her to leave with the children, and whenever she comes to visit them at her husband's home, he beats her. Mary reported the matter to the District Probation officer but nothing much has been done to assist her.¹⁵

In another story, a woman narrates how she and her husband owned both goats and a banana plantation. However, the man would sell the goats and banana plants at will without consulting his wife. Even though the wife felt this was unfair, she also felt she could not do much about it, beyond raising complaint to him¹⁶.

Esther, from Lira District, married a man from Gulu District. After his death, Esther continued to live at her husband's home until she and her nine children were driven out by her brothers-in-law. Esther and the children returned to her parents' home where she lived for a year before her elder brother asked her to return to her late husband's home because the land was not enough to accommodate her and the children. Her uncle offered her a one-acre piece of land on which to settle temporarily but her brothers asked her to leave this piece of land as well. Esther's uncles resolved that the family land be divided among all her late father's children, and Esther was given two acres where she could live with her children. However, her brothers continue to threaten her to leave, so Esther has one meal a day in order to save money to acquire a different piece of land herself. "Women have had to endure so much in a world dominated by men to the extent that my own brothers have turned against me. I live in fear, knowing that one day, they may even kill me for this piece of land," she says¹⁷.

These stories are a clear indication that property plays a very important role in creating ways of negotiating sexual behavior with intimate partners and women need some form of independent economic support in order to escape violent marriages. Further, because ownership of property acts as an exit option, it deters marital violence.

Land access increases a woman's livelihood options and gives her a sense of empowerment. Land access also increases economic security thereby reducing her tolerance to violence.

The important point however, is not whether a woman actually uses the exit option land or property provides, but that the very existence of that option could deter her husband's violence.

If violence does take place, she is in position to escape further abuse without having to choose between homelessness and injury.²²

15 Included Yet Excluded: A Publication of Women's Land Rights in Palisa and Kapchorwa. (Report done for Action Aid by Jacqueline Asiimwe and Evelyn Nyakojo, 2001)

16 Women's Property Rights, HIV and Domestic Violence: Research Findings From Two Districts in South Africa and Uganda (2008) pg 105

17 See 15 above at pg 25.

Challenges in Delivery of Justice¹⁸

The mission statement of the Justice, Law and Order Sector is “to enable all people in Uganda to live in a safe and just society”. The Reality however, is that many people in Uganda, particularly the poor and marginalized groups like women, the disabled and children have very little access to justice and little protection from the justice system to ensure their safety and security.

Women in comparison to men have more difficulties in accessing justice as they comprise majority of the poor, have a lower status in society and are expected to conform to classified gender roles.

The capacity of women to access justice and enjoy their civil , political and property rights is affected by many factors. These factors are categorized as social, economic, cultural, legal, institutional, procedural and geographical factors.

When all barriers; physical access barriers, financial barriers and social constraints are overcome, there are still constraints contained in the various laws. These laws provide technicalities and procedures to be followed in court processes which make it difficult for both men and women to access justice. However, accessing justice is even more difficult for women because of disadvantages resulting from gender based discrimination that affects all areas of their lives.

Effective criminal justice mechanisms are required to deal appropriately with perpetrators of violence.

They are also important for a survivor’s recovery in showing that society as a whole condemns what has happened to her and will act to ensure that this will not happen in future.

The government of Uganda has admitted that some of the challenges in accessing the legal system are:

1. The painfully slow process of law reform, especially in relation to gender sensitive legislation.
2. Staffing constraints,
3. Logistical challenges,
4. Delays in the formal justice system,
5. Limited gender capacity across the institutions of the criminal justice sector,
6. High costs of litigation, and
7. The inadequacy of legal aid.

¹⁸ See generally: “I Can’t Afford Justice: Violence Against Women Continues Unchecked and Unpunished”, by Amnesty International, 2010

All these factors add to the challenges women face in the pursuit of justice. Therefore, women are let down by the criminal justice system. In some cases, women see their experience within the criminal justice system as an extension of the initial abuse. This discourages other women from seeking a remedy.

Access to justice is essential for development because when a society is safe and just, the capacity of its citizens to work towards poverty eradication is increased.

Functionality of Land Management Structures

The administration of the various land tenure systems in Uganda is vested in several structures. These include:

1. The Ministry of Lands, Housing and Urban Development,
2. Uganda Land Commission,
3. District Land Boards,
4. District Land Offices
5. Area Land Committees.

However, despite the existence of these Institutions, the public appears to be slowly losing confidence in the land administration system. There has been public outcry on delays in processing of land titles, crowded land offices, payment of bribes and the increase in land wrangles and evictions and encroachment on Government land. However, in spite of the existence of these institutions, the public is losing confidence in the land administration system because of the following issues:

- ① Delays in processing of land titles,
- ① Crowded land offices,
- ① Payment of bribes,
- ① Increase in land wrangles
- ① Evictions and encroachment on government land.

The land administration institutions attribute these challenges to the slow implementation of the national land policy, understaffing and inadequate funding.

A value for money audit, conducted by the Office of the Auditor General (in 2011)³⁰ found that District Land Boards (DLBs) had been constituted with the exception of Mukono and Moroto districts.

However due to the failure of districts to adhere to appointing guidelines, there are always delays ranging between 8–18 months to appoint and constitute new Boards after the

expiry of old Boards. This has led to delays in the processing of land transactions and clearance of backlogs.

Narrowing Civic Space

The Report also indicated that although the Area Land Committees had been constituted, the members of these committees had not been given formal appointment letters because of the fear to commit the District's limited resources. As such, the Members of these Committees have low morale to work and are in the position to be comprised. Further, if the decisions of these committees are challenged in court, the decisions may not be able to stand because they were made by Committee members without valid appointments.

Further, the Audit Report found that not all the budgeted funds were released by the Ministry of Finance, Planning and Economic Development (MOFPED) to the Ministry and ULC. The Ministry, Uganda Land Commission and District Land Offices on average received only 79.5%, 87% and 80% respectively of their budgeted amount which affected the implementation of their annual planned activities.

The Audit Report also revealed that DLBs were not preparing annual and quarterly work plans as required by the existing guidelines. Without work plans, DLBs lacked a guiding tool to effectively implement their activities.

The Audit Report further established that neither the District Councils nor the Sub counties/ Divisions indicate preparedness to assist in funding the activities of Area Land Committees. The absence of facilitation has left members of the ALC vulnerable to being compromised by the clients.

When institutions do not function at their maximum capacity, then women are adversely affected. Because women have less mobility, time and money, any attempts to try and effect their rights are further jeopardized when institutions do not work.

Civil society organizational forms include non-governmental organizations (NGOs) and community-based organizations (CBOs). The legal instruments that regulate NGO's are the Non-Governmental Organizations (Amendment) Act 2006 and the NGO Registration Regulations, SI 113-1, 1990.

The definition of NGO under Section 1 of the NGO Act is narrow and limits the activities that NGOs can engage in. NGOs engaged in advocacy or public policy activities, for example, are therefore vulnerable to governmental supervisory action.

Moreover, the operating scope for NGOs remains subject to governmental discretion.

Recent legislation is narrowing the activities in which civil society can engage. For example, on October 2, 2013, the President of Uganda assented to the Public Order Management Act,

2013. Section 8 of the Act grants the police powers to prohibit public meetings while Section 9 grants the police powers to decide suitable venues for holding public meetings. Since the enactment of this law, it has been used by the police to target meetings organized by the opposition members and civil society representatives.

However even before the enactment of the Public Order Management Act, State Security Forces such as the Police have responded to peaceful demonstrations with excessive use of force. The Police have often arrested peaceful demonstrators in a manner that violates their right to freedom of expression and to demonstrate peacefully which are guaranteed by the constitution.

UWONET in partnership with women's rights organizations came out to denounce violence by Uganda Police Force inflicted on a female political leader. (<http://www.monitor.co.ug/News/National/Women-to-demonstrate-over-police-brutality/-/688334/2912244/-/w0vsvd/-/index.html>)

Further, Restrictive media legislation, overbroad counter terrorism laws, as well as vague charges of endangering public security, are also increasingly used as tools to unjustifiably limit freedom of expression, media freedom and peaceful demonstrations.

In May 2014, the Cabinet approved the Non-governmental Organizations (NGOs) Registration (Amendment) Bill, which could bar NGOs from engaging in political work and expand government powers to monitor NGOs.

The Minister of Information and National Guidance also said that the Bill would provide a way of "shielding Uganda from undocumented inflow and outflow offunds for NGOs" that could be used for "fanning instability."

The Unfinished Tasks

Evidently, the implications and scope of the proposed amendments to the NGO Act are far-reaching. Crucially they have serious implications for the ability of citizens to hold their governments accountable in terms of Article 8A (Uganda government to be guided by principles of good governance) and, especially, the freedoms of conscience, expression, movement, religion, assembly, and association. (Article.

- ① The restrictions imposed, placing excessive discretionary power in the hands of the state and in light of the vague nature of most of the standards stipulated, would also be difficult to justify in terms of Article 43 of the Constitution, which requires any restrictions to human rights to be acceptable and demonstrably justifiable in a free and democratic society.
- ② Given the progress made in the area of violence against women and women's land rights, and given the current socio-political context, several activists and actors

proposed various actions³¹ that still need to be done in order to make advances in the area of violence against women and women's land rights:

The suggestions include the following:

- ① The need to better connect and integrate work on violence against women and women's land rights: While a lot of progress has been made over the years, in advancing women's rights in the two critical areas of violence and land rights, the actors have tended to work in isolation and not together. Very little work has evolved or is done that connects the two issues. It was thus felt that there is need to bring together actors and strategies that address the nexus between violence against women and women's land rights, as one way to add value, but also to advance the protection and promotion of women's rights more generally. Land rights programming must incorporate violence sensitivity and violence against women's work, must incorporate clear elements of promoting women's land rights.
- ① A coalition, such as Women First is a good starting point in bringing the actors and the issues together. Also important to note, is that women with disabilities (organizations and issues affecting them) need to be included in this coalition so as to be more inclusive and disability sensitive. There was a clear suggestion that actors need to take cognizance of and work more towards addressing the systemic issues that perpetuate violence against women and the denial of their land rights. This entails the actors engaging more with governance issues such as the functionality of institutions supposed to deliver on women's rights, as well as dealing with questions of corruption and impunity that impinge on rights of women. Actors need to craft strategies that address the governance issues within which violence against women and women's land rights play out. Actors need to engage politically, especially in governance issues, they must engage the political elite.
- ① Actors need to engage the political elite on questions such as militarization of the state. Actors must also engage with the culturally based governance structures so that they too are held accountable for advancing gender and social justice.
- ① Actors must address impunity in a way that makes it politically risky for people to violate women's rights.
- ① Actors must also engage with the global politics around development models that violate women and disenfranchise them, especially in the area of land rights.
- ① Actors must engage with the idea of citizenship and what this means for the advancement of women's rights. Promoting women's rights is highly political work and actors cannot work outside the political arena and hope to make sustainable gains. To ignore engaging in/with these issues, only continues to roll back the gains made in promoting women's rights.

- ① More work needs to be done to address attitudes that accept violence against women and that promote the notion that 'women do not/cannot own land'.
- ① Actors in the areas of violence against women and women's land rights have started working with and through community and cultural structures in order to address the prevailing negative attitudes, and this work should continue. The issue of attitudes should be dealt with not just at community level, but also within law enforcement structures, as well as land administration structures.
- ① Actors must find ways to hold formal and informal structures accountable for the attitudes that perpetuate violence against women.
- ① Best practices must also be documented and replicated (e.g. the work done to document principles and practices of land rights), where possible.
- ① Actors must come to the realization that one size does not fit all. Different women face different vulnerabilities to violence and denial of their land rights. This therefore calls for targeted strategies for various categories of women.
- ① for instance, one main criticism of the co-ownership of land, is that it protects only legally married women and thus leaves out protection for single women, women in cohabitation and widows.
- ① Actors need to carefully think through various strategies to promote women's rights that work for all women, and this takes more time, thought, flexibility and also takes more social and political awareness about the different vulnerabilities that different categories of women face, in order to come up with strategies that work for all women.

There must be careful thought around notions of individual rights, family rights and community rights, especially as regards women's land rights. If strategies to promote women's rights only focus on women's individual rights, this may inadvertently increase the incidences of violence against women.

- ① Actors need to carefully weigh when and how certain rights are better enjoyed by women if such rights are embedded and promoted as part of group rights—either at family or community level. In many instances, when the family and community is marginalized, this increases women's vulnerability, since women play a key role in these two spheres. One cannot focus on and promote women's individual rights and ignore how this affects or impacts the family and community in which they belong. Actors must work towards a fair balance of promotion of rights work at the three levels— individual, family and community.
- ① Actors must advance women's land rights with the awareness that these rights are enjoyed at three levels: individual, family and community. Actors focusing on women's land rights must not ignore how this affects the family and the community to which

these women belong. This is because if strategies that promote women's land rights focus on only women's individual rights, it may lead to increased incidences of violence against women.

- ① Work needs to be done around budget advocacy and budget tracking, to ensure adequate financing for implementation and monitoring of both the Domestic Violence Act, as well as the National Land Policy. While the policy and legal framework for violence against women and women's land rights is generally adequate, financing and staffing of the requisite institutions remains poor, and this impedes the desired progress and impact in promotion of women's rights.
- ① There is the unfinished legal reform around the Marriage and Divorce Bill, There is need for actors to continue advocacy and lobbying so that the Marriage and Divorce Bill is passed into law. as well as amendments to the Succession Act (following the successful Constitutional petition challenging discriminatory aspects of the Act). There is also an urgent need to amend the Succession Act to reflect the position of the law as put forth by the Constitutional Court. The Constitutional Court declared that some sections of the Succession Act were discriminatory towards women but to date this law have not been amended.

Both of these pieces of legislation touch on violence against women, as well as promotion of their land rights, and both need to be in line with Uganda's obligations as a state party to CEDAW and the Maputo Protocol.

- ① Actors must continue to do all they can to ensure that Government passes these two laws as a matter of urgency. This would also go a long way in ensuring accountability for Government's own intentions around promotion of women's land rights, as expressed in the Land Policy. This would ensure that Government is held accountable for the commitments it has made in the National Land Policy to protect women's land rights.
- ① Government (under the Ministry of Gender) is in the process of finalizing a GBV policy. Civil Society actors need to ensure that the process is finalized and that the policy is adequately resourced and implemented. Actors also need to engage more proactively with the newly elected leaders to ensure there is no roll back of any gains around the fight against violence against women and promotion of women's and rights.
- ① More work needs to be done to amplify the voice and work around women's land rights. While work around violence against women has gained attention, the same cannot

be said about work on women's land rights. This may be because there is no clear/coherent civil society leadership on the matter.

- ① A coalition such as Women First can lend voice and vision to the work around women's land rights in a way that advances this area of work. The work on these issues should be seen as part and parcel of the broader work to build a social movement around women's rights, and this work takes the right leadership to build the right momentum to cause systemic change.

Conclusion

Most land in Uganda is held under customary tenure and is regulated by customary law. Though statutory law does not bar women from owning property, the reality within which they live effectively denies them this right.

This is because there exists many socio-cultural practices that discriminate against women and discourage them from owning land which is critical for women's own advancement first and foremost, but also to Uganda's development.

There are several factors that are increasingly making it difficult for women to enjoy their land rights. These include the following:

1. The global financial crisis, the food and fuel crises, 2. privatization of large portions of customary land through land grabs, all contribute to the pressure on land and increasing the threats to women's land rights.
2. Allocation of large pieces of land for energy production, large scale agriculture or irrigation.

These factors make women more vulnerable to conflict, sexual and gender based violence (SGBV).

Where large pieces of land have been allocated for energy production, large-scale agriculture or irrigation, women's access to land is reduced, making women more vulnerable to conflict, sexual and gender based violence (SGBV).

Additionally, the effects of land-grabbing have brought new challenges for women's land rights and land use initiatives. These challenges need to be understood better to be able to address them and find opportunities to advance women's land rights.

The negative impacts on general development that sexual and gender based violence on women and girls in Uganda has brought is huge and all actors need to join their efforts to find lasting solutions to women's insecurity.

Ugandan women and girls continue to face increased violence due to conflicts and conflicts and the culture of violence and patriarchy in many homes and communities in different areas across the country. In a situation of violence with no redress, legal rights to land are rendered meaningless as are other development interventions. The Present situation is that women and girls face violence with no opportunity for redress. In such a situation, women cannot enjoy their legal rights to land and development interventions do not yield the intended results. Enabling

access to justice by the survivors of SGBV is not easy and will require very clear actions to end impunity and protect women.

The fact that Uganda has made impressive progress in enacting laws and policies that address violence against women and women's land rights cannot be denied.

and a lot of credit goes to NGOs working on women's rights that have worked tirelessly to ensure the passage of these laws and policies.

At the same time, it is time to move on to the critical work of ensuring enforcement and implementation of the laws and policies in place.

Efforts should also be aimed at coordinating work on the two issues of prevention of violence against women and promotion of women's land rights. It is in working this way that one can hope to make additional gains to the work already done.

The Women's First Coalition presents a key forum within which to test programming that encompasses both issues—and this programming should cover areas of budgeting, institutional strengthening, and accountability, as well as service provision.

List of Persons Interviewed:

1. Ms Irene Ovongi, ED FIDA
2. Ms Judy Adoko, ED Land and Equity Movement in Uganda (LEMU)
3. Ms Tina Musuya, ED Centre for Domestic Violence Prevention (CEDOVIP)
4. Mr. Richard Mugisha, Country Representative of Open Society Initiatives, East Africa (Uganda Office).
5. Ms Harriet Gimbo, Director of Programs, Action Aid International Uganda
6. Ms Naome Kaganda, Assistant Commissioner, Land Policy and Land Administration, Ministry of Water, Lands and Environment.
7. Mr. John Mary Matovu, Program Manager, National Union of Women with Disabilities of Uganda (NUWODU)
8. Ms Ramla Nakyaja, Program Officer, Gender and Disability Mainstreaming, NUWODU Bigirwa Joselyn, OXFAM
9. Rama Omonya, OXFAM Ms Juliet Odoi, ACORD

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