

**RIGHTS OF WOMEN TO PROPERTY, A CASE STUDY OF ISINGIRO DISTRICT,
UGANDA.**

**BY
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**A RESEARCH REPORT SUBMITTED TO THE FACULTY OF
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DECLARATION

I **NATUHWERA JUSTUS** declare that this is my original work and to the best of my knowledge, it has never been submitted to any University or institution for a degree award or any other academic award.

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APPROVAL

This research report has been submitted for examination with my approval as a university examination supervisor.

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DEDICATION

With much pleasure and appreciation, this piece of work is dedicated to my dear parents Mr. Banzimba Enos and mum Ms. Kyebirungi Sep plus my brothers and sister especially Mwesigwa Robert and Sister Queen Melody for the great love and care, I can Say God Bless You.

Special to my supervisor Ms. Miyienda Pauline for her endless support in compiling the five chapters inside this research work. May the Almighty God continue to bless You Madam.

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Most of all, recognition of merit goes to the Almighty God for granting me knowledge and the gift of life to complete this for years course in laws, I Owe this to you my Lord.

I acknowledge the contribution of my supervisor Ms. Miyienda Pauline, for her guidance and time she has taken in supervising the five chapters inside this research dissertation, thank you so much madam, may the Almighty God reward you abundantly.

To the community of Kampala International University friends and Lecturers for the comfort in the four years course of Laws of Kampala International University.

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LIST OF ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
ANC	African National Congress
BCE	Before Christ Existed
FAO	Food for Agricultural Organization
HIV	Human Immune Virus
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IEC	Information, Education and Communication
ILO	International Labour Organization
LAW-U	Law and Advocacy for Women in Uganda
NGOs	Nongovernmental Organizations
ULA	Uganda Land Alliance
ULA	Uganda Land Alliance
UMWA	Uganda Media Women's Association
UN	United Nations
UWONET	Uganda Women's Network

TABLE OF STATUTES

National statutes

1995 Constitution of the Republic of Uganda as amended

Divorce Act Cap 249

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Marriage Act of 2000

Succession Act Cap 160

The Succession Act of 1972

Regional statutes

Constitution of the Republic of Zimbabwe 1980

Constitution of the Tanzanian Republic 1984

International statutes

Convention on the Elimination of all Forms of Discrimination Against Women

Convention on the Elimination of Violence against Women (CEDAW) 2010

International Covenant on Economic, Social and Cultural Rights

The African Union protocol on the Rights of Women (Maputo Protocol)

Universal Declaration of Human Rights

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Kivuitu v. Kivuitu (1990–19994) E.A. 270.

Law and Advocacy for Women in Uganda Vs Attorney General of Uganda, Constitution
Petition Number 13/05/&/05/06.

Mayambala v Mayambala, High Court Divorce Cause No. 3 of 1998.

Muwanga v. Kintu, High Court Divorce Appeal No. 135 of 1997.

R.V Gansambizi Wegonga(1948) 15 EACA 50

Uganda Association of Women Lawyers & Others v Attorney General Constitutional Petition
No.2 of 2003.

ABSTRACT

This reserach was based on examination of the rights of women to property. It was based on three specific objectives; to illustrate the law governing protection of women's rights to property ownership in Isingiro district, to examine the effectiveness of mechanisms of enforcing women's rights in Isingiro district and examination of the strategies to be employed in enforcing women's rights towards property ownership in Uganda. The study was based on a doctrinal research methodology using legal sources from the library of Kampala International University, Makerere University, Human Rights commission and other relevant literature from legal resources concerning women and their privileges towards ownership of property. The law governing protection of women's rights to property ownership in Uganda involves the constitution of the republic of Uganda 1995 as amended, Marriage Act of 2000, The Land Act 1998 and Succession Act among others. The mechanisms of enforcing women's rights in Uganda are still being challenged by especially traditional beliefs on marriage. The study concluded that property rights are claims to property that are legally and socially recognized and enforceable by external legitimized authority. These rights can be in the form of actual ownership or usufruct, the rights of use. The study recommended the government to strengthen efforts to eliminate practices and belief that hinder women from owning property. A strategic action plan geared to achieving this objective must be put in place without delay, involving both governmental and non-governmental actors which should not be perceived as long-term, distant or unattainable. It also called for trainings for police that provide information on women's human rights, violence against women, cultural sensitivities, and "honour"-based violence, including its prevalence, defining characteristics, risk factors and consequences should be embarked on. The legislature was also advised to take measures to curb excesses like commercialization of the bride wealth. Such parties should be encouraged to resort to those laws and the remedies they offer.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

This chapter covers the introduction, background of the study, problem statement, objectives of the study, research questions, significance of the study, methodology, literature and the Chapterization which will make an overview of how the whole research will be conducted.

1.1 Background of the study

Globally, in countries like England, before 1870, any money made by a woman either through a wage, from investment, by gift, or through inheritance automatically became the property of her husband once she was married. Thus, the identity of the wife became legally absorbed into that of her husband, effectively making them one person under the law.¹ Once a woman became married she had no claim to her property as her husband had full control and could do whatever suited him regarding the property: "Thus, a woman, on marrying, relinquished her personal property moveable property such as money, stocks, furniture, and livestock to her husband's ownership; by law he was permitted to dispose of it at will at any time in the marriage and could even will it away at death".² For example, any copyrighted material would have the copyright pass to the husband on marriage. This would be analogous to copyright of the work done as part of the employment being owned by the employer.³

In 1868, efforts to get the act passed were revived and a Married Women's Property Bill was introduced into parliament, which proposed that married women should have the same property rights as unmarried women". A long and energetic campaign by different women's groups and some men led to the passing of this Act.⁴ The Married Women's Property Act of 1870 provided that wages and property which a wife earned through her own work or inherited would be regarded as her separate property and, by the Married Women's Property Act 1882, this principle was extended to all property, regardless of its source or the time of its acquisition.⁵ The Act also protected a woman not only from her husband gaining control of her property but also from people that worked for him, his creditor where these acts generally

¹ Rachel Ablow, "'One Flesh,' One Person, and the 1870 Married Women's Property Act" branch, 2015-12-01.

² Combs, p.1031.

³ Ibid.

⁴ Ibid..

⁵ Marriage, Wife Beating and the Law in Victorian England p 101.

exempted married women's property from attachments by creditors of their husbands"⁶ This gave married women a separate statutory estate and released them from coverture. It was for the first time theoretically possible for married women to live away from their husbands and support their own children themselves. However, widowed women with children, as *femes soles*, had already had the right to own property and support their children.⁷

In Rome for example Roman law, similar to Athenian law was created by men in favor of men. Women had no public voice and no public role which only improved after the 1st century to the 6th century BCE.⁸ Freeborn women of ancient Rome were citizens who enjoyed legal privileges and protections that did not extend to non-citizens or slaves. During the Roman Republic, the mother of the Gracchus brothers and of Julius Caesar was noted as exemplary women who advanced the career of their sons. During the Imperial period, women of the emperor's family could acquire considerable political power and were regularly depicted in official art and on coinage.⁹

In Africa, in ancient Egypt, women enjoyed the same rights under the law as a man; however rightful entitlements depended upon social class and landed property descended in the female line from mother to daughter, and women were entitled to administer their own property. Women in ancient Egypt could buy, sell, be a partner in legal contracts, be executor in wills and witness to legal documents, bring court action, and adopt children.¹⁰

In South Africa, it was not until the introduction of the Constitution of South Africa in 1996 that all women in South Africa were formally recognized as equal citizens. In this Constitution, there was a special paragraph for women, titled 'Equality'. In this it said that in the state you may not unfairly discriminate directly or indirectly against anyone on one or more grounds. Before this Bill of Rights, the struggle of the women in South Africa started as early as 1913, when black women began to protest against having to carry identification passes white women did not have to carry the passes. Before 1943 the African National Congress (ANC) was an organization founded by men and admitted men. The women now

⁶Rachel Ablow, "'One Flesh,' One Person and the 1870 Married Women's Property Act" branch". www.branchcollective.org.

⁷ Ibid.

⁸A. N. Sherwin-White, Roman Citizenship (Oxford University Press, 1979), pp. 211.

⁹E. Walter, "The Emperor and His Advisors", Cambridge Ancient History (Cambridge University History), 2000, p. 211.

¹⁰ J. Joshua, Mark, "Women in Ancient Egypt", Ancient History Encyclopedia, 2017, p.12.

have more rights than they have ever had before. On August 9, 1975, South African women celebrated the first South African Women's Freedom day. The holiday was organized by the ANC to commemorate the protests that began on August 9, 1913, against the identification passes that black people had to carry.¹¹

In Uganda, the law relating to matrimonial property has come a long way and to best understand it in general, it is pertinent to understand the social perception of women's property rights in Uganda at the different times since matrimonial property law cannot easily be detached from the law relating to women's property rights as expressed in the case of *Julius Rwabinumi V Hope Bahimbisomwe*¹² when the learned Justices of the Court of Appeal erred both in law and they held that all property solely acquired by the Appellant became jointly owned property upon his marriage to the respondent and should be shared equally.¹³

By interpreting Article 31(1) of the Constitution of Uganda, 1995 beyond its broad objective, the counsel stated that the constitutional principle of non-discrimination on the basis of sex argued that it was neither a legislative nor a property distribution provision that passed proprietary interests from one spouse to another. This therefore, indicated that women and men have equal rights when it comes to property ownership as enshrined under Article 31(1) (b) ¹⁴guaranteed equality in treatment of either the wife or the husband at divorce, it did not require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases, be shared equally upon divorce. The Constitution of Uganda (1995) while recognizing the right to equality of men and women in marriage and at its dissolution, also reserved the constitutional right of individuals, be they married or not, to own property either individually or in association with others under Article 26(1).¹⁵

During the colonial era, courts interpreted customary law in terms favourable to women.¹⁶ The courts protected the rights of women in relation to matrimonial property and ownership of land. The protection of these rights was embedded in two legal principles; the house

¹¹Women and the African National Congress: 1912-1943 | African National Congress". www.anc.org. 2018.

¹² Civil Appeal no.30 of 2007.

¹³Ibid.

¹⁴ The Uganda Constitution (1995) as amended.

¹⁵ Ibid at Art. 26.

¹⁶K. Lynn, Journal of African Law; negotiating Law and Custom; Judicial Doctrine and Women's Property Rights in Uganda, School of Oriental and African Studies, UK 2002, p.2.

property complex and the principle of gifting, the house property complex organized assets around autonomous female-headed houses. Men retained a few parcels of land but distributed the bulk of their assets to women for food production which was premised on the idea of social order through food production. Under the idealized house-property complex, land passed from mother to son. Should a woman die or divorce before their maturity, the husband holds the land in trust for them.¹⁷

In the period between 1960s-1995 the law in relation to matrimonial property took a different position. Khadhadiagala argues that it was not until the late 1960s that courts favoured a more patriarchal vision of family and by the 1990s, entrenched in judicial doctrine was a legal presumption that property belongs to the male head of household. This postulation reiterates the dictum in Twinomujuni's judgment in Rwabinumi's case when he observed that the law has a 'long history of treating the woman as an inferior partner in marriage.'¹⁸

1.2 Problem Statement

Women's property rights are simply their rights to own, acquire through purchase, gift or inheritance, to manage, administer, enjoy and dispose of tangible and intangible property including land, housing, money, bank accounts and livestock. These rights are very important because they are fundamental to women's security, legal status and even some times survival. In the world over countries like Uganda deny women's rights to property an indication that Uganda is still facing disparities in asset ownership where for instance very many women silently lack access to and control of property which is a significant factor in the subordinate status of women. For instance when it comes to land ownership, statistics indicate that only 27% of registered land is owned by women yet 70% of the women are engaged in agriculture and less than 20% control outputs of their efforts.¹⁹ To make matters worse, 80% of the women usually do not have a say on how some of the society's important property (land) is used unless they have rented it.²⁰ This therefore shows that access and ownership of property is still constrained despite the existing laws and regulations in regard to equality of men and

¹⁷ Okumu Wengi, Weeding the Millet Field; Women's Grassroots Justice in Uganda at p.10.

¹⁸ Okumu Wengi, Weeding the Millet Field; Women's Grassroots Justice in Uganda, 2002, p.1.

¹⁹ UNHS 2012/13.

²⁰ FAO Country Gender Assessment 2016.

women's rights to property ownership and it is what the study covers through highlighting what the law says and how it has failed to achieve equality for both men and women.²¹

1.4 Purpose of the study

To examine the rights of women to property in Uganda

1.5 Objectives of the study

- i) To illustrate the law governing protection of women's rights to property ownership in Uganda and the effectiveness of mechanisms of enforcing women's rights in Uganda.
- ii) To examine the challenges faced while enforcing women's property rights in Uganda.
- iii) To examine the strategies to be employed in enforcing women's rights towards property ownership in Uganda.

1.6 Research questions

- i) What is the law governing protection of women's rights to property ownership in Uganda and the effectiveness of mechanisms of enforcing women's rights in Uganda?
- ii) What are the challenges faced while enforcing women's property rights in Uganda?
- iii) What are the strategies to be employed in enforcing women's rights towards property ownership in Uganda?

1.7 Significance of the study

To the stakeholders

To add on existing stock of knowledge since little has been done to safeguard the right of women to property ownership

To women in Isingiro district

This study is crucial for the welfare of the women in Isingiro who have been victims of loosing their privileges in owning property.

²¹ Z. Flavia, Women and the property rights paradox in Uganda; So much Protection, So much vulnerability, 2015.

To Male counterparts

Men in Isingiro will benefit from the study because more awareness will be created by this research especially to those male counterparts who do not leave any property to women after death.

To the Law Community

This research is also an evaluation of the relevance of the legal frameworks that Uganda has in place regarding the privileges of women on property ownership. It will inform the legal fraternity on the relevance of amending further laws and changing cultural beliefs in regard to property ownership.

To the Researcher

Further it will help the researcher graduate in pursue of his bachelors of laws of Kampala International University.

1.8 Scope of the study

Geographical scope

The study was carried out from Uganda.

Time scope

The study was conducted for a period of three months that is from April to July 2019

Content scope

The study was based on examination of the legal implications on violation of women's rights towards property ownership in Isingiro district. It as well illustrated the law governing protection of women's rights to property ownership in Isingiro district and the challenges faced while enforcing women's property rights in Uganda. This thus brings out the clear picture of what this research entails to cover.

1.9 Methodology of the study

The study is based on a doctrinal research methodology using legal sources from the library of Kampala International University, Makerere University, Human Rights commission and other relevant literature from legal resources concerning women and their privileges towards ownership of property. Further case laws on how women's rights have been denied in trying

to own property was explored in Uganda, regionally and on an international basis considering the topic in question.

1.10 Literature Review

The study is based on exploration of different literature reviewed by authors in regard to women and their privileges to property ownership.

Agarwal represents an important empirical study of the impact of women's access to property and the particularities of property rights regimes in a number of Asian countries, on empowerment. Looking at the cases of Bangladesh, India, Pakistan, Nepal and Sri Lanka, Agarwal makes the case of the direct connection between non-access to property rights and gender inequalities. The study does not presume property rights to derive only from legally formalized individual rights.²² This study does not however, provide for women who are still cohabiting because under the law, they also need to be protected, hence the researcher provides for the rights enshrined for both men and women when it comes to property ownership.

Datta explores the impact of joint titling on women's empowerment in urban informal settlements in Chandigarh, India. The Article finds that joint titling improved women's voice in decision-making in the household, enhances women's knowledge about and access to decisions about property related affairs in the home and related transactions, and results in a redefined bargaining position at household level.²³ However, the study did not specify the tribes which practice joint titling because it is not true that all tribes in India practice it as it is true that in their cultural practices, women pay for bride price, hence the study looks not practical in allover India. In a different way therefore, on addition to other practices, this study looks at the relevance of joint titling.

Panda and Agarwal based on household survey analysis in Kerala, find that women owning immovable property (in the form of land or housing) face a lower risk of domestic violence than women who do not own property. Fafchamps and Quisumbing found that improved property ownership makes a difference for instance, when the marriage or partnership reaches

²² B Agarwal, *a Field of One's Own; Gender and Land Rights in South Asia*, Cambridge: Cambridge University Press, 1994.

²³ N. Datta, Joint titling - A win-win policy? Gender and property rights in urban informal settlements in Chandigarh, India, *Feminist Economics*, 12 (1-2), 2006, pp. 271-298.

an end following abandonment, divorce or death of a spouse.²⁴ However, the study does not indicate the laws practical for ownership of property on both men and women's side. This is what the study therefore covered through highlighting the law for both men and women in regard to property ownership.

Whitehead and Tsikata note two types of findings in relation to the de jure/de facto disjuncture. While there is agreement of the empowering potential of legal change that seeks to eliminate discriminatory norms and practices in property ownership, the reality is more complex.²⁵ First, some studies show findings that titling and individualization of land have affirmed gender inequalities to land to the detriment of women, citing Karanja on Kenya as an example of this.²⁶ This study looks applicable, however, it does not provide for case laws where women have been violated irrespective of owning land titles in Kenya and how they have been secured.

Nyamu-Musembi traces the gender-blind nature of justice sector reform and rule of law policies of the 1990s which remained, in her analysis, unaltered in its focus into the 2000s. Integrating gender in rule of law reform remains both underdeveloped and understudied.²⁷ This further reflects that equality before the law may exist de jure but justice systems whether formal or customary reproduce gendered power imbalances in the application of the law, so that effective implementation of the spirit of the law does not occur in practice. However, despite the fact that the unfair just laws exist, the study does not provide for solutions to alter them and it is what the study recommends in chapter five.

Friedeman-Sanchez finds that legal rights are not important but not sufficient hence according to him, effective property rights for women depend also on the interaction between legal knowledge, titling procedures and social norms that enable equitable laws to be bypassed. Thus, legal empowerment as a process is relevant to create the enabling conditions for implementation of the law.²⁸ The study still leaves one asking the so called legal

²⁴ S. Pandey, Rising property ownership among women in Kathmandu, Nepal: An exploration of causes and consequences, *International Journal of Social Welfare*, 19 (3), 2010, pp. 281-292.

²⁵ A. Whitehead and D. Tsikata 'Policy Implications for Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary', in S. Razavi (ed.) *Agrarian Change, Gender and Land Rights*, (2003) pp. 67-112, Oxford; Blackwell.

²⁶ A. Whitehead and D. Tsikata.

²⁷ A. Varley, Gender and Property Formalization, Conventional and Alternative Approaches, *World Development*, 35 (10), 2007, pp. 1739-1753.

²⁸ G. Friedemann-Sánchez, Legal Literacy and Immovable Property: Laws, Norms and Practices in Colombia, *Development and Change*, 43 (6), 2012, pp. 1361-1384.

empowerment procedures which can be used to enable women to equally enjoy property ownership as done to men.

Majurin points out, in three East African countries like Kenya, Tanzania and Uganda the persistence of negative cultural attitudes towards women's leadership which can be seen clearly in the fact that women tend to be less well-represented in elected positions such as members of the board, than as members of staff in managerial positions.²⁹ In an ILO study of Latin American co-operatives, a similar pattern to that seen in other regions is revealed. Women remain under represented in the decision making bodies of co-operatives despite comprising over half of the membership.³⁰ However, the study does not provide for ways of how such cultural attitudes can help women achieve their rights because in Africa, culture existed and it is hard to change but it is not guaranteed to deprive some groups rights to own property.

1.11 Chapterization of the study

This research was conducted basing on five chapters where chapter one has provided for the background of the study through covering the instruments governing protection of rights of women towards ownership of property in Uganda and the world over. Focus is also put on stating the problems women face in owing to own property in families and the society, the methodology that will be used to conduct research and the literature reviewed by various authors in regard to property ownership. Chapter two looks forward illustrating the law governing protection of women's rights to property ownership in Uganda and this targets the 1995 constitution of the Republic of Uganda and other legal instruments, Chapter three was based on examination of the mechanisms of enforcing women's rights in Uganda. It also explored different ways in which cases have backlogged and the challenges to administration of justice in regard to women ownership of property. Chapter four looks at making a comparison on the international instruments to protection of women's rights on property with the Ugandan law on protection of women. Chapter five made a summary of the findings as discussed in chapters two, three and four respectively and after recommendations are expressed for improvement in the law.

²⁹ E. Majurin, *Business Group Formation Empowering Women and Men in Developing Communities*, Thailand; ILO Sub regional Office for East Asia, Bangkok, 2008.

³⁰ R. Mogrovejo and p. Vanhuynegem, P., *El Cooperativismo en America Latina (Cooperativism in Latin America)*. La Paz, ILO, 2012.

CHAPTER TWO

LAW GOVERNING PROTECTION OF WOMEN'S RIGHTS TO PROPERTY OWNERSHIP IN UGANDA

2.0 Introduction

This chapter provided for the law governing protection of women's rights to property ownership in Uganda. The study examines the 1995 constitution of the Republic of Uganda and the land Act 1998 as amended.

2.1 The law governing protection of women's rights to property ownership

2.1.1 The Constitution of the Republic of Uganda 1995 as amended

The Constitution of the Republic of Uganda under Chapter Four provides for the right to equality and freedom from discrimination;³¹ protection from deprivation of property;³² right to privacy of person, home and other property;³³ right to a fair and public hearing;³⁴ freedom of movement and assembly;³⁵ right to marry and 'equal rights in marriage, during marriage and at its dissolution'³⁶ and a right to just and fair treatment in administrative decisions.³⁷

Therefore, Article 24³⁸ ensures gender balance and fair representation of marginalized groups, such as women³⁹ and those cultural values that promote and enhance the dignity and well being of Ugandans shall be preserved.⁴⁰ All Ugandan citizens have the Constitutional guarantee to be free from discrimination.⁴¹ Women are also expressly guaranteed to be treated equal to men and Uganda is required to "provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement"

³¹ Article 21 of the 1995 Constitution of the Republic of Uganda , 1995 as amended.

³² Ibid., Article 26.

³³ Article 27.

³⁴ Article 28.

³⁵ Article 29.

³⁶ Article 31.

³⁷ Article 42.

³⁸ The 1995 Uganda Constitution of the Republic of Uganda as amended.

³⁹ Constitution of the Republic of Uganda , 1995, Article VI; Gender balance and fair representation of marginalized groups. The State shall ensure gender balance and fair representation of marginalized groups on all Constitutional and other bodies.

⁴⁰ Constitution of the Republic of Uganda , 1995, Article XXIV(a): Cultural objectives Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy and with the Constitution may be developed and incorporated in aspects of Ugandan life. The State shall (a) promote and preserve those cultural values and practices which enhance the dignity and well-being of Ugandans

⁴¹ Constitution of the Republic of Uganda , 1995, Chapter 4, Article 21(1-2).

and “protect women and their rights.”⁴² The Ugandan Constitution upholds the customary land tenure system regime⁴³ and on its face seems like a gender-neutral provision by stating that land belongs to “all citizens of Uganda. In effect, however, these customary practices actually discriminate against women and create a vast inequality between women and men as well as violating other provisions of the Constitution.

Thus in details under Chapter IV, **Article 21(1)**⁴⁴ provides for equality and freedoms from discrimination where all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. Further 21(2) provides that without prejudice to clause (1) of this Article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability hence for the purposes of this Article, “discriminate” means to give different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. This implies that women and men are entitled to equal ownership of property.

Article 26(1) provides for the protection from deprivation of property where every person has a right to own property either individually or in association with others. Thus **Art26(2)** provides that no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health and the compulsory taking of possession or acquisition of property is made under a law which makes provision for prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of

⁴² Constitution of the Republic of Uganda, 1995, Chapter 4, Article 33(1-3): Rights of women - (1) Women shall be accorded full and equal dignity of the person with men. (2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement. (3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

⁴³ Constitution of the Republic of Uganda, 1995, Chapter 15, Article 237(3): Land Ownership. - Land in Uganda shall be owned in accordance with the following land tenure systems (a) customary; (b) freehold; (c) mailo; and (d) leasehold

⁴⁴ Ibid at Article 21.

the property; and a right of access to a court of law by any person who has an interest or right over the property.⁴⁵

Article 32(1)(2) provides for the affirmative action in favour of marginalized groups where it is stipulated that the State shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them. Further the **Article** under **2(2)** provides that the parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this Article.⁴⁶ Therefore, 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.⁴⁷

Article 33(1) provides for the Rights of women where in regard, women shall be accorded full and equal dignity of the person with men. Further, **Article 33(2)** provides that the State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. (4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. Without prejudice to Article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom. (6) 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.⁴⁸

2.1.2 The Land Act 1998

During the period leading up to the passing of the Land Act, women's rights activists lobbied Parliament for the inclusion of women-friendly provisions in the Act.⁴⁹ The impetus to raise women's concerns arose in part from the Constitution itself, which is a progressive and

⁴⁵ Article 26 of the 1995 Constitution of the Republic of Uganda as amended.

⁴⁶ Ibid at Article 32.

⁴⁷ Ibid.

⁴⁸ Article 33 of the Constitution of the Republic of Uganda, 1995.

⁴⁹ Irene Ovonji Odida, Land Law Reform; Challenges and Opportunities for Securing Women's Land Rights in Uganda (Feb. 18, 1999).

gender-sensitive document that recognizes women's rights generally and the rights of all Ugandan citizens to land ownership.⁵⁰

Section 40 requires the prior written consent of both spouses in transactions involving family holdings, defined as land on which the family ordinarily resides and from which they derive sustenance.⁵¹

Section 28 prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land, as well as decisions that impose conditions violating constitutional provisions protecting women. Further, it is stipulated that the Act requires land management bodies and institutions to have female representation. The Uganda Land Commission must include at least one female among its five members, one-third of the membership of the District Land Boards must be female, and land committees at the parish level must have at least one female among their four members.⁵²

Under **Section 17 (4)**⁵³ (b) provides that at least one-third of the members of the Communal Land Management Association must be female. These Associations are corporate bodies which may be formed under the Land Act by any group of persons on any land for any purpose connected with communal land ownership and management of land.' Progressive as these Sections may seem in so far as they relate to women and land, the provision that women's rights activists proposed and which was passed by Parliament but was "missing" in the final draft of the Act⁵⁴ was the co-ownership clause. In order to address the problem of women's lack of ownership of land, women's rights and human rights groups had proposed co-ownership of land between spouses.

Section 39 provides that no person shall "sell, exchange, transfer, pledge, mortgage or lease any land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with the prior written consent of the spouse."⁵⁵ The "consent

⁵⁰ Ibid.

⁵¹ The Land Act, Act 16, p.40 (July 2, 1998) (Uganda).

⁵² Ibid at Section 28.

⁵³ Ibid at Section 17.

⁵⁴ Hon. Miria Matembe, who made the motion to include the co-ownership clause, has explained that the clause did not appear in the final Act due to some technical problem related to the public address system in Parliament.

⁵⁵ The Land Act of 1998, Chapter 227.

clause” is designed to protect the rights of family members from abuse.⁵⁶ As a result, the sale of land by a husband without the written consent of his wife is legally invalid. However, no authority in central or local Government has the explicit responsibility to verify written spousal consent of land sales, resulting in considerable land sold without spousal consent, including customary land.⁵⁷

Further **Section 39** gives some security to women as it prevents dealings in the subject land by the husband or men without the consent of the other partner in this case the wife or woman. Enforcement of this clause however calls for proof of certain requirements which fails its purpose.⁵⁸ Hence **Section 39(1)(c)(i)** puts restrictions on transfer of land by family members where for example it is stipulated that no person shall give away any land inter vivos or enter into any other transaction in respect of land in the case of land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with the prior written consent of the spouse.

However, irrespective of the legal procedures, in enforcement of women’s rights to property ownership, the enforcement of women rights has always been undermined by the patriarchal ideology system in Uganda which tends to overshadow whatever rights exist under the law. This has not been helped by conflicts in the legal regime which make land inheritance patrilineal (Succession Act Cap 162) which squarely puts ownership of registered land in the hands of men. There is therefore a need to resolve discordance in the law before gender rights can be fully consummated.⁵⁹

Also, there is limited awareness among women and the general public of the gender rights the law confers upon them. According to recent studies, women are about twice as illiterate (43%) compared to men (26%). This suggests that much as there should be efforts to close the gaps in the law, innovative ways of creating awareness among this group would need to be devised especially given the likely perception gaps between the elite woman driving these

⁵⁶Ibid

⁵⁷Ibid.

⁵⁸The 1998 Land Act Cap 227.

⁵⁹ Flavia Zzimula Women and the property rights paradox in Uganda; so much Protection, So much vulnerability, December 1, 2015.

campaigns and the less privileged victim who may be hostage to fears that are little appreciated.⁶⁰

The rights of women and the protection of vulnerable groups, as these assume a very different significance depending on which system of tenure is being applied. While protection of customary tenure was vested in elders it was their responsibility to ensure that land was used properly and that the rights of all were respected. This requires a completely different approach with the introduction of a western-style system of individual private ownership.⁶¹

This has undoubtedly caused confusion during the limited attempts to implement the Land Act 1998 and will become a bigger problem if there is any move towards issuing titles and certificates of ownership for example while the Land Act expressly provides rights and protections for women and children, it is very often stated that, under customary law 'women do not own land'. This means that their names are rarely entered on ownership certificates or their consent obtained for sales. However, customary law does recognise the right of women to use land, within the family, and gives her certain protections within marriage and on the death of her husband. One report has argued that no husband has the right to stop his wife using his land (though he may allocate some for his own personal benefit or for other wives). If he dies, the woman retains exactly the same rights over the land she can use it all as she pleases, and the land will then pass to her children.'⁶²

2.1.3 Law and Advocacy for Women in Uganda (LAW-U)

Think Tank At the close of 2000, women rights activists under the auspices of Law and Advocacy for Women in Uganda (LAW-U) held a one-day "Think Tank" in order to evaluate advocacy efforts used in the struggle for the co-ownership clause. Through discussion at the Think Tank, they also hoped to map out a clear advocacy strategy for 2001. The advocates stressed how they could take advantage of the upcoming election year to challenge presidential and parliamentary candidates to discuss the candidates 'agendas on gender equity, launch a women's "get out the vote" campaign and encourage women to run for political office, thereby increasing their foothold in political/public spaces and potentially influencing laws and policies that favor women.' The women's rights activists at the Think

⁶⁰ Ibid.

⁶¹ Adoko and Levine, A Land Market for Poverty Eradication: A Case Study of the Impact of Uganda's Land Acts on Policy Hopes for Development and Poverty Eradication. June 2005.

⁶² Ibid.

Tank further pledged their support to candidates who are clearly committed to women's rights issues.⁶³

2.1.4 Uganda's Marriage Act of 2000

This is the general law governing all marriage in Uganda. It provides for civil marriages of all religions and gives legal recognition to customary marriages. Regarding property rights, however, the Act 'does not spell out any rights and duties that accrue to spouses contracting a marriage including any mention of spouses' rights to property before, during or at the dissolution of the marriage'.⁶⁴ The shortcomings of the Marriage Act of 2000 and the Customary Marriage (Registration) Act on the issues of divorce, property rights and inheritance in Uganda are addressed by the Domestic Relations Bill (DRB) which was introduced in 1965 and has remained in contentious national debate over the decades. Briefly, the DRB would combine all laws related to marriage, divorce, separation, inheritance and property rights in Uganda. It would regulate marriage and family relations and determine the legal status of men and women in the family. With respect to property rights, it would provide legal recognition of the joint property rights of couples in a consensual union.

2.2 Conclusion

This chapter provides for the legal framework in regard to protection of women's rights to property ownership. However, gaps still exist in enforcement of the law. The study expressed the fact that women are protected under chapter four of the 1995 constitution of the republic of Uganda, Land Act among others. However, irrespective of the law, challenges still affect women ranging from economic and cultural perspectives.

⁶³ Law and Advocacy For Women In Uganda, Call For Action On Women's rights-Think Tank 12-13 (Dec. 19,2000).

⁶⁴ Birabwa-Nsubuga, Women under Customary Marriage in Uganda; a Critical Look at Their Property Rights at Dissolution'. Research Partnership 2/2006. Copenhagen: The Danish Institute for Human Rights, 2007, p.18.

CHAPTER THREE

EFFECTIVENESS OF MECHANISMS OF ENFORCING WOMEN'S RIGHTS IN UGANDA

3.0 Introduction

This chapter provides for the mechanisms of enforcing women's rights in Uganda. focus will mostly be put on property ownership and at the same time highlight ways through which such mechanisms have failed to protect rights of women to property ownership.

As in many countries in the East African region, Uganda suffers from high gender inequality and is currently ranked 116th out of 146 countries on the Gender Inequality Index.⁶⁵ At present, women provide "70-80% of agricultural labor and 90% of all labor involving food production in Uganda, yet own just a fraction of the land with figures varying between 7% and 20%." ⁶⁶ This presents a major issue that disproportionately affects women. This concern of land rights presents other issues for women including forced evictions, land grabbing, food security and land tenure. Each of these specific issues individually and collectively violates the human rights of women.

Women's human rights refer to a revolutionary notion aimed at emphasizing that women's rights are human rights and women are entitled to such rights simply for being human. The concept of women's rights helps to focus on women in the human right movement. Women's human rights are given great importance in the Convention on the Elimination of all Forms of Discrimination Against Women. A woman's human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality.⁶⁷

3.1 Mechanisms for enforcement of women's rights in Uganda

3.1.1 Marriage as a mechanism

As a result of inequalities entrenched in history, cultural practices and some laws, women have not been able to enjoy their rights to property especially land at the same level as men. Indeed, women in Uganda face persistent and systemic violations of their land and property rights. The Uganda Land Alliance and the Uganda Media Women's Association have

⁶⁵Uganda; the Fight for Women's Rights to property ownership; Lewis, Phillipa report, (2012).

⁶⁶Id.

⁶⁷ Oxford learner's International Dictionary.

reported that, "the gender structure of land rights in Uganda varies across the country, but is highly unequal, as women's land rights are generally restricted to access while men are likely to have ownership rights."⁶⁸

Under customary law, a woman is considered the property of her husband if he paid a "bride price" for her.⁶⁹ Historically, the bride price had no commercial implications but rather was a means of bonding two families through a gesture of appreciation for the woman's family.⁷⁰ Today, however, the payment of a bride price is akin to purchasing property, giving a man full ownership over his wife. The payment of bride price demeans a woman's status by encouraging men to conceive of their wives as chattel. After being purchased, women often feel subservient to their husbands, who can do as they wish with their wives. The husband's power is therefore expressed under customary law because if a woman does not own property, it is impossible for her to return the bride price without the help of her birth family. If her birth family cannot or will not repay the price, the woman is trapped in the relationship.⁷¹

Specifically on issues of inheritance, customary law dictates that women do not have the right to inherit property while the Marriage Code grants widows the right to inherit 15 percent of a deceased husband's property; even this provision is often not enforced.⁷² While the Constitutional Court has declared discriminatory provisions of the Succession Act as unconstitutional, the Government is yet to amend the Act so as to bring it into full compliance with the Constitution and its international human rights obligations. *Law Advocacy for Women in Uganda v Attorney General*⁷³

However, LAW-U's constitutional challenge with respect to the Succession Act was against **Sections 2(n)(i)–(ii), 15, 16, 27, 43, and 44**⁷⁴ because these provisions disadvantaged females and female heirs for example, while **Section 27** of the act provided that the property of a

⁶⁸ Uganda Land Alliance (ULA) and Uganda Media Women's Association (UMWA), 'Women's gains from the implementation of succession law in Uganda: voices from Wakiso and Mpigi Districts, Uganda,' Women's Land Rights Initiative, Policy Brief 1, March 2011. See also: Think Africa Press, 'Uganda: The Fight for Women's Land Rights,' 20 November 2012.

⁶⁹ Anna S. Sussman, 'Ugandan Adultery Law Curbs Effects of Polygamy,' Women's news, June 24, 2007.

⁷⁰ Florence Shu-Acuaye, 'The Legal Implications of Living with HIV/AIDS in a Developing Country: The African Story,' 32 *Syracuse J. INT'L L. & CoM.* 51, 51 (2004).

⁷¹ *Ibid.*

⁷² Social Institutions & Gender Index (SIGI), 'Uganda,' Valerie Bennett, Ginger Faulk, Anna Kovina & Tatjana Eres, 'Inheritance Law in Uganda: The Plight of Widows and Children,' *The Georgetown Journal of Gender and the Law*, Vol. VII, pp. 451-530.

⁷³ Constitutional Petitions Nos. 13/05 & 05/06 (2007) UGCC 1 (5 April 2007).

⁷⁴ Succession Act Cap 160.

deceased male would be distributed to his heirs, there was no such provision for the property of deceased females. Further, **Section 43** of the act gave only fathers, and not mothers, the right to appoint a guardian and **Section 44** of the act allowed male, but not female, relatives to be guardians. The challenge argued that this different treatment based on sex was unconstitutionally discriminatory. The Court ruled that the challenged Sections of the Succession Act were null and void because they were inconsistent with Articles 21(1)–(3), 31 and 33(6) of the constitution

Since women are considered property, and the husband's extended family claims his property, a widow is not entitled to any of the contributions that she made to the marital home.⁷⁵ She could refuse to be inherited but her in-laws would then likely evict her, leaving her destitute and unable to support herself or her children.⁷⁶ As Human Rights Watch reports, "women succumb to widow inheritance primarily as a result of economic vulnerability and the fact that they are often without property or any viable means of supporting their children."⁷⁷

Substantial property rights issues occur in the rural communities of Uganda since this is where the majority of women reside.⁷⁸ Land in rural communities "is not just a source of employment it is money, food, home and survival."⁷⁹ However, significant disparities between the rights of men and women arise from Ugandan customary practices and traditions because women are considered in an inferior position to men.⁸⁰

The right of women to ownership of property like land in areas of rural Buganda and Ankole societies is directly related to the institution of marriage. A married woman with children, preferably male children, has more security in her husband's land than a married woman who has no children.⁸¹ Custom denies women the independent right to own land in the communities of the rural Banyankore and Baganda societies. The Ugandan women in the

⁷⁵Byamukama, discussing the variable effects of statutes, culture, and religion on widows whose husbands died intestate).

⁷⁶ According to the Ugandan Constitution, it is the right of the parents, not the grandparents or in-laws, to care for the children, Constitution of the Republic of Uganda art.

⁷⁷ UNAIDS, UNFPA & UNIFEM, Women and HIV/AIDS; Confronting the crisis, at IV (2004) (Confronting The Crisis).

⁷⁸Ibid. at note 28.

⁷⁹The Women and Land Studies; Uganda; Gender, Land, and Rights: Contemporary Debates in Law, Policy and Practice in Uganda; Bikaako, Winifred.

⁸⁰Ibid.

⁸¹The Women and Land Studies; Uganda; Gender, Land and Rights; Contemporary Debates in Law, Policy and Practice in Uganda; Bikaako, Winifred.

rural Acholi, Langi and Iteso societies have significant land rights under customary tenure regimes but few actually realize and benefit from these rights.

Even though the land passes from father to son because the families are considered to own the land instead of clan individuals, any member of the clan born on inherited land has the right to use the land.⁸² When a woman marries, she has the right to her husband's land and cannot be denied access.⁸³ Although women derive secondary rights through marriage, upon divorce they often lose these rights and are rendered landless. Clan elders are responsible in ensuring that everyone has equal access to land but are failing at their duty to protect the rights of all its members.⁸⁴ Yet the women in these communities face great challenges because the clan elders often fail to protect their rights.

However, the Constitution guarantees a woman's equal rights within marriage and in the event of a divorce but the legal framework in Uganda currently does not enforce this right. Adoption of the Marriage and Divorce Bill in Uganda, which aims to reform and consolidate the law relating to marriage, separation and divorce, has yet to happen. The Bill in its various iterations has been waiting for parliamentary approval for approximately the last 40 years. If enacted, the Bill would benefit Ugandan women in many ways: it would outlaw a number of traditional practices (such as widow inheritance and bride price), make asset sharing mandatory in divorce, give cohabiting partners property rights, and make marital rape a criminal offense.

In rural Uganda, customary marriage a practice that is guided by the traditions and practices of the community is typically unregulated by the national legal statutes and is still the norm.⁸⁵ The Customary Registration Act of 1973 governs customary marriages but is silent on the issue of inheritance and property rights.⁸⁶ Though unmarried women have the same rights of inheritance as their brothers, there is no event that will trigger the allocation of land to an unmarried woman.⁸⁷

⁸²The Women and Land Studies; Uganda; Gender, Land, and Rights: Contemporary Debates in Law, Policy and Practice in Uganda; Bikaako, Winifred.

⁸³Ibid.

⁸⁴Ibid.

⁸⁵Women, Marriage, and Asset Inheritance in Uganda, Doss, Cheryl; Nabanoga, Gorrettie; Namaalwa, Justine; Truong, Mai (2011).

⁸⁶Customary Registration Act of 1973.

⁸⁷Understanding and Strengthening Women's Land Rights Under Customary Tenure in Uganda, Adoko, Judy and Akin, Jeremy (2011).

A woman must rely on receiving land allocation either from her parents if they are still alive and have any remaining land to give, or from her brother(s) and also faces the challenge of her brother(s) forcing her off any land that is allocated to her. The Succession Act of 1972 governs inheritance rights in Uganda, but is quite vague on the issue of women's rights. Although customary law allows a widow to remain on her husband's land, her rights to remain there are often contested by her in-laws, resulting in the threat (or occurrence) of a widow being forced off the land to which she is rightfully entitled.⁸⁸

To make matters worse, when customary land is bought and sold in Uganda, the Government does not require the sale to be registered or documented in any way.⁸⁹ This creates a disadvantage for women because their rights over land and natural resources are subordinate to those of men for example, daughters typically do not inherit land or inherit much less than sons. The land women are "gifted" by their parents is often given over to their brothers when daughters marry because they are seen to be "leaving their natal family and transferring to the community of their husbands." However, once they are married, women are not considered full citizens of their husband's community and married women can only typically access land through their husbands.⁹⁰

Even if a woman is given a plot of land to farm on, she tends to have limited decision-making authority, if any, over the land. Losing access to property causes women to live lives of destitution and social isolation, a threat that causes many women to accept subordinate status to their husbands or in-laws. Approximately 23 percent of all households in Uganda are headed by women who are at risk of being denied access to land by their relatives who are trying to lay claim to the land.⁹¹ When challenged by people of higher status, such as husbands or in-laws, women are often unable to protect their land rights because clan elders are unable to uphold their duty under traditional customary law to protect women.

Therefore, in implementing **Article 2(2) and Article 3**, Uganda must consider that their laws and policies may fail to address or may even create, inequality amongst men and women because the existing economic, social and cultural inequalities experienced by women are not

⁸⁸Ibid.

⁸⁹Understanding and Strengthening Women's Land Rights Under Customary Tenure in Uganda, Adoko, Judy and Akin, Jeremy (2011).

⁹⁰Ibid.

⁹¹Understanding and Strengthening Women's Land Rights Under Customary Tenure in Uganda, Adoko, Judy and Akin, Jeremy (2011).

being taken into account.⁹² Property status is a prohibited ground of discrimination under

Article 2(2) of the ICESCR. Article 3 requires Uganda to respect the principle of equality “in and before the law”, which means that it must be respected when enacting laws and adopting policies.⁹³ Failure to ensure formal and substantive equality in enjoying human rights between men and women and allowing discrimination against women to occur are blatant violations of Articles 2(2) and Article 3.

3.1.2 Culture as a mechanism for enforcement of women’s rights to property ownership

Property ownership amongst Ugandan culture

Among the Iteso (Eastern Uganda), property customarily belongs to men for instance women may purchase and own animals and some household property and foodstuffs but no land. Women are often counted as property because payment of bride wealth has become considered a transaction of goods rather than its original intention to show appreciation. A woman therefore ceases to own even herself.⁹⁴

Among the Banyankole (Western Uganda), a woman has no customary right to own property except items such as pots. When women acquire property, it is still called the man’s property. Married men have said that when a woman is buying property, particularly land or cows, it has to be in the husband’s name. Opinion leaders have noted that this keeps the family property in a pool and promotes family harmony. Married women do not like this at all. They are bitter that at times husbands would use the property they, the women, had accumulated in order to marry other wives.⁹⁵

Among the Alur (Northern Uganda), the husband has a customary right to own property and in most instances, his wife’s property is also deemed to be his. A wife’s customary property rights

are restricted to ownership of personal property like cooking utensils, pots, clothes among others.

⁹²The Constitution of the Republic of Uganda , 1995 as amended.

⁹³Ibid at Article 3.

⁹⁴ Uganda Law Reform Commission Domestic Relations Study Report, Revised Edition, June 2008, pp. 108-109.

⁹⁵ Uganda Law Reform Commission Domestic Relations Study Report, Revised Edition, June 2008, pp.108-109.

Among the Baganda (Central Uganda), all property customarily belongs to the husband.

However, a wife can acquire and own property in her own name. It is acknowledged that a wife can have independent property where she has bought it, inherited it or received it as a gift. Baganda men have stated that where a woman has not contributed to the property financially, such property belongs to the man alone. However, even when the property belongs to the husband, the wife still has user rights to the property as long as the marriage continues.⁹⁶

3.1.3 Networking as a mechanism for enforcement of women's rights to property ownership

Property ownership amongst Ugandan culture

Under the leadership of two main umbrella groups, the Uganda Women's Network (UWONET) and the Uganda Land Alliance (ULA), several sectors of the women's movement have combined their expertise and resources to pressure Parliament to pass the co-ownership clause. Through networking, the two groups have been able to set up meetings with key policy-makers, and have organized public forums to discuss the matter.⁹⁷

One major outcome of the collaboration was the realization that the co-ownership clause alone would have little effect if family laws remained discriminatory against women. Since co-ownership was intended to raise the stakes of women in the home, legislation governing domestic relations needed to be passed to further cement women's rights.

Threatening a Boycott of the Referendum 2000 where in this year the government of Uganda held a referendum on political systems, as provided for under the Constitution of Uganda.⁹⁸ Because women's rights activists knew that the government had a large stake in this exercise, they decided to threaten to boycott the referendum and to encourage women in the rural areas to do likewise, unless their concern about the co-ownership issue was taken seriously.⁹⁹

This threat came after the government failed to live up to its promises to revisit the issue of co-ownership. Instead of addressing the women's concerns in good faith, the Cabinet

⁹⁶ Ibid.

⁹⁷ Uganda Women's Network, Annual Report; Creating A Change For A Better Future 5 (2000).

⁹⁸ Uganda Const. art. 271(3)

⁹⁹ Jennifer Bakyawa, Women Threaten to Vote Against Movement Over Land, THEMOMITOR, Feb. 22, 2000.

proposed that the co-ownership clause be placed in the Domestic Relations Bill—a move that women's rights groups viewed as a delaying tactic. The threat to boycott the referendum indeed compelled the government to meet with women's rights activists, even if only to tell them not to threaten or blackmail government and instead to be grateful for all that the government had done for women.

The boycott threat was one of the more radical and overtly political tactics of the movement, and the government reaction demonstrated that women's rights activists could use their political leverage as voters to make the government respond.¹⁰⁰ Information, Education and Communication (IEC) materials were aimed to educate politicians, the press and the public in Uganda about the arguments for the co-ownership clause. Several women's organizations produced posters, pamphlets and booklets detailing the importance of women owning land. These were widely distributed at meetings and at seminars sponsored by various NGOs. The Land Alliance also produced a documentary film to capture the plight of women within the current system of land ownership. The film was an appeal to the emotions, a vivid depiction of the injustice and discrimination faced by women. It was aired on national television.¹⁰¹

3.1.4 International instruments as mechanisms for enforcement of women's rights to property ownership

Uganda is a party to several human rights conventions, including the International Covenant on Economic, Social and Cultural Rights. The Covenant was ratified in Uganda on January 21, 1987.¹⁰² These international instruments guarantee women the right to own and inherit land, be treated as equals to men, and the adequate access to food. Women in Uganda are entitled to (land) rights stipulated in these international instruments as well as under the Constitutional and other statutory laws.

The international community for many years has viewed forced eviction as a very serious issue and a gross violation of human rights.¹⁰³ **Article 11(1)** of the ICESCR provides for the right to adequate housing and State parties are required to recognize, grant and protect this

¹⁰⁰ The main drawback was that the threatened boycott came just three months short of the referendum exercise. With already limited resources, women's organizations were left with too little time to mobilize women voters for a protest vote.

¹⁰¹ Uganda Land Alliance, *Co-Ownership Of Land By Spouses* (2000)

¹⁰² United Nations Committee on Economic, Social, and Cultural Rights, *Uganda State Party Report* (2012).

¹⁰³ Committee on Economic, Social, and Cultural Rights, *General Comment 7: Forced Eviction and the Rights to Adequate Housing* (1997).

right and that the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.¹⁰⁴

Under customary ownership, “land is held in trust by the family, for all past, present and future generations, with the current adult occupants responsible for managing it, in the role of trustees.”¹⁰⁵ Over time, the roles of managing the land and actual individual legal ownership of the land have become confused. Trustees have taken on the role of ownership and women’s ownership of the land has been weakened by the individuals who have been appointed to “manage” the land through various events.

However, since Uganda lacks an effective mechanism to implement these laws and policies and a method of monitoring to ensure that these laws and policies are being enforced and upheld, women are being denied fundamental human rights guaranteed to them by the laws and policies of Uganda and the Articles of the Covenant. Efforts at statutory reforms to increase legal protection of women’s rights, as enshrined in the Constitution, have encountered lack of political will and resistance from those who wield the religious and culturists’ cards, in contradiction to Constitutional provisions.¹⁰⁶

This is applicable to Uganda in a sense that **Article 28(i)(b)** of the Constitution requires Uganda to respect international law and treaty obligations.¹⁰⁷ The general rules and principles of the Covenant shall conform to the laws and policies of Uganda. Chapter 19, Article 287¹⁰⁸ provides that any international treaty, agreement or convention that the State was a party to before the implementation of the 1995 Constitution will not be affected and Uganda will continue to be a party to it.¹⁰⁹ Therefore, the Articles of the Covenant may be applied by the courts, tribunals, administrative authorities or any other competent authorities that are a part of the legal system of Uganda.

¹⁰⁴ Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights.

¹⁰⁵ Ibid.

¹⁰⁶ United Nations Committee on Economic, Social, and Cultural Rights, Uganda State Party Report (2012).

¹⁰⁷ Constitution of the Republic of Uganda, 1995, Article XXVIII (i)(b):(i) the foreign policy of Uganda shall be based on the principles of (b) respect for international law and treaty obligation.

¹⁰⁸ Ibid at Article 287.

¹⁰⁹ Constitution of the Republic of Uganda, 1995, Chapter 19, Article 287; International agreements, treaties and conventions where (a) any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the Government on or after the ninth day of October.

Article 2(2) and Article 3 Non-Discrimination and Equality¹¹⁰

Discrimination on the basis of sex is a major problem in many parts of the world including Uganda.¹¹¹ The term “sex” includes more than just physiological characteristics; it also includes the social construction of gender stereotypes, prejudices and expected roles, all of which have created great obstacles for the equal fulfillment of economic, social, and cultural rights an indication that the principles of non-discrimination and equality are prevalent throughout the ICESCR and are essential to exercise the enjoyment of economic, social and cultural rights. **Article 2(2)** of the ICESCR requires State parties to guarantee the rights of the Covenant be exercised with non-discrimination of any kind including based on sex.¹¹² **Article 3** of the ICESCR requires State parties to ensure that men and women be treated equal in order to enjoy all of the economic, social and cultural rights guaranteed by the Covenant.¹¹³

In comparison to Uganda, **Article 26(1), 31(1), 33¹¹⁴** provide for equal treatment of both men and women. The Land Act further addresses the rights and role of women in Land matters for example **Sections 27, 38A, 39¹¹⁵** aim at protecting spouses on family land, giving them the right to access which includes use and security of occupancy but not equal ownership and control. In Uganda, custom, tradition and overt discrimination create a lesser status for women and prevent them from equally enjoying their human rights. Under customary practices, women are being discriminated against and being treated unequally to men in violation of both **Articles 2(2) and Article 3** of the ICESCR.

Despite the protections provided under law, many women face challenges in realizing their rights. Due to a lack of education and cultural factors, many women are unaware of the rights they have. Government and different organizations have come up with plausible measures to create awareness through mobilization and sensitization however owing to the schedules

¹¹⁰ ICESCR.

¹¹¹ Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

¹¹² Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights; the State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without any discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

¹¹³ Article 3 of the International Covenant on Economic, Social, and Cultural Rights: The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights set forth in the present Covenant.

¹¹⁴ 1995 Constitution of the Republic of Uganda as amended.

¹¹⁵ Land Act 1998.

these activities are given, women who need these activities the most benefit from it the least.¹¹⁶

Worse still, Uganda's laws and policies prohibit discrimination and therefore eliminate formal discrimination. To make matters worse, Uganda lacks an effective mechanism and monitoring system to implement these laws and policies to ensure they are systematically respected. Exceptions still exists where Uganda has failed to repeal laws found unconstitutional on grounds that they fostered discrimination, such as the Succession Act which discriminated women on grounds of inheritance and distribution of property. Widows in Uganda continue to be deprived of property due to persistent disinheritance practices and lack of strong legal basis to protect them.¹¹⁷

Even those who know of their rights in a general sense do not know the details of the laws and policies protecting them or where they can turn to vindicate those rights for example CESCRA has demonstrated in its work with grassroots women that women, in areas where the discovery of oil and gas has increased land related conflicts and violations, lack of knowledge of laws and general understanding of their rights. This situation has increased women's vulnerability to unequal decisions in unprecedented land sales where their spouses have sold land and left their families landless, Government-driven compensations for compulsorily acquired lands for oil refinery ignore women's specific inequalities and violations related to unequal compensations left women more prone to other violations.¹¹⁸ **Article 2(2) and Article 3¹¹⁹** are appropriately applied together since the principle of equality and the principle of non-discrimination are complimentary. Under international law, a State's failure to act in good faith to comply with the Articles of the Covenant amounts to a violation.¹²⁰

¹¹⁶ Women's Land Link Africa; the Impact of National Land Policy and Land Reform on Women in Uganda (2010).

¹¹⁷ Law and Advocacy for Women in Uganda Vs Attorney General of Uganda, Constitution Petition Number 13/05/&/05/06.

¹¹⁸ Experiences from areas around Kabale, Kyangali and Kabwoya in Hoima District and Ngwedo and Buliisa Town Council in Buliisa District in Bunyoro oil region by Centre on Economic Social Cultural Rights in Africa (CESCRA), 2015.

¹¹⁹ 1995 Constitution of the Republic of Uganda as amended.

¹²⁰ Ibid.

Committee on Economic, Social and Cultural Rights¹²¹

Article 3¹²² prescribes that discrimination can occur directly or indirectly yet the direct discrimination occurs when a difference in treatment relies explicitly and directly on distinctions based exclusively on sex or other characteristics which cannot be justified objectively.¹²³ Indirect discrimination occurs when a law or policy appears to be non-discriminatory but has a discriminatory effect when implemented. Pre-existing inequalities can disadvantage women in enjoying a particular right, and enacting and applying a gender-neutral law may leave the inequality in place or worsen it.¹²⁴

The committee attributed to the fact that discrimination can occur due to a conflict between the land rights as enshrined in the law and the manner in which land is transferred under a customary tenure regime. Women of Uganda also face indirect discrimination although the laws of Uganda are nondiscriminatory on their face and guarantee women equal rights to men; a failure in implementation makes the gender equality an unrealized ideal.

Uganda has legal obligations to respect, protect and fulfill under the ICESCR to ensure that women are able to enjoy human rights equally to men. In applying **Article 3** of the ICESCR, both *de facto* and *de jure* equality is essential in order for international human rights treaties to guarantee rights of non-discrimination and equality. *De jure* (formal) equality expects that a law or policy treating men and women in a neutral manner will foster equality.¹²⁵ *De facto* (substantive) equality expects that the effects of laws and policies that alleviate rather than maintain the inherent disadvantage that particular groups, including women, experience. Simply enacting laws and policies that appear to be gender-neutral will not achieve substantive equality.

The 2013 Uganda National Land Policy states that the Government shall “by legislation protect the right to inheritance and ownership of land for women and children” and shall “ensure that both men and women enjoy equal rights to land before marriage and at

¹²¹ Committee No.16.

¹²² Ibid at Article 3.

¹²³ Committee on Economic, Social, and Cultural Rights, General Comment No. 16, Article 3; the equal right of men and women to the enjoyment of all economic, social, and cultural rights (2005).

¹²⁴ Ibid.

¹²⁵ Committee on Economic, Social, and Cultural Rights, General Comment.

succession without discrimination.¹²⁶ The Policy is however silent on measures to be taken so as to protect women's land rights vis-à-vis cultural norms and practices.

Women are essential in achieving the three components of food security in Uganda. More often than not, women are the farmers cultivating food crops.¹²⁷ Women are the main providers of food, especially in rural areas.¹²⁸ Generally, women are also responsible for selecting and preparing food. Currently three out of four women are agricultural laborers and nine out of ten women are food-producing laborers.¹²⁹ It is from this much needed labor that food security is achieved and basic livelihood enjoyed. Despite the major role women play in food production, they only own less than 8 percent of the land.

The Ugandan Constitution recognizes the significant role women play in food security.¹³⁰ However, due to gender inequality and their lack of enjoyment of social and economic rights, women are often disproportionately affected by food insecurity. When women are denied access to or have limited access and limited control of land to farm on, it is impossible to achieve food security, and their fundamental human right to adequate food guaranteed to them under both the Uganda Constitution and Article 11 of the ICESCR is being violated.

The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, which oversee the implementation of the ICCPR and the ICESCR¹³¹ International law recognizes that individuals have the right to own property and the right to be protected against arbitrary or unlawful interference with their privacy and home. Everyone has the right to adequate housing. All individuals also have the right to the use and peaceful enjoyment of their property and no one shall be arbitrarily or unlawfully deprived of their property. The 'right to property' is not an absolute, or non-derogable, right. The State can limit this right in certain circumstances such as when it is necessary in the public interest. Any interference

¹²⁶ The Uganda National Land Policy, Chapter 4.10, Article 65, Land Rights of Women and Children; Policy Statements (2013): 65(a) Government shall by legislation protect the right to inheritance and ownership of land for women and children; b) Government shall ensure that both men and women enjoy equal rights to land before marriage and at succession without discrimination

¹²⁷ Monitoring Food Insecurity Using National Household Survey Consumption Data; Uganda: Gender Information Improves Food Policies and Programmes; Ramasawamy, Seevalingum (2010).

¹²⁸ Ibid.

¹²⁹ Women, Food Security, and Agriculture in a Global Marketplace; Mehra, Rekha and Rojas, Mary Hill.

¹³⁰ Constitution of the Republic of Uganda, 1995, Article XV: Recognition of the role of women in society, the State shall recognize the significant role that women play in society.

¹³¹ General Comment No. 4 of the United Nations Committee on Economic, Social and Cultural Rights on the Right to Adequate Housing contained in UN Doc. E/1992/23; General Comment No. 7 of the United Nations Committee on Economic, Social and Cultural Rights on Forced Eviction contained in UN Doc. E/C.12/1997/4.

must be 'lawful' under both domestic and international law and a 'fair balance' must be struck between the interest of the general community and the right of the individual property owner.¹³²

Convention on the Elimination of Violence against Women (CEDAW) 2010

Article 13¹³³, requires state parties to take measures to eliminate discrimination against women in areas of communal and social life to ensure women's equal rights to bank loans, mortgages and other forms of financial credit. This right is further entrenched in Article 15. As stated in its 2010 Concluding Observations, CEDAW noted that even though women receive Constitutional protections in Uganda, mechanisms of implementation and enforcing these Constitutional provisions remain widely unknown and inaccessible to women.¹³⁴

Thus by not having a mechanism for implementation of enforcement of both the Articles of the Covenant and the State's Constitutional provisions so women may freely exercise their right to own property and obtain food security and a monitoring system to ensure the provisions are being enforced and upheld, Uganda is violating both its Constitution and Article 11 of the ICESR by allowing for this discrimination against women to occur. **Article 17(1)**¹³⁵ emphasizes the right to property ownership without any interference. Article 16, is clear on equal rights of spouses at, during marriage and at its dissolution.¹³⁶

The African Union protocol on the Rights of Women (Maputo Protocol)

Article 2, binds states to avoid discrimination against women and Article 7 recognises women's equal rights to an equitable sharing of joint property deriving from separation, divorce, annulment and marriage.¹³⁷ The Beijing Platform for Action announced in September 1995 required that women's rights to inheritance, ownership of land and property should be recognised and that governments should take legislative reforms and measures to remove disparities.

¹³² European Court of Human Rights, 1979, European Human Rights Reports, Vol 2, p.330 and *Soering v United Kingdom*, European Court of Human Rights, 1989, European Human Rights Reports, Vol 11 p.439.

¹³³ Convention on the Elimination of Violence against Women.

¹³⁴ Convention on the Elimination of the Discrimination Against Women, 2010 Concluding Observations (Uganda)

¹³⁵ Universal Declaration of Human Rights.

¹³⁶ Ibid at Article 16.

¹³⁷ The African Union protocol on the Rights of Women (Maputo Protocol).

3.2 Conclusion

Unless women are granted property rights, a country can't develop. Women property rights promote gender equality, which eventually leads to development. Lack of these rights causes underemployment of women and keeps them impoverished thus countries with the unequal inheritance laws have also unequal property rights regimes. Hence, women's property rights are important, as these are fundamental to women's economic security, social and legal status and sometimes their survival, property ownership empowers women and provides income and security. Without property rights, women have limited say in household decision-making and no recourse to the assets during crises be it divorce or death of a husband or any other difficult situation and this lack of property rights also results in domestic violence. Therefore, Uganda should struggle to abide by international instruments seen above to make women's rights to property ownership a reality.

CHAPTER FOUR

STRATEGIES EMPLOYED IN ENFORCING WOMEN'S RIGHTS TOWARDS PROPERTY OWNERSHIP IN UGANDA

4.0 Introduction

This chapter provides for the strategies to be employed in enforcing women's rights in Uganda. The increase in the number of domestic violence cases has partly been attributed to the struggle over property ownership. Considering that most marriages in Uganda are customary, women face challenges in claiming their rights over property ownership. Emphasis for this chapter will be considered looking at the different categories of ownership of property when in marriage.

4.1 Strategies employed in regard to women's rights to property ownership in marriage

4.1.1 Courts of law in regard to ownership of property by women

The courts have been so effective in settling gaps concerning marriage especially in regard to property ownership for example they developed guiding principles for determining as to what amounts to marital or matrimonial property and the same guiding principles are applied in both civil and customary marriages. The guiding principles were developed in 1997 by Justice Bbosa J. in the case of *Muwanga v. Kintu*,¹³⁸ where he observed that; "Matrimonial property is understood differently by different people.

There is always property which the couple chose to call home and in a different perspective, there may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should be considered differently. The property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to."¹³⁹

What usually constitutes matrimonial property as a presumption of law is that property which is registered jointly in the names of both parties to the marriage. Registering property in the joint names of both parties to the marriage entitles both of the parties to a legitimate claim.

¹³⁸ High Court Divorce Appeal No. 135 of 1997.

¹³⁹ Ibid.

over the property as its joint proprietors¹⁴⁰ As such, as a matter of law, such property must be shared in equal proportions at dissolution.¹⁴¹

The courts in Uganda have established a principle which recognizes each spouse's contribution to acquisition of property. This contribution can be direct or indirect and it is direct when there is a monetary contribution, say where both parties pool financial resources from their different salaries or any other sources and purchase or develop property jointly. The contribution is indirect where one of the parties offers domestic services such as taking care of the children or remaining home to protect the property, adding value to it or paying household bills and other household items or even growing food for feeding the family. Such contribution though not monetised is recognised as a tangible and substantial contribution to the matrimonial wealth and when distributing property at dissolution of the marriage, it is immaterial that one of the parties to the marriage was not as financially endowed as the other. It is immaterial that only one of the parties was the financial muscle behind all the wealth or property acquired.¹⁴² Thus, while determining whether particular property constitutes matrimonial property, contribution made by either party is taken into account of and usually courts require the party alleging that they contributed to it to give proof of such contribution.¹⁴³

The demand for bride price by parents of the bride from prospective sons-in-law as a condition precedent to a valid customary marriage is contrary to **Art 31 (3)**¹⁴⁴ provides that marriage shall be entered into with the free consent of the man and a woman intending to marry, because the demand for bride price makes the consent of the persons who intend to marry contingent upon the demands of a third party.¹⁴⁵

¹⁴⁰ *Bakiza v Nafuna Bakiza* (Divorce cause no.22 of 2011) High court of Uganda.

¹⁴¹ *Namukasa v Kakondere* (2010)

¹⁴² *Kagga v Kagga*, High court divorce cause no.11 of 2005; *Mayambala v Mayambala* (1998); *Kivuitu v Kivuitu* [1990-1994] EA 270; *Chapman v Chapman* [1969] All ER 476.

¹⁴³ *Basheija v Basheija*.

¹⁴⁴ 1995 Constitution of the Republic of Uganda as amended.

¹⁴⁵ *Ibid.*

4.1.2 Treatment of Joint property between husband and wife

With regard to joint property where both spouses contributed towards its purchase, the legal position is that a spouse is entitled to his or her share in the property in proportion to the contribution towards its purchase. In **Kagga v. Kagga**¹⁴⁶ for example, **Mwangusya, J.** observed that; courts have established a principle which recognizes each spouse's contribution to acquisition of property and this contribution may be direct, where the contribution is monetary or indirect where a spouse offers domestic services.¹⁴⁷

When distributing the property of a divorced couple, it is immaterial that one of the spouses was not as financially endowed as the other as this case clearly showed that while the first respondent was the financial muscle behind all the wealth they acquired, the contribution of the petitioner is no less important than that made by the respondent.

The court proceeded to order for the registration of 50% interest in the parties' matrimonial house and for the transfer of several other houses in favour of the wife, despite the Judge's finding that the wife had only rendered domestic services, as opposed to the respondent husband who was "the financial muscle behind all the wealth." The decisions of Ugandan courts on distribution of joint properties are consistent with English cases such as *Chapman v. Chapman*,¹⁴⁸ where the wife was held to have acquired an equal share in the property although she had not made an equal cash contribution to the acquisition of the property in question. The court found and held that the husband and wife had put all their financial resources into the pool to purchase their house without reserving any special interests.¹⁴⁹

It is also worth noting that the contributing spouse's share is not restricted to a maximum of 50% share either in the matrimonial home or in other jointly held property. In some other cases, the court awarded a higher percentage share either in the matrimonial home or in some other properties for example, in **Mayambala v Mayambala**,¹⁵⁰ the wife's interest in the matrimonial home was established at a 70% share.¹⁵¹

¹⁴⁶ High Court Divorce Cause No. 11 of 2005.

¹⁴⁷ Ibid.

¹⁴⁸ (1969) All E.R. 476.

¹⁴⁹ Family law, Separation agreements, Nova Scotia Supreme Court cases.

¹⁵⁰ High Court Divorce Cause No. 3 of 1998.

¹⁵¹ Ibid.

4.2 Determining contribution of the women to ownership of marital property

Ugandan courts have held that the contribution of the spouse toward the marital property may be direct and monetary or indirect and non-monetary. In **Muwanga v. Kintu**¹⁵² Bbosa, J. adopted a wider view of non-monetary indirect contributions by following the approach of the Court of Appeal in **Kivuitu v. Kivuitu**.¹⁵³ In that case, court found that the wife indirectly contributed towards payments for household expenses, preparation of food, purchase of children's clothing, organizing children for school and generally enhanced the welfare of the family and that this amounted to a substantial indirect contribution to the family income and assets which entitled her to an equal share in the couples' joint property.

Article 31 (1)(b) of the Constitution of Uganda provides that men and women of the age of eighteen years and above, have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution. The supreme court of Uganda held in the case of **Julius Rwabinumi versus Hope Bahimbisomwe**¹⁵⁴, that the Constitution of Uganda (1995), while recognizing the right to equality of men and women in marriage and at its dissolution, also reserved the constitutional right of individuals, be they married or not to own property either individually or in association with others. The right to own property individually is preserved by the Constitution of Uganda as is the right of an individual to own property in association with others, who may include a spouse, children, siblings or even business partners.

The property of the estate of the deceased who dies intestate and which may be subject to division includes and consists of property that the deceased may have acquired in Uganda before his or her marriage. The Constitution of Uganda upholds the right to own property individually and such property does not become joint property upon the marriage. Such property that the deceased may have acquired and registered in his or her name during the subsistence of the marriage with the understanding of both parties that such property should be individual property. The proportional share of the deceased's contribution towards a joint property held with a spouse and any other person including a business partner.¹⁵⁵

¹⁵² High Court Divorce Appeal No. 135 of 1997.

¹⁵³ (1990 – 19994) E.A. 270

¹⁵⁴ Civil Appeal No. 10 Of 2009

¹⁵⁵ Art.31 of the Constitution of the Republic of Uganda , 1995.

There is also an equitable principle of law that no man can take advantage of his own wrong since this would amount to a travesty of justice or gaining out of wrong doing. The courts usually do not allow this to happen. As such, a spouse who mortgages the matrimonial home, in which she or he has a legal interest by virtue of being joint proprietor (in cases where the property is registered in both spouses names) with the intention of not redeeming it leaving it to the risk of foreclosure by the bank on the property or to the burden of the other spouse to, as co proprietor to redeem the same cannot turn around to claim interest in the property he or she had abandoned to foreclosure by the bank or to redemption by the spouse.¹⁵⁶

This would amount to taking advantage of her own mistake and courts do not turn a blind eye to that since it would amount to sanctioning what is illegal. Note that illegality once brought to courts attention overrides all questions of pleading as well as any admissions made.¹⁵⁷ As such what would ordinarily be assumed to be matrimonial property such as a matrimonial home registered under the joint proprietorship of both spouses may turn out to not be matrimonial property since court can order for one of the parties who have committed the illegality to be struck off the register as a joint owner.¹⁵⁸

In regard to distribution of property of an intestate in Uganda, the **Succession Act of Uganda**¹⁵⁹ provides for guidelines on distribution of property of the deceased who died intestate. It is provided under **Section 27**¹⁶⁰ that where a deceased person dies leaving a spouse, children, dependent relatives and a customary heir, the children take 75%, spouse takes 15%, dependent relatives 9% while customary heir takes 1% of the estate of the deceased.¹⁶¹ But where a deceased person dies leaving a spouse, dependent relatives, a customary heir but no children, the spouse takes 50%, dependent relatives take 49% while the customary heir takes 1% of the estate of the deceased. The payment of bride price by men for their wives as demanded by custom from several tribes in Uganda leads men to treat their women as mere possessions from whom maximum obedience is extracted, thus perpetuating

¹⁵⁶ Bakiza v Nafuna Bakiza (Divorce cause no.22 of 2011) High court of Uganda.

¹⁵⁷ Mukula International ltd V His Eminence Cardinal Nsubuga and another [1982] HCB 11

¹⁵⁸ Section 91 of the Land Act cap, Laws of Uganda.

¹⁵⁹ Cap 160.

¹⁶⁰ Succession Act cap 160.

¹⁶¹ Ibid.

conditions of inequality between men and women, prohibited by Art 21(1), (2) which provides that all persons are equal before and under the law.¹⁶²

4.3 Ownership of property in regard to bride price

The demand for bride price by parents of the bride from prospective sons-in-law in as much as it portrays the woman as an Article in a market for sale amounts to degrading treatment, prohibited by the Constitution of Uganda in Art 24 which guarantees that every person shall be treated with dignity.¹⁶³

Article 31 of the Constitution mandates that “women shall have the right to equal treatment with men and as equals, the petitioners contend that a bride price, thus contravenes Article 21 which provides for equality and freedom from discrimination (All persons are equal before and under the law in all spheres of economic, social and cultural life and in every other respect shall enjoy the equal protection of the law).¹⁶⁴

Article 31 (3) provides that Marriage shall be entered into with the free consent of the man and woman intending to marry.” Basically and in short, the petitioners say the payment of bride price militates against the consent of the man and woman since the proceeds of the arrangement go to the parents of the bride and yet the marriage is between the bride and the bride groom.¹⁶⁵

The custom is intended to offer an opportunity to the bride groom and his relatives to express gratitude and appreciation to the parents of the bride for the caring for and upbringing of the bride in such a way that she can be appreciated by the bridegroom as one who can become a wife of his choice. The custom also strengthens the bonds that bind the two families of the bride and that of the bridegroom in the interest of the stability in the marriage.¹⁶⁶

In a way, it gives a sense of fulfillment to the parties to the marriage by enhancing self esteem and self confidence in each of the parties in that the bride groom realizes he has a valuable partner in the marriage who can also rely on his assured determination and ability to ensure her wellbeing in their home. As for the bride, it is important to realize that the giving

¹⁶² 1995 Constitution of the Republic of Uganda .

¹⁶³ Ibid at Art 24.

¹⁶⁴ Ibid at Art 31.

¹⁶⁵ 1995 Constitution of the Republic of Uganda as amended.

¹⁶⁶ Article 31 of the Constitution of the Republic of Uganda 1995.

of bride wealth is only one component or aspect in a process that eventually matures into the actual marriage.¹⁶⁷

The practice of “bride rice” leads men to treat their women as mere possessions from whom maximum obedience is extracted. Under such a custom, the wife is not an equal in the realm of marriage vis-à-vis the husband, but rather she is simply a piece of his property into with the free consent of the man and woman intending to marry. The cultural practice of bride price offends the Constitutional right to one’s human dignity. The Constitution 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. Bride price being declared per se unconstitutional would thus deny a man and a woman one legitimate way to get married, which would contravene Article 33(1), which is a violation of the constitutional right to marry and begin a family.¹⁶⁸

Articles 33(6) and 24¹⁶⁹ provides for “respect for human dignity and protection from inhuman treatment.” Accordingly, no person shall be subjected to “cruel, inhuman or degrading treatment or punishment.” Art. 24. both the demand for a bride price and the demand for a refund of the bride price, amount to the buying and selling of a bride as an item for sale in a market. Such “haggling and pricing of young girls and women like commodities” is argued to be an affront to human dignity. *Nemezio Ayiia Pet Vs Sabina Onzia Ayiia*¹⁷⁰ on marriage under Lugbara Customary Law where the courts’ holding was to the effect that before all dowry is paid, a man and a woman cohabiting can be regarded as husband and wife but marriage is not valid until the all dowry is paid.

Article 2(2) of the Constitution provides for the Supremacy of the Constitution since it is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. Clearly, by this Article, the Constitution is the supreme law of the land.¹⁷¹ The same Constitution under Article 126 (2) (e) enjoins the courts of this country to administer substantive justice without undue regard to technicalities. The province of the

¹⁶⁷ Thiara, K. et al ‘A sensitive Cultural Matter, Bride price/Lobora, domestic violence and Poverty in Uganda’ The social Work practitioner-Researcher, (2012) 4(1):pp.85-102.

¹⁶⁸ Constitution of the Republic of Uganda 1995 as amended.

¹⁶⁹ Ibid at Art.33 and 24.

¹⁷⁰ Divorce Petition No. 8 of 1973.

¹⁷¹ Article 2(2) of the Constitution of the Republic of Uganda 1995 as amended.

Evidence Act is, in my view, to lay down evidential and procedural rules as to what matter is or is not admissible for purposes of establishing facts in dispute and as to the manner in which such matter may be placed before court.¹⁷² That Act is not concerned with direct establishment of relevant principles of substantive law which is mainly concerned with facts in their wide sense and what the Act provides for, therefore are matters of technicalities rather than substantive law.

Article 37 of the Constitution provides for the Right to culture and similar rights and every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. By putting this provision in the Constitution under chapter 4 which deals with Fundamental Human Rights, the framers of the Constitution pronounced themselves on the importance they and the people of Ugandan attach to culture.¹⁷³

By the same Constitution, in its Article 20 (1), Fundamental rights and freedom of the individual are inherent and not state granted. By Article 20 (2) all organs and agencies of Government and all persons are commanded to respect, uphold and promote the rights and freedoms of the individual or groups enshrined in chapter 4 of the Constitution.¹⁷⁴

In many nationalities, by the time the bride wealth is given, the bride's consent to marry the bridegroom has already been secured and assured either expressly or by conduct through the interaction between the two families and always with close consultations of the bride as to whether she consents to marrying the bridegroom. Intermediaries between the side of the bride and that of the bridegroom, like the Katerarume (go between) in the Kinyankole culture or the Ssenga official aunt of the bride and the Muko (the official brother in law to the bridegroom), in the Kiganda cultures are examples of significant intermediaries between the two sides.¹⁷⁵

In many cultures, in addition to the above steps being carefully taken to ensure the bride is not forced into a marriage with a partner she does not love, the question is clearly put to

¹⁷² Ibid at Article 126.

¹⁷³ Article 37 of the 1995 Constitution of the Ugandan Republic.

¹⁷⁴ Article 20 of the Constitution.

¹⁷⁵ *Enkuluze y'Oluganda eye 'Makerere'* (The Luganda Dictionary).

either the bride herself or her official agent for instance in Kiganda culture to the official aunt (Ssenga), who is freely chosen by the bride herself from among her aunts or her very close relatives from her paternal side whether she consents to the marriage.¹⁷⁶

The bride or her aunt's answer is the conclusive evidence of such consent or lack of it. That act is greatly respected at the introduction ceremony (*Okwanjura*) in Kiganda culture. Okwanjula is defined in the "*Enkuluze y'Oluganda eye 'Makerere'*" (The Luganda Dictionary) as "*Omuwala okulaga bazadde be omulenzi gwaba asiimye okufumbirwa*" translated as the function at which a girl introduces or shows to her parents the boy she has chosen to marry.

Further still, in the very rare cases where the girl may feel being forced into a marriage with someone not of her choice, either shortly before or at the night preceding the wedding day the girl will just vanish (*okubula*) from her parents' home in most cases with the active assistance of the official aunt who is usually fully in the know of the reason for the girl's attitude and protest.¹⁷⁷

The meaning of Okwanjula' as sown above necessarily embodies consent for instance **Article 37** gives the right to "enjoy, practice, maintain and promote any culture, cultural institution and tradition in community with others." the requirement to pay dowry or bride price does not contravene the Constitution because the practice of "bride price or dowry" is "intended to show appreciation to a woman's parents for taking care of the woman."¹⁷⁸

Moreover, if such a practice do lead to isolated cases of men treating their wives as mere property, such a perversion of the purpose of bride price does not negate the noble aims of the practice, let alone render the custom unconstitutional. As contended by respondent, those men and women that appreciate the positive goals of a bride price agreement should not be denied their constitutional right to enter into such arrangements.

Article 137(1) & (3) (a) & (b) of the Constitution provide that any question as to the interpretation of this Constitution shall be determined by the Court of Appeal sitting as the

¹⁷⁶ *Enkuluze y'Oluganda eye 'Makerere'* (The Luganda Dictionary).

¹⁷⁷ Uganda National Development Plan, 2010/2011 – 2014/2015.

¹⁷⁸ 1995 Constitution of the Republic of Uganda .

constitutional court. A person who alleges that an Act of Parliament or any other law or anything in or done under the authority of any law; or Any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.¹⁷⁹

The demand for refund of bride price as a condition precedent to the dissolution of a customary marriage is contrary to the provisions of **Art 31(1)** of the Constitution of Uganda in as far as it interferes with the exercise of the free consent of the parties to a marriage.¹⁸⁰

Article 33(6) provides for the rights of women to equality with men where it is stipulated that the Court is cognizant of the constitutional provisions intended to correct historical imbalances and an unequal playing field as between men and women. Anytime a woman is equated with a sum of money or property, as occurs in any bride price agreement, such an agreement does, on its face, seem to undermine the status of the woman vis-à-vis the man.¹⁸¹ A potential bride price being discussed in terms of any quantity of money does, at first glance, seem to violate the constitutional prohibition against customs that undermine the status of a woman.

4.4 Relationship between ownership of property by women by other jurisdictions with similar provisions to Uganda

Like **Article 273(1)**¹⁸², in Tanzania, **Section 4(1)**¹⁸³ provides that the court will construe the excating law, including customary law with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the provisions of the Fifth Constitutional Amendment Act 1984 that is to say Bill of Right.” In *Ephrahim vs Pastory and Another*,¹⁸⁴ the Tanzania court was confronted with a case where customary law was alleged to be inconsistent with a provision of the Bill of Rights.

A woman in one of the clans in Tanzania had validly inherited a piece of land from her father by will and later sold the land to a non-clan member yet their customary law does not allow a

¹⁷⁹ Ibid at Art.137.

¹⁸⁰ Ibid at Art.31.

¹⁸¹ Constitution as seen above Article 33.

¹⁸² 1995 Constitution of the Republic of Uganda .

¹⁸³ Act 16 Constitution of the Tanzanian Republic 1984.

¹⁸⁴ Civil Appeal No 70 of 1989 (1970) LRC (Const) 757.

female member of the clan to sell clan's land. The position was different for a male member of the clan. Her nephew sued the buyer to recover the land claiming that the sale was void as under their customary law a female member, like his aunt, could not sell clan's land. The trial Magistrate ruled that the female member of the clan had the right under the Constitution to sell the clan land and that a male member had the right to redeem it only on refunding the purchase price. On appeal, the Tanzanian Court upheld that decision stating that the customary law, as an existing law was construed as modified to be void for being inconsistent with the provision of the Bill of Rights that provides against discrimination on the basis of sex.

In Zimbabwe, **Section 4(1)**¹⁸⁵ which is in parimateria with **Article 273(1)**¹⁸⁶ reference to the case of *Bull vs Minister of Home Affairs*¹⁸⁷ a certain provision in their Criminal Procedure and Evidence Act Cap 59 restricted the right to bail. This was alleged to be in conflict with the right to liberty in the Bill of Rights because the court agreed that if indeed that provision in the Criminal Procedure Act was inconsistent with the right to liberty prescribed in the Bill of Rights then it would be taken as modified such that it did not exist but void. However, the learned judge found as a fact that the Section in question was not inconsistent with any provision in the Bill of Rights hence the Supreme Court of Zimbabwe agreed with the reasoning of the trial judge.

The above cases provide persuasive guides as to how **Article 273(1)**¹⁸⁸ should be applied since it provides that the operation of the existing law after the coming into force of this Constitution shall be affected by the coming into force of this Constitution but the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution.”

Sections 4(1) & (2), 5, 21, 22, 23, 24 and 26¹⁸⁹ discriminate on the basis of sex which brings them into conflict with **Articles 21(1) (2), 31(1) and 33(1) & (6)**¹⁹⁰ all of which provide against discrimination on the basis of sex. This is a ground for modifying or declaring them void for being inconsistent with these provisions of the Constitution. To the extent that these

¹⁸⁵ Constitution of the Republic of Zimbabwe 1980.

¹⁸⁶ The 1995 Constitution of the Republic of Uganda .

¹⁸⁷ (1987) LRC (Const) 547.

¹⁸⁸ 1995 Constitution of the Republic of Uganda .

¹⁸⁹ Divorce Act Cap 249.

¹⁹⁰ Constitution as seen n217.

Sections of the Divorce Act discriminate on the basis of sexes, contrary to Articles 21(1) & (2), 31(1) & 33(1) & (6) of the Constitution, they are null and void which means that the grounds for divorce stated in Section 4(1)& (2) are now available to both sexes.

The damages or compensation for adultery (S.21), costs against a co-respondent (S.22), alimony (S.23 and 24) and settlement under Section 26¹⁹¹ are now applicable to both sexes.

Reference to the Traditional approach which was adopted by majority of colonial judicial officers and is well articulated in statements and judicial pronouncements where it is argued that although customary law is undoubtedly part of the law of the various East African Countries, it has not certainly in the past, been accepted that the courts can take judicial notice of such law in the same way as they can of the statute, and received English law, the general attitude of the courts has been to regard such law in much the same way as foreign law and to require proof of its contents particular exception being taken by High court judges, particularly in Tanganyika during the late nineteen twenties and early nineteen thirties to magistrates who were also administrative officers making use of their knowledge of customary law without calling evidence to prove it.¹⁹²

The *Privy Council in Angu Vs Attah*¹⁹³, in an appeal from the then Gold Coast clearly stated the attitude thus as is the case with all customary law, it has to be proved in the first instance by calling witnesses acquainted with the native custom until the particular customs have, by frequent proof in the courts, become so notorious that the courts will take judicial notice of them

The traditionalists would not even be willing to rely on guidance by African assessors even when one of the functions of such assessors was to advise the judge on matters of customary law. In *Ndenbera S/O Mwandawale*¹⁹⁴ the East African Court of appeal held that the existence of native custom must be proved in evidence and must not be assumed from statements of the assessors or from the experience of the judge."In *R.V Gansambizi Wegonga*¹⁹⁵, the East African Court of Appeal rejected a position that had been taken by a trial judge that since he had the assistance of assessors, it was not necessary to call a witness to give evidence in proof of a custom.

¹⁹¹ Divorce Act as seen above n218.

¹⁹² Evidence in East Africa by H.F.Morris No.24 at pp.112 to 113.

¹⁹³ (1916) P.C 74 28, 43.

¹⁹⁴ 1947 14 EACA 85.

¹⁹⁵ (1948) 15 EACA 50.

The court stated that the legislatures of all the East African territories have been vague, perhaps intentionally so in defining or setting out (assessors) functions and until they are so defined it would be unsafe and impossible for the court to set them out in comprehensive certainty. All that can be said is that in the examination of the actual exercise by assessors of any functions, this court will always apply the test of what is fair to the accused person and will keep in mind the example of natural justice.”

In some cases the court will be able to take judicial notice of these customs without further proof where the particular customary law has been the subject of a previous judicial decision or where the customary law is set out in a book or document of reference but usually in the High Court or in a magistrate's court the relevant customary law will, as a matter of practice and of convenience, have to be proved by witnesses called by the party relying on that particular customary law in support of his case.¹⁹⁶

It would, in my view, be wrong to rely only on the opinion of assessors at the conclusion of the trial. In *Kigozi Vs Njuki*¹⁹⁷ Whitley C.J stated thus in British courts questions of custom rarely arise and when they do arise the courts probably have no definite knowledge as to what the custom is and unless the custom has become notorious it must be formally proved by evidence.

In the native courts of Buganda the position is quite different since they have few written laws and no case law and consequently they are for the most part administering customary law. Justice is administered by the high Officials and Chiefs who are themselves familiar with the customs of their people and generally speaking require no evidence to inform them what those customs are. In the great majority of cases in their courts turning upon customs, it would be unreasonable to expect evidence as to custom.

Article 33(1) provides that women should be accorded full and equal dignity of the person with men yet under the custom of bride price; women are not treated as human being but as chattels. They are priced so low that they are exchanged for a cow or a few cows, a pig or a few pigs or a goat or a few goats. Their price is fixed without reference to them and many young men cannot marry because they have no property to pay for young women.¹⁹⁸

¹⁹⁶ *Angualia Busiku & Co. Advocates, www.lawyers-uganda.com.*

¹⁹⁷ 1943 6 ULR 113.

¹⁹⁸ The 1995 Constitution of the Republic of Uganda .

A young woman is not at liberty to choose a man of her heart because if he has no property, she has no chance to marry him. Marriage is not an exercise of free consent as required by **Article 31(3)** of the Constitution. Bride price helps to perpetuate a belief in society that a man is superior to a woman, that once he buys a woman, he can batter her, humiliate her and treat her as he likes.

In Uganda still reference to **Article 26(1)**, it can be said that the courts separate that property which one of the parties may be holding in trust for other people and do not consider it as part of matrimonial property. It also establishes that there is a right to own property as an individual before the marriage and that this right is retained even during the marriage. Therefore against this background, courts recognize the constitutional provision that all persons married or not are entitled to own property as individuals or jointly in association with others.¹⁹⁹

Therefore, property acquired solely by either party to the marriage remains under the sole ownership of that party even in the subsistence of the marriage and even after the marriage, unless the sole owner transfers or consents to joint ownership with his or her spouse.²⁰⁰ In the absence of such intention to convey the property, it cannot be said that the property in issue constitutes matrimonial property. There is no presumption that any or all property acquired during the subsistence of the marriage is/must be treated as being jointly owned by the parties. It is therefore possible for property rights of parties to the marriage to be kept entirely separate.²⁰¹

To make matters worse, even at dissolution or death, they have estates entirely distinct from each others. The principle that courts are to assume community ownership unless it is excluded by the parties to the marriage has been pronounced as a matter of policy for Parliament to effect and therefore courts cannot infer the same.²⁰² As such, courts seem to be making a point that unless parliament legislates to the effect that there should at law be a presumption of joint ownership for every property owned by the spouses in a particular marriage, they too (the courts) are willing to maintain the constitutional provision of the right to own property jointly or in association with others. The most recent inference of joint ownership of property was recently propounded by Justice Kenneth Kakuru in the court of

¹⁹⁹ Article 26(1) of the 1995 Constitution of the Republic of Uganda (as amended).

²⁰⁰ Julius Rwabinumi v Hope Bahimbisomwe, Constitutional civil appeal No.10 of 2009.

²⁰¹ Essa v Essa, Kenya Court of Appeal, Civil Appeal no.101 of 1995.

²⁰² Petit V Petit [1970] AC 777.

appeal in which he was of the view that the effect of the vows in church at weddings is that they automatically convert property owned individually before marriage into jointly owned property. However, the propoundment was vehemently opposed by the Supreme Court on appeal of the same case.

Furthermore, courts look at time considerations that sometimes how much property one gets depends on how long the marriage has subsisted for example if one of the parties has spent most of the most productive years of his/her life in the marriage, chances are the courts will not allow her/him to walk away empty handed at the dissolution of the marriage. This is because equity would not be in favour of this. In fact, sometimes even when there is no evidence of marriage (as is the case in situations of cohabitation), courts will often take into consideration the fact that the petitioner has lived in a given house for many years without objection from the other party and that this is enough to make the staying party believe it was their home and due to this, the 'owning' party is estopped by his conduct from denying that that party does not have an interest in the house.²⁰³

4.5 Challenges faced while enforcing women's rights to property ownership in Uganda

Failure to Implement Constitutional Protections

Article 21²⁰⁴ confirms the equal status of all Ugandans before the law, provides for the equal protection of the law, and prohibits discrimination on a number of grounds including sex. **Article 33**²⁰⁵ accords women equality with men and 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."²⁰⁶ However, policy has failed to translate into action, and there has been a distinct failure to implement constitutional provisions to protect women which is often overlooked. Uganda has a brilliant, progressive constitution for women but it is not operationalized."²⁰⁷

The constitution is designed to provide for the Ugandan people's most fundamental rights and freedoms. Yet women's constitutional rights are literally trampled upon on a daily basis. In 1999, the Ministry of Gender, Labour and Social Development (Ministry of Gender) noted

²⁰³ Haji Musa Kigongo v Olive Kigongo (High Court Civil suit No.295 of 2015).

²⁰⁴ 1995 Constitution of the Republic of Uganda as amended.

²⁰⁵ Ibid.

²⁰⁶ Ibid at art.33.

²⁰⁷ UN Women, Dashboard, Global Gender Equality Constitutional Database, (2016), accessed on 21st May 2019.

that whereas in the new constitution there are positive provisions, it is still too early to celebrate their application as the law enforcement organs are adjusting to meet the constitutional principles. Moreover, economic, social and cultural constraints still hinder the full realization of women's equality."

Property violations committed by spouses and in-laws transgress constitutional provisions affording every person protection from the deprivation of property still exist regardless of the law.²⁰⁸ Forced sex, women's inability to negotiate condom use and procreation, unequal rights over children and discriminatory grounds for divorce contravene women's entitlement to equal rights during marriage, and at its dissolution under **Article 31(1)**.²⁰⁹ Polygamous unions which entitle husbands to marry multiple spouses are also inconsistent with **Article 31(1)**.²¹⁰

There are also constraints to Effective Prosecution, despite the law being neutral, its application and enforcement tends to be biased; the Ugandan legal regime discriminates against women and perpetuates women's subordinate position in society; the attitude of law enforcement officers and agencies, even where laws are non discriminatory, influences the application of the law by judicial officers, magistrates and judges as well as the police and prison service.²¹¹

A discriminatory legal framework is just one of the many obstacles that Ugandan women face in trying to escape abusive relationships. Women remain without adequate recourse to state protection whether through the police or the local courts and contend with social stigma when attempting to prosecute their abusers biased officials, convoluted legal processes and the imposition of official and unofficial "fees" hinder women at every step.²¹²

Individual women and NGO representatives depicted government institutions that directly handle cases of violence against women as ineffective and non-responsive to women's needs. Numerous challenges remain regarding reporting, follow up, arrest, trial and punishment of perpetrators of gender violence. These include the fact that officials in these different

²⁰⁸ Convention on the Elimination of All Forms of Discrimination against Women", available from http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty CEDAW (accessed 15 March 2018).

²⁰⁹ Art.33 of the constitution of the republic of Uganda, 1995.

²¹⁰ Ibid.

²¹¹ World Bank Group, Women, Business and the Law 2016; getting to Equal, pp.45-46, (Washington, D.C., 2015).

²¹² Ibid.

structures and often the victims themselves are inculcated in and have internalized the culture of gender inequality such that they are not cognizant of what constitutes gender violence.²¹³

In an effort to enhance the police response, the government has established family protection units at police posts at the national level, gender desks at the district level, and has carried out gender sensitization of law enforcement agencies.²¹⁴

Women are more often employed in the informal sector and are restricted to low paying, labor intensive occupations such as domestic work and as a result, their labor rights are not legally regulated, leaving them with little protection. Women also face severe impediments on rights to own or inherit property. As in many developing countries, land in Uganda is the most important factor of production and Ugandan women play a central role in agricultural output.²¹⁵

Ugandan marriage and divorce laws discriminate against women and contravene constitutional provisions providing for nondiscrimination,²¹⁶ equal protection of the law and equal rights in marriage, during marriage, and at its dissolution. In 1999, the government admitted in the laws of marriage, divorce or inheritance, there is no gender equity or fairness to date. The woman is always in a subordinate position. This position is aggravated by the requirement in most marriages that bride price be paid to the parents of the female so that the family and clan of the husband tend to take the woman as property."

Legislative reforms under the 1998 Land Act, which provide some protection for women, are nevertheless undermined by gaps in existing legal provisions or implementation mechanisms. The situation of women's, children's and orphans' land rights on the ground does not appear to have been significantly affected by all these reforms. The little research conducted to date suggests that while many people are aware of, and some support, the reforms, this has not translated into improvements in the security of land rights of many women."²¹⁷

Article 37²¹⁸ does not attempt to specify or list what customs or cultural practices it guarantees. It is a general provision for the protection and guarantee of all lawful customs

²¹³ OHCHR and UN Women, *Realizing Women's Rights to Land and Other Productive Resources*, p. 36.

²¹⁴ Action Aid, *Making Care Visible, Women's Unpaid Care Work in Nepal, Nigeria, Uganda*, (2013), pp. 4, 6.

²¹⁵ Mathur, Greene and Malhotra; United Nations Commission on Population and Development 2003.

²¹⁶ Article IV of the Constitution of the republic of Uganda, 1995.

²¹⁷ Uganda, Ministry of Lands, Housing and Urban Development, *The Uganda National Land Policy*, paras. 67(i)-(iii), (Kampala, 2013).

²¹⁸ 1995 Constitution of the Republic of Uganda.

/cultures that are recognized and accepted as such by the people of Uganda who cherish

them. It follows therefore, that if a custom is known to exist and it does not offend against any provision of the Constitution or other laws of the land, then such a custom qualifies for the constitutional guarantee and protection under Article 37.²¹⁹ The Constitution itself commands in Article 31 (1) (b) the enjoyment of equal rights by parties to a marriage at, during and at the dissolution of marriage. There are also other provisions of the law including Articles 43 and 50²²⁰ of the Constitution and Penal laws that can be called to the aid of an aggrieved party in the event of the collapse of such a marriage.

Conclusion

In conclusion, ownership of property for women depends on the circumstances of the members and spouses they live with in different families. Laws have been adopted and various institutions like NGOs to protect women, however, significant gaps still exist for instance practices of paying a dowry or “bride price” are not exploded especially in circumstances of separation between spouses where such payments are non-refundable.

²¹⁹ Ibid at art 37.

²²⁰ Ibid at Article 43 and 50.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter provides for the summary of findings as presented in the chapters above, conclusions and recommendations for improvement in regulations of women's rights concerning property ownership.

5.1 Summary of findings

5.1.1 Law Governing Protection of Women's Rights to Property Ownership in Uganda

It was found out from chapter two that the law governing women in regard to ownership of property involve the Constitution of the republic of Uganda 1995 as amended which is provided under Article 24 which ensures gender balance and fair representation of marginalized groups such as women and those cultural values that promote and enhance the dignity and well being of Ugandans shall be preserved. It is further protected under Art 21 which provides that all Ugandan citizens have the Constitutional guarantee to be free from discrimination among other Articles; hence the constitution of the republic of Uganda was so much relevant to this research work in regard to protection of rights of women in regard to property ownership. Further it was found out that the Land Act 1998 also provides for protection of women's rights towards property ownership under Section 40 which requires the prior written consent of both spouses in transactions involving family holdings, defined as land on which the family ordinarily resides and from which they derive sustenance. Section 28 which prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land, as well as decisions that impose conditions violating constitutional provisions protecting women. Further under Section 17 (4) (b) which provides that at least one-third of the members of the Communal Land Management Association must be female. However, NGO platforms through the Law and Advocacy for Women in Uganda (LAW-U) protects women's rights to property ownership for instance the study indicated that women rights activists under the auspices of Law and Advocacy for Women in Uganda (LAW-U) held a one-day "Think Tank" in order to evaluate advocacy efforts used in the struggle for the co-ownership clause.

5.1.2 Effectiveness of Mechanisms of Enforcing Women's Rights in Uganda

Chapter three findings expressed the fact that regardless of the regulations in protection of women's rights to property rights, there are mechanisms used in protection of women's rights although most of these mechanisms do to a greater extent violate women's rights because they are based on traditional beliefs for instance in marriage, as a result of inequalities entrenched in history, cultural practices and some laws, women have not been able to enjoy their rights to property especially land at the same level as men. Indeed, women in Uganda face persistent and systemic violations of their land and property rights. Hence under this mechanism, a woman is considered the property of her husband if he paid a "bride price" for her. Property rights to women's ownership of property is also expressed under culture for example among the Among the Banyankole a woman has no customary right to own property except items such as pots and that when she acquires property, it is still called the man's property. Iteso (Eastern Uganda) where it was expressed that property customarily belongs to men for instance women may purchase and own animals and some household property and foodstuffs but no land among the other tribes expressed in Chapter three. International instruments like International Covenant on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights and The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have also been effective in regard to rights of women to property ownership.

5.1.3 Strategies employed in enforcing women's rights towards property ownership in Uganda

It was found out that institutions like courts have been used to establish principles which recognize each spouse's contribution to acquisition of property. This contribution can be direct or indirect and it is direct when there is a monetary contribution, say where both parties pool financial resources from their different salaries or any other sources and purchase or develop property jointly. Emphasis has been put on treatment of Joint property between husband and wife and ownership of property in regard to bride price is emphasized. However, to emphasize the issue, focus was put on examining the relationship of ownership of property by women by other jurisdictions with similar provisions in their Constitutions and it was found that in Tanzania, under Section 4(1) the court looks forward construing the excating law to provide protection for women in regard to property ownership, this was on addition to

other laws which reflect proceedings in Uganda concerning protection of rights of women as enshrined in the constitution of the Ugandan republic and other statutes.

5.2 Conclusions

Property rights are claims to property that are legally and socially recognized and enforceable by external legitimized authority. These rights can be in the form of actual ownership or usufruct, the rights of use. In Uganda, women are protected under certain instruments, however, under certain mechanisms, a woman is considered the property of her husband if he paid a "bride price" for her, hence strict policies need to be embarked on like severely punishing those who mistreat women and also changing traditional beliefs and amendments of the law.

5.3 Recommendations

To the Ugandan government

It is recommended to strengthen efforts to eliminate practices and belief that hinder women from owning property. A strategic action plan geared to achieving this objective must be put in place without delay, involving both governmental and non-governmental actors which should not be perceived as long-term, distant or unattainable.

It should eliminate remaining discriminatory legislation and adopt laws to increase protection of women's rights and as well focus on implementation of all relevant decisions of the Constitutional Court on succession and property ownership for both women and men without delay

A marriage and divorce law protecting Muslim women's rights, in conformity with the Constitution and international law, must also be adopted urgently, with a view to eventually adopting a unified Act.

It should take measures to ensure the effective implementation of the Domestic Violence Act. Implementing regulations, the necessary budget, and an implementation scheme must be adopted without delay. Such implementation scheme must include the following as priorities: Adoption by government of a training scheme for actors in the justice and law sector; Review of the Local Council Act to include the duties under the law as part of their mandate; Provision of training to local authorities on their new duties under the Law; Launch of a

media awareness raising campaign on the Law, including air-time for NGOs; Include awareness raising/training module on the Law in police standard curriculum, and specialized training for community services officers; Improve Ministry of Health/NGO cooperation with a view to enhancing the capacity of health professionals under the law. This should reduce on the case backlogs especially when women desire to protect for their rights for property ownership.

The government should ensure women's access to justice by adopting measures to overcome obstacles, including the costs of criminal investigations and failures in the collection of forensic evidence, police investigations and trials.

Recommendations to the police

Policies should seek to increase the presence of women in the police forces including operational rank, and provide victims of or at-risk of "honour"-based violence the option of speaking with a female officer. In some communities, victims may be reluctant to report "honour" crimes to male police officers hence there is need to recruit more female counterparts in the police to reduce on the backlogs.

Trainings for police that provide information on women's human rights, violence against women, cultural sensitivities, and "honour"-based violence, including its prevalence, defining characteristics, risk factors and consequences should be embarked on.

Responding in a language understood by the complainant/survivor, conducting a coordinated risk assessment of the scene, interviewing parties, witnesses including children, separately and using an authorized interpreter and not rely on family members, neighbors, friends or community members to act as an interpreter. This will help women simplify claims on especially separation.

Recommendations to the legislative assembly

Legislative measures can be taken by the appropriate legislatures to curb excesses like commercialization of the bride wealth. Such parties should be encouraged to resort to those laws and the remedies they offer.

The parliament of the Ugandan republic is advised to provide for posts from various districts for representatives to fight for women's rights in regard to property ownership.

Recommendations to the judiciary

Laws should state that the constitution and other legal authorities are meant to protect victims especially women and vulnerable, this will help reduce on the lack of knowledge on law operations.

The judiciary must earlier provide ruling for cases related to family especially those from women claiming for their rights to property ownership. This will help reduce on the high rates of case backlogs happening in courts of law in Uganda.

The judicial committee should consult and work closely with non-governmental organizations and victims' advocates. These policies should provide for a collaborative, coordinated response among the various relevant sectors.

To the International Community

The international community, including the UN, the African Union, the African Commission on Human and Peoples' Rights, the European Union, the Commonwealth and donors should support the government of Uganda in its efforts to address discrimination against women.

The international community and donors should support civil society organizations to strengthen their action in favour of women's rights throughout the country, including rural and post-conflict areas.

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