

EXTRA-LEGALISM, GENDER LAND RELATIONS AND LIVELIHOODS: CHALLENGES AND OPPORTUNITIES FROM NORTHERN UGANDA.

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Abstract: Women's access to land is critical for sustainable livelihoods of vulnerable households. The majority of women in Uganda depend on customary agricultural land as the only main source of livelihoods. In Northern Uganda customary ownership is often regulated by marriage regimes which are not legally registered, but determine access and inheritance rights to property, which are unethical in the sense of promoting gender justice and violating the fundamental rights of women to own landed property. It is mainly through marriage that women acquire user's rights to land. Furthermore, the dynamics of access are changing in the region where most women were left as widowed with orphans after a protracted conflict, which even weakened customary practices that used to guarantee access rights to women. With the changing socio-economic conditions including increasing land values, male relatives are claiming land over which, women, especially widowed have had rights. Based on the observable gap in de jure and de facto land rights for women, this study suggests for the harmonization in statutory and customary regimes. Statutory law recognizes women's rights to own property and protection of their rights to inherit property, but also retains customary provisions. The marital property and inheritance rights remain discriminatory, recognizing men as head of household, and therefore

the rightful authority over land. This paper analyzes gender justice in an extra-legal patrilineal society of northern Uganda, looking at the dynamics of women's access to land, insecurity and resource conflict, livelihoods and the importance of harmonizing the statutory and customary regimes.

Keywords: Customary Laws, Gender Perspective, Livelihoods, Patrilineal and Resource Conflict

INTRODUCTION

Access to land is critical to sustainable livelihoods of vulnerable households. People with extensive rights to land are more able to enjoy a sustainable livelihood compared to those with limited rights (FAO 2002:1&2). A sustainable livelihood comprises of capabilities, assets and activities needed for a living (ibid. p.4). Recent studies revealed that agricultural food production continues to dominate family and household units and denial of large access to land results into unanticipated consequences such as extreme poverty, dependence, and social instability (ibid.p.6). Households are impaired to access secure livelihoods and sufficient food security when there is insecurity of tenure (ibid.p.18). With the changing socio-economic conditions on customary ownership, shortages or increasing land values, male relatives are claiming land over which, women, especially

widowed or single women have had rights (ibid. p.25). Changes to promote security of women in statutory land policy have been contradicted by cultural norms and practices, in which the rights of women are mostly ignored (ibid. p.27).

Millions of women in Africa depend critically on land for livelihood (Agarwal 2003:2), benefiting in a numbers of ways including: welfare improvement, efficiency, equality and empowerment (Agarwal 2002; 2003:193-97). Women's access to land can be through the state, the family and market. However, access through the family and markets deserve particular attention (Agarwal 2003:218). Women's access to land is a major aspect of women's property rights development in Africa where livelihood of the majority depends on land (UNECA 2007:6). Many African countries have revisited their existing land laws but with little attention on gender justice (ibid. p.9). Changes have been made to protect women's equal rights in the constitution and land laws including Ethiopia, Madagascar, Mozambique, South Africa, Tanzania, Tunisia, and Uganda. However, studies in these countries revealed that women usually stay in the margins in the competition for land due to their less powerful societal status, poorer education and poorer economic resources (ibid.p.10). In addition; these changes sustained and or redefined the role of customary laws while ensuring gender-equal access to resources through statutory laws (ibid. p.11). Customary inheritance laws cannot be ignored in African context:

Due to patrilineal kinship systems and customs, women have not been able to own and control land in most African cultures. Since the customary laws are still very powerful in many countries, despite the policy development for securing women's rights, statutory policies and laws are sometimes formulated in an attempt to respect the customary laws and avoid conflict with them. This has lead to situations wherein women are not able to claim their rights, because it is (a) against their social or cultural beliefs or (b) there is no system to do it or anybody to whom discrimination can be reported, or (c) statutory law is not easily interpreted and it is not clear to either party how to proceed (UNECA 2007: 13)

Although women have equal rights to land ownership in theory, in practice women only have use rights over the land, which is owned by their families or husbands.

Experts revealed that women in Africa contribute to 70 percent of food production. Yet, their rights tend to be held by men or kinship groups controlled by men. This dependency on men leaves many African women vulnerable (Kimani 2008). Women always lack tenure security, and this is exacerbated by conflicts were they are left as widowed with

orphans (Barangi & Weitzner 2006:5). Also, conflicts weakened the capacities to regulate tenure and use, create insecure tenure and access, and weakening the traditional instruments for managing land-related disputes. Wars also displaced thousands leaving land to be occupied other peoples. The return of internally displaced persons to their traditional lands during recovery periods generates new conflicts and pressures for compensation (ibid. p.10). In Sub Saharan Africa, laws related to marital property and inheritance rights remain discriminatory. African cultural attitudes consider women's inheritance of land a threat to the continuity of clan land (Benschop 2004). Access security in land today is influenced by factors like: (1) erosion of customary laws and practices that protect women from exclusion; (2) registration of land in name of husband; (3) discriminatory laws and policies; (4) lack of representation in decision making bodies; and (5) lack of awareness.

Many studies in Uganda have focused on property rights for women in Uganda, including land rights access (Ellis et al 2006; Birabwa-Nsubuga 2007). However, there is little work done explicitly on extra-legal patrilineal society. Few studies have been conducted on the institutional practices (customary regimes) that reinforce gender injustice in property rights, including where points of success and challenges in promoting gender injustice. This study therefore analyzes the new dynamics of exclusion in an extra-legal patrilineal society of northern Uganda. It focuses on examining the clash between the de jure rights and de facto rights in the communal system of land holding. It investigates who has, or should have, the control over which rights. It first looks at policy and structural support put in place to support women's rights. It then explores the dynamic of post conflict land rights access, discusses the importance of effective and independent land rights and suggests what could be done to improve women's access to land.

This article is divided into parts proceeding introduction. Part one is about the introduction. Part two highlights the methodology of the study. Part three is a review of the concept of gender justice as a contemporary positive approach to development thinking. It is a right-based approach which acknowledges state to move from the first generation civic and political rights to second generation economic and social rights. Part four discusses the observable gap between the de jure and de facto of gender justice. Part five examines changes in gender injustice on land over time in Acholi sub region of Northern Uganda. Part five discusses policy recommendations and conclusions of the study.

METHODOLOGY

This paper first review empirical literature and the government commitment in promoting gender justice in Uganda.

Using qualitative research design, the study therefore analyzes the new dynamics of exclusion women's land rights in an extra-legal patrilineal society of northern Uganda. Interviews were conducted to selected women at in Unyama Sub County and in the peri-urban area, Laroo Divison, Gulu municipality, Gulu district. Information collected was based on de jure and de facto of women's access to communal land, and how the marriage regimes influence women's access to land in Northern Uganda. This is because most lands in these areas are owned communally. The semi-structured interviews aimed at capturing their experience on access to communal land, resource conflict and livelihood in relation to custom regimes. The focused groups were conducted at Local Council I level in the community. This study also used the review of the current law and secondary sources. A total of 10 case studies were analyzed based on the information of women's exclusion through FIDA Uganda, Gulu Office. Also, personal observation and experience of growing and living in the Acholi region where these customs are practiced constitute part of information gathering. This paper therefore debates the dynamics of access to land by women; the cultural bias embedded in the notion land rights and the redress needed to correct the injustice.

THE CONCEPT OF GENDER JUSTICE IN LAND RELATIONS

Gender concept is a social construction of difference between men and women. It is the institutionalized sexual difference (Okin 1989:6 in Nyamu-Musembi 2007:172). According to this definition, justice is relational. However, this definition has been criticized on a number of grounds: it assumes a universal subordination, by excluding the focus on power relations between men and women; it assumes women are powerlessness, yet they could draw power from their family, religion or community; and the assumption of nuclear model is misleading in African contexts (cf Steady 2002 in Nyamu-Musembi 2007:172-3).

There are lot misconceptions about the concept of gender justice. There is no precise definition of gender justice. It is however, used interchangeably with the notion gender equality, gender equity, women's empowerment and women's rights. Gender justice is often used to describe emancipation projects that advance women's rights through legal change, or promote women's interests in social and economic policy (Goetz 2007: 17). Additionally, Ideologies and conventions about women's subordination to men and the family are rooted in

assumptions about what is 'natural' or 'individual ordained' in human relations. The implication is that on women's rightful subordination are legitimized not by appeals to justice but by socially embedded convictions about honor and propriety – convictions felt beyond the realm of justice. Therefore, it is not surprising that the concepts of gender justice that seek to enhance women's autonomy or rights in relations to men are controversial and arouse intense debate. More so, the patriarchal mindsets and social relations that are produced in the private sphere are not only contained, but infuse in most economic, social and political institutions. Therefore, the term gender justice provides a direct reminder of this problem of institutionalized bias in its conception and administration, is often much gendered, responding to patriarchal standards derived from the domestic arena.

The enabling paradigm (entitlements and choice) of gender justice has roots in liberal feminist political philosophy. It begins from the central dilemma of feminist politics that oppressed women themselves may not propose a gender justice that challenges male privilege because they have been socialized into the acceptance of their situation. Familial and social conventions can disable women's agency by limiting their capabilities and act independently, and by obliging them to put the need of others above their own. In response to this women's acquiescence in their own social and economic subordination, feminist political philosophers (e.g. O'Neil 2000, Nussbaum 2000 & Young 1990) have debated for the 'minimum capabilities' approach to describe the principles of gender justice as an enabling paradigm. It is based on constructing the conditions required for free and rational individual choice. This paradigm was adapted from Amartya's 'capabilities' approach. 'Capabilities' are what people are actually able to do and to be. The 'capabilities' approach focuses on minimum necessary requirements, retreating from the profound challenges of the struggle for human equality. It is blamed for retreating from equal rights to basic entitlements (Goetz 2007:19-20).

Another paradigm looks at gender justice as absence of discrimination. The most formalized attempt to establish principles of gender justice is found in the 1999 CEDAW. It stipulates that absence of gender discrimination is gender justice. According to Cook, determining whether discrimination against women has occurred can be assessed by asking two fundamental questions: (1) Do the law, policies, practices or other measures at issue make any distinction, exclusion or restriction on the basis of sex; (2) If they do make such distinction, exclusion or restriction, do they have effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital

status, on the basis of equality of men and women, of human rights and fundamental freedoms? (Cook 1997:189) Although CEDAW has introduced the concept justice in the absence of discrimination, asking states to commit themselves in addressing gender injustices, CEDAW however, has been lacking the ability to challenge the legal institutions that are male biased. This is because it lacks the viable enforcement mechanisms it instead demands on states to implement on its behalf (Goetz 2007:23).

Gender justice as positive rights is a contemporary approach to development thinking. It is a right-based approach. It acknowledges that states have been very instrumental in achieving so called first generation civic and political right from second generation economic and social rights. However, Advocates of substantive right-based approaches further argue that first and second generation rights are interlinked. The civic and political rights are meaningless without economic and social rights. State's role as a guarantor of rights therefore should involves: (1) an obligation to respect (the state's duty not to interfere); (2) an obligation to protect (setting safety standards or protecting property); and (3) an obligation to fulfill (positive action in identifying vulnerable groups and facilitating their access to resources. This is important for disadvantaged groups) (Gaitha 2003, in Goetz 2007: 26). However, the approach has been labeled as impractical; with easy promulgation into the law but very easily evasive he agents.

Goetz (2007) proposes a model for analyzing the constraints to gender justice in any society.

The practical working definition of gender justice for this paper is built on the right-based approach. Goetz (2007) defined gender justice as "the ending of – and if necessary the provision of redress for- inequalities between men and women that result in women's subordination to men. These inequalities may be in the distribution of resources and opportunities that enable individually to build human, social, economic, and political capital." "Gender justice requires that women are able to ensure that power-holders – whether in household, the community, the market, or the state – can be held to account so that action that limit, on the grounds of gender, women's access to resources or capacity to make choices, are prevented."

Goetz supports rights-based approach to gender justice. However, she stresses on the process of defining rights and justice drawn from the attention to the way the institutions that produce rules and adjudicate disputes between women and men institutionalize biases against women. A conceptual analysis must draw attention to: (1) the persistent and profound influence of sub-state human communities within which gendered norms are generated; (2) the

nature of both formal and implicit contracts within these communities that determines the extent to which power-holders must answer less powerful members; (3) the phenomenon of patriarchal 'capture' of authoritative roles and significant resources in rule making institutions, as well as of rights; (4) the subtle institutionalization of male bias in the systems for adjudicating disputes or punishing offenders (Goetz 2007: 31-32).

"Understanding the ideological and cultural justifications within each arena of women's subordination can help to identify the means of challenging patterns of inequality "(Goetz 2007: 16). The consequence of systems of male capture and bias in rule-making institutions is the creation of limited membership rights and capabilities for women – constrained citizenship rights (ibid. p.32). To explain why formally equal citizenship rights do not produce equivalent entitlements for women and men, it is important to acknowledge that few states have drawn clear distinctions between public office and private interests. More so, there are few states in which norms, prejudices and affections that have developed in particular communities are exercised from the deliberations of public actors in deciding who should benefit from public resources. In some cases, pre-state normative and authority systems are particularly strong. Therefore, the state's rulings on justice are ignored by powerful groups, and the rights it extends to all citizens are not deemed legitimate or relevant to those who must urgently require them in order to transform the oppressive social relations (ibid. 35).

Furthermore, many states have colluded in this, by ceding control over women and children in the periods of state formation to traditional patriarchal groups, excluding many forms of injustices in private relationships from the purview of formal law as a form of compensation for those authorities for their surrender of power to the state (Goetz 2007: 35). This is reflected in the constitutional provision a country 'personal law.' For examples, on law governing marriage, divorce, inheritance and clan-based property right management.

The cultures of 'patriarchal connectivity' value kinship that is organized on the basis of gender and age domination. The effect of privileging these cultures is that patriarchal family becomes the basic unit of membership of political community, and the individual's position and the role of family shapes assumptions their rights and entitlements as citizens (Joseph 2002:25). Inheritance and property ownership will not be seen as legitimate by the traditional community. The prevalence of patriarchal attitudes across public institutionalized and customary forums means that often men may feel confident that their interests as patriarchs will be

defended, no matter what the forum, and no matter what ideologies and principles (individual rights, Islamic jurisprudence, and customs) are used to justify the rulings.

Goetz has given considerable explanation of competing norm-producing systems in developing countries to show the difference that exists between models of modern rights-bearing citizens equal before the law, and experience of most people, to whom formal law may be irrelevant. Customary patriarchal norms derived from familial and class relationships infuse state-citizen relations in Africa, constraining women's entitlements. As Goetz noted that in response to the limited penetration and legitimacy of citizenships based equal rights before the law, there is need for inclusive citizenship strategies in order to challenge the tyrannical traditional social relations. During the positive engagement with legal pluralism, it is important to identify and build upon those aspects of customary law and practices that accord women rights over resources, especially land rights where women have significant access to and control over clan controlled land. In doing so, we should interpret customary law in light of international human rights norms, and activation of claims to citizenship rights through collective action (Goetz 2007: 42-44).

This paper conceives land rights as defined by Agarwal (2002) as "claims that are legally and socially recognized and enforceable by an external legitimized, be it a village-level institutions or some higher-level body of state". And that these rights can be in form of usufruct, freedom to lease out, mortgage, bequeath, or sell. (Agarwal 2002:3). Addition, the distinctions in these rights are relevant. First, is the difference between the legal recognition of a claim and its social recognition, and between recognition and enforcement? A woman may have a legal right to inherit property, but this may remain on paper if the claim is not recognized socially legitimate or if the law is not enforced. Second, is a distinction between ownership and effective control? Legal rights do not automatically mean rights of control in all its senses. Legal ownership may be accompanied by restriction on disposal. Third, is the distinction between rights vested in individuals and those vested in groups (Agarwal 2002:3). This analytical conceptualization concerns an effective and independent right in land, effective rights being rights not just in law but also in practice; and independent rights being rights that women enjoy in their own capacity and independent of those enjoyed by men. Therefore, there is a gap between legal rights and actual ownership, especially in patrilineal system where there is strong male resistance to endowing women. This gap in the *de jure* and the *de facto* is what is study is interested in, that women ownership

be accompanied by effective control so as to a difference the theory and practice.

Despite the scholarly disagreements on what constitute gender justice, the following elements have emerges in favor of what constitute gender justice: (a) Fair treatment of women and men, on the basis of substantive outcomes, not on the basis of formal equality (b) Fairness should be both at interpersonal relations and institutional level (c) Realignment of the scales in women favor given the long history of gender hierarchical disadvantaged (d) Questioning the arbitrariness that characterizes the social construction of gender (Nyamu-Musembi 2007:174-5)

GENDER JUSTICE IN UGANDA: AN OPPORTUNITY OR CHALLENGE FOR WOMEN?

The practical working definition of gender justice in this paper is built on the right-based approach, a contemporary positive rights to development thinking. The study acknowledges that the state has been very instrumental in achieving so called first generation civic and political right than in achieving the second generation of economic and social rights. With respect to gender justice in land rights to women, institutions that produce rules and adjudicate disputes between women and men institutionalize biases against women. Right-based approach requires a high level of commitment to address women access to land in a more comprehensive way. However, the challenge remains in confronting persistent patterns of inequalities and discrimination in development and formulating action to deal with them. Right-based approach emphasizes the quality of the progress both as required by the law and for the goodness of development itself.

In this section, we shall first explore the possibility of institutional opportunities (*de jure*) provided to women. The national land policy provides a lot of promises in promoting gender justice in Uganda. Section 40 of the Land Act 1998 requires that before any transaction is carried out on land which a family resides or derives its subsistence from, the spouse, dependent children of majority age and the Land Committee should be consulted. This section was amended in 2004 to allow spouses have the rights to use access and live on their husband's land and they may withhold their consent to stop land transactions. In this case, women have been given the opportunity of controls in land decisions making. However, the consent clause does not really empower women or protect their land rights.

Article 21(1) of the Constitution of Uganda recognizes equality of every person before and under the law in the political, economic, social and cultural life and every other aspect and shall enjoy equal

protection of the law. It confirms the equal the equal status of all citizens under the law and prohibits discrimination on the basis of sex. Article 26 (1) provides for every person, including women, the right to own property. Article 31 (1) guarantees women's equal rights upon, during, and after marriage and provides for the protection of the rights of widows and widowers to inherit the property of their deceased spouses. Article 32 (1) obliges the state to take affirmative action in favor of groups marginalized on the basis of gender. In decision making institution of Uganda Land Commission, at least one must be a female out the four members. In the District Land Boards, at least one- third of the members of the board have to be women.

Article 2(2) recognizes that if any law or any custom is inconsistent with any provision in the constitution, the constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency be void. Article 33(6) prohibits any laws, cultures, and traditions which are against the dignity, welfare of interest of women. Article 237 of the constitution provides that land in Uganda shall belong to the citizens of Uganda and shall vest in them accordance with four tenure systems: customary, freehold, mailo and leasehold. Article 237 (4) (a) of the constitution recognizes customary tenure as one of the forms of land holding in Uganda. It accounts for 75 percent of the total land holding in the country.

There is a great recognition on the importance of property rights in the economic empowerment of women, both at international and national commitments. Uganda is a party to The Convention of the Elimination of all forms of Discrimination Against women (CEDAW). Article 14 of CEDAW requires states parties to account for problems faced by rural women and their significant roles in the economic survival of their families (CEDAW Article 14(1)). However, the problem is now translating the substances in the article in practice.

Uganda is also a member of African Charter on Human and People's Rights (ACHPR) ratified in 1986, bestows a duty on all state parties to ensure equality before the law, the elimination of every discrimination against women and also ensure the protection of the women and the child as stipulated in international declarations and conventions (ACHPR, Article 3 and 18(3)). However, the ACHPR does not ensure effective protection of women rights. It does not effective engage the state parties to promote access justice through ensuring effective access.

The Land Sector Strategic Plan (LSSP) recognizes the vulnerability of women in relation to security of tenure. It seeks to address the following activities: (1) developing check lists and guidelines for land sector activities in relations to the needs of both men and

women; (2) developing specific monitoring indicators for gender balance programs; (3) under research that ensure women consent provisions of the Land Act are implemented; (4) assessment of training needs to enables women become more effective participants in land sector institutions; (5) addressing gender issues in land information systems, including data aggregation by gender. (Ellis et al 2006:57)

The Uganda's National Objectives and Directive Principles of State Policy number XIV calls on the state to fulfill the fundamental rights of all Ugandans (Uganda Human Rights Commission 2008). The Human Rights Based Approach to planning of Uganda is that legislation, policies and programs for national development should explicitly reflect and implement the standards set out in the international, regional and national human right law which are legal commitments entered into by the state. Objective XI of the directive states that state passes laws that protect and enhance the right of the people to equal opportunities in development. The Uganda's National Objectives and directive Principles of State Policy guideline nine states that facilitates sustainable, non-discriminatory and secure access and utilization of resources consistent with the 1995 of Uganda and other international human rights instruments to protect assets that are important for people's livelihoods. Guideline 9b stipulates that through enabling laws and policies, the state should promote and protect the security of land tenure, especially the vulnerable including the right to inherit. However, there is little illustration of relevance to gender justice in Uganda's National Objectives and Directive Principles of State Policy.

Unfortunately, the de facto is that there is implicit recognition of women interests in land rights and control. Despite the institutional recognition of land holding such as mailo, freehold, leasehold and customary, women's interests in land rights greatly fall under customary tenure system which accounts for 75 percent of the total land holding in the country. Unfortunately, customary land is regulated by customs, the marriage regime, and is not titled or registered. It is male biased. In fact, customary law continues to be recognized even if it contradicts the statutory provisions. This promotes gender injustice in land rights, in which ownership is dominated by men, contrary to greater protection against property rights promises in national laws.

The challenges to promote gender justice is therefore are embedded in the customary regimes, which regulate customary marriages, which are also not legally registered, but determine inheritance based lineal descendents. Women's land rights depend on their relationship with the male counterparts. It is mainly through marriage that women acquire user's

rights. However, it may be revoked when a husband abandons his wife or chases her away from his land. Moreover, an abandon wife cannot remarry unless she loses her rights to her first husband's land. Women don't have the necessary documentation as the rightful owners of the land. While others can buy land on their own, very few can afford to buy. Also, equal access to land through inheritance has not been recognized in the statutory law. The Succession Act does not recognize it.

Custom marriage regimes regulate women's access to land. Customary law is the collection of traditional norms and practices that governed a particular community but do not form part of the national legal statutes of society as a whole. It is based on tradition and custom rather than statutory law (Encarta Dictionary: English, North America). The Marriage Act 2000 recognizes customary marriages as lawful and it is an offence punishable by the law for anyone to contract a marriage with another person under the Act while at the same time in an existing customary marriage to someone else (Cap 251 Laws of Uganda 2000). It legally recognizes customary marriages while making it illegal for individuals customarily married to contract a civil marriage. Section 9 of the Act provides that where parties have made any marriage settlement in connection with the marriage, the details of such settlement should be recorded by the registrar. However, not registering customary marriage does not invalidate it. The Act does not spell out any rights of spouses' rights to property before, during or at the dissolution of the marriage (Birabwa-Nsubuga 2007:18), instead it promotes the interests of group lineage; Individual interests are viewed within the wider interest of the community. Therefore, marriage is considered as a social institution rather than a legal institution (ibid. p. 20). Also, women can jointly acquire with their husband but cannot claim ownership of the property (ibid. p. 30).

The Customary Act is silent on property rights and inheritance issues. Property rights and property inheritance are marriage regimes. Land ownership is closely linked to marital status. Marriage becomes the key to land ownership. Married and widowed have higher possibility of owning land compared to the unmarried ones. Widowed have independent claims to land or inherited land from their husbands may remain unmarried after they are widowed and remain in the community. In short, married women can successfully access land through their husband and the problem is that the access depends on the stability of the marriage.

The iconoclasts have been struggling for the introduction of Domestic Relations Bill (DRB) since

1965, but have not been passed into a law under the different governments that ruled Uganda. It covers all domestic related laws including marriage, divorce, separation, inheritance and property rights. It calls for the automatic co-ownership rights. Article 31 of the constitution which entitles men and women to equal rights in marriage and its dissolution is what DRB is seeking change and enforce all laws and practices that impact on the rights of the family in order to ensure they conform to the constitution and to ensure that all barriers to equal justice within the family unit is confronted and challenged by active participation in the legal processes so as to uphold gender equality and respect for human rights especially women's rights in the family (Birabwa-Nsubuga 2007:16). This Bill has been dismissed as incapable of regulating the marriage institution. Those against the Bill argue in defense of culture and religion which discriminate women on the grounds of sex.

Evidence of gender-based injustice highlighted in the literature includes: (a) Few state programs address landlessness in general, landlessness of female-headed households in particular. The few state-led land reforms have either lacked a gender component. (b) Under representation or complete lack of representation of women in key decision making institutions on land and other key resources (c) Lack of accessibility of land bureaucracies such as registries and dispute resolution tribunals (d) Inequalities are embedded in customary practices. Patrilineal succession, which exclude daughters; the embedded notion that property ultimately belong to the husband, and his lineage. (e) State-initiated programs that led to erosion of women's property rights or reduced control over land by women. The most common one was land titling that have been implemented to varying degrees (Nyamu-Musembi 2007:180-1). Even though women had limited authority over customary land, men do not have absolute ownership. Customary tenure systems recognize certain limits to husband authority, such as the need to consult the network of wider family before the decision is made. State-led titling was issued in the husband's name.

The constitution of Uganda 1995 and the Land Act 1998 has recognized both statutory and customary tenure regimes. However, these provisions are male biased. Yet, the constitution stipulates that state law must prevail where it is contradicted by customary law. Property rights control and inheritance in Uganda are mainly influenced in customary regimes. The table 1 illustrates the influence of culture in promoting gender property right disparity in Uganda.

Table 1: Culture and Gender Disparities in Property Right Determinants

Property Right Determinants	Women (%)	Men (%)	Influence of Culture
Ownership of registered land	7	93	Women are economically dependent on men. Land inheritance is mainly patrilineal
Distribution of credit	9	91	Lack of credit limits women's economic interdependence and affects gender relations
Applications for processing land certificate titles	6	94	Applying for land title is costly. Women lack exposure to land issues, have limited opportunity to inherit, are subject to land grabbing when widowed have limited knowledge of land rights and information procedures

Source: Adopted from Mukasa et al, 2004: in Ellis et al 2006. p.23

Ellis et al (2006) study's found that women in Uganda have few controls over land. Cultural norms limit women's right to inherit land. This is because of a system of patrilineal inheritance and patrilocal residence. Also, registration of land is limited to women. Most registrations are male biased. This could be reflected from the Uganda's Pilot Systematic Demarcation Project conducted under the Land Strategic Plan together with the Ministry of Water, Land and Environment and NGOs. This study was piloted in selected district of Ntungamo, Soroti and Rakai to encourage individualizing customary land and its convert into freehold. Interesting, 95 per cent of cases were registered solely in husband's name. Registration in wife's names in some cases was either where wife had bought the land herself or inherited it. (The GOU2004b cited in Ellis et al 2006:55).

Similarly, the study conducted by FIDA (2010) in Kitgu and Pader districts informing the community on women land rights indicated that men who attended the sessions appreciated the need to protect women's right but stressed to facilitators that women should not perceive their rights to undermine their husbands. Without financial infrastructure put in place to assist women realize property rights, even women themselves do not see any logic in empowering women. It is pointed out that customary land in Acholi-region is owned by men and women are limited to access as revealed by the community and the district and cultural officials interviewed. Hence, section 27 of the Act protects the rights of women only to access and not ownership decisions regarding customary ownership, occupation or use of

any land contrary to the provision in article 33 of the constitution.

THE DYNAMICS OF GENDER INJUSTICE IN ACHOLI SUB REGION OF NORTHERN UGANDA

Women's access to land in Acholi sub region of Northern Uganda is changing over time. Women used to enjoy access to land through customary arrangements. Usufruct rights were guaranteed through the traditional practices regarding land rights. The majority of women are experiencing various forms of exclusion from male relatives, who claimed ownership of land that belonged to them. After many years of living in the internally displaced person's camps, land has become a valuable commodity and the traditional values that used to protect women's access to land in the region has relatively eroded. Male relatives are claiming land over which, women, especially widowed have had rights. Those who that have land given to their grandparents through gift before leaving to the internally displaced person's camp were prevented from using the land by male descendants of those who gave the land.

Based on information from semi-structured interviews and focus group discussions, this section explains the dynamics of access to land by women; the cultural bias embedded in the notion land rights in the post conflict patriarchal society of the Acholi people in Northern Uganda. The focus was on the dynamics of exclusion. Few studies have been conducted on how institutional practices (customary regimes) reinforce gender injustice in property rights. Table 2 below shows the dynamics of gender injustice in land relations in Acholi Sub region based on the formation provided during interviews.

Table 2: Dynamics of gender injustice in land relations in Acholi sub region of Northern Uganda

S/No		Results	Comments
1	Dynamics of women's access to land and control rights	<ul style="list-style-type: none"> • Customary ownership (clan land and family land). Family land is controlled by husbands. For unmarried women, land is for brothers. • Some women in the Peri-Urban area have personal land, acquired through purchased and have land titles. • Daughters also need land 	<ul style="list-style-type: none"> • Men have rights over land • Women don't have control over land. They have very small voice over land. • Land is owned by men, in fact sons only
2	Family acquisitions of land ownership	<ul style="list-style-type: none"> • The land was for my ancestral parents, this land was given to me by my grandparents, land is for the clan • It was given to me and after 5 years, then I acquired the land. • Land was given to me by my relatives but currently their children are claiming it back • From clans, family or parents and sons • My daughter bought it • For my husband 	<ul style="list-style-type: none"> • Women can be transferred use rights of ancestral land not control rights • Some women have land titles, • Land is sold
3	Women's experience with access, control and resource conflict in customary system	<ul style="list-style-type: none"> • Women's access land for subsistence farming • Men own land, control harvests, and commercial farming is for men • My father was a sub-county chief who had a lot of land and distributed to us and his grand children, however people who found us here are chasing us to leave the land for them since we do not have land titles • Limited access to land in some places for farming where we farm in groups in an open land in the wilderness. • Land inheritance is discriminatory in nature; it is for men only • Proceeds from cultivation are for men only 	<ul style="list-style-type: none"> • Without control rights, women cannot have independent right or make decision on their land. • Independent right for women can be realized when a woman buys a piece of land. • Some crops are for women while others are males. Women are encouraged to grow staple food. • Inheritance is male biased
4	Regulation of women's access to customary land	<ul style="list-style-type: none"> • I make my own decision since this land was bought for me by my daughter; The elders make decisions on customary land • The clan members regulate the land even when you want to farm, you have to consult them • Customary land access is regulated through in-laws, family, clan leaders, husbands and elders 	<ul style="list-style-type: none"> • The family land is given to women, but elders also dictate on land in all ways • Women who buy land can make their own independent decisions
5	Impacts of customs on independence and control over land by women	<ul style="list-style-type: none"> • Favor men and women should not own land • Inheritance is patriarchal • No ownership. I only access land for farming on a small scale • Discriminatory even the widows' land is claimed any time by relatives of the man • I came to FIDA office such that they can help me document my land and give my children since my relatives are chasing us away from my parents land. 	<ul style="list-style-type: none"> • Custom is male bias • Women are not allowed to access land for commercial purposes • Only brothers can be given a large piece of land not girls. • Inheritance is patriarchal in nature
6	Factors determining women access to customary land	<ul style="list-style-type: none"> • Marital status, separation, barrenness, reactions from step-mothers, wrangles with brothers and neighbors during resettlements • Family break up; we separated with my husband when he married another women and gave her a 	<ul style="list-style-type: none"> • Widowed are disadvantage because women are usually undermined on issues related to land and

		<p>lot of land.</p> <ul style="list-style-type: none"> • Domestic violence, we used to fight with my husband till his death • No proper documentation of the land, the land is not registered and demarcated • The land I live in was given to me temporarily such that any time I will have to live 	<p>inheritance</p> <ul style="list-style-type: none"> • Women must maintain good relations with the male counterparts at all costs if they were to have access to land • Customary land is not registered, and women only have usufruct rights
7	Changes in customary practices on women's access to land	<ul style="list-style-type: none"> • Erosion of cultural practices; Children outside wedlock does not possess any land and sometimes do not have access to farmland. • Sale of land especially by men; orphans are deprived; step parents do not acknowledge equal distribution of land among the children • Sale of land while dependents are left out. 	<ul style="list-style-type: none"> • Land wrangles/fights after the death of the elders, parents and influence persons in the clan. • Orphans and widows are excluded, especially due to ignorance on land issues
8	Women's sources of livelihoods	<ul style="list-style-type: none"> • Peasant farming • Firewood business • Charcoal retailing • Poultry and piggery • Tailoring • Rearing goats • Produce dealer • Petty businesses etc 	<ul style="list-style-type: none"> • Most of livelihood activities are carried out on customary land. • Because women don't have independent control over land, they cannot make independent decisions
9	Resource conflict related to land and livelihoods	<ul style="list-style-type: none"> • Harvest is not shared, farm proceedings are controlled by men • Demarcation of land and apportioning • Greed during inheritance • Acquisition of land titles 	<ul style="list-style-type: none"> • Men discriminate in acquisition of land titles. • Females are discriminated in favor their male counterparts.
10	The current factors influencing women's access to customary land	<ul style="list-style-type: none"> • Limited independence in terms of decision making; Discriminatory cultural practices like land is owned by the male sexes • Ignorance on land issues and practices; Less information on the land is being circulated; No access to information on land. • Corruption by men • Step Children • patriarchal society • erosion of cultural settings and practices 	<ul style="list-style-type: none"> • Inadequate political support on land matters • Inadequate knowledge on land • Death of elders in the communities; Collective/family/clan decision making • Sudden death without property distribution • Negative attitude towards writing will
11	Approaches to improve independent right and control over landed resources by women	<ul style="list-style-type: none"> • Representation of the land owners like ICLA - Wangoo of NRC -Uganda; • Land sensitization and awareness raising at all the levels in the communities • Land registration, proper documentation and record keeping; Land advocacy especially for the vulnerable persons in the communities 	<ul style="list-style-type: none"> • Government should support the land owners with free land information boards and centers; • Establish land committees in the villages, parishes among others • Attitudinal change through awareness on women's land rights • Gender justice on property

Source: Interviews

Table 3: Different accounts of women's exclusion

S/No.	Description	Intervention	Remarks on patrilineal exclusions
1	The husband died leaving a un- surveyed piece of land and a bank account. The two were not formally married but with two children. She acquired letter of administration without the knowledge of the mother in law and other in-laws. One of her sisters in law decided to grab this land in question. She was successfully driven away from the said land by her sister in law and mother in law	She reported the case to magistrate's court that ruled in her favor but failed to execute the eviction as per court ruling delivered. The local council leaders tried in vain to execute the court order. She sought legal assistance from FIDA. FIDA hired court broker who executed the eviction order.	<ul style="list-style-type: none"> • Court order alone is not enough for women's access to gender justice in land without effective representation.
2	Her father is an alcoholic addict, does not dig and does not engage in any developmental activities including agriculture. She is disabled and the only girl child in the family with divorced mother who got married to another man. A male community member despites her as a "mere" woman who has failed to get married and begins to grab approximately 6 hectares of land from her and deprives her digging on land while threatening to kill her for attempting to claim use or ownership of the land.	Through the legal assistance of FIDA, a meeting was organized. The male respondent claims that the land was given by his parent to her parent in 1972. He now wants his land back after the war. The community members were divided on this matter with some supporting her and others supporting the male. Finally, land was divided among the two parties and demarcation clearly marked.	Without rights to inherit customary land, women will not have control over land. This land could not have been divided if it was the case for the male. Customs normally prevails over national provision of equal right to land.
3	Her husband died in 1983 leaving her with customary property and children. During the insurgency at its onset in 1986, she reallocated to a village far from the roadside. Around 1994 a construction company demolished the huts she had left in her land and started digging marram for the construction of Kitgum road. When the construction company left she resumed using the land. "It was on this very piece of land where my husbands eloped with me, married me where I gave birth to seven children and five died and were buried on this very same land," she states. The children of my brother in law have now ganged up against me and they want to sell off this land because I only have girl children left and that after all this is a customary land so they can as well use as members of the clan.	Through legal assistance from FIDA, a meeting was organized with elders and local leaders of the area. In the meeting, she was given part of the land while the area from where the road construction had dug marram were dissolved to be sold off and the money was distributed to all members interested in the land dispute including another woman who was deprived of land in the area by the people. However, she was not satisfied by the decision and referred the matter to magistrate's court.	Familial greed for land fuels women exclusion. Customarily, brother in laws own the land given to their brothers if the brother is not alive and failure to produce a male to inherit the land. Her male children can defend the land more than her. Sons inherit land, not the females.
4	Having previously grabbed part of her land through dubious and unclear court processes, her neighbor with whom they share the boundary illegally entered into a land sale agreement with someone else. She only realized when the buyer had come to fence off his purported land which was actually her. When she raised her concern, the purchaser dictated that he	She reported to the police and was referred to FIDA for legal assistance. A meeting was initiated with the local leaders and members of the area. The seller admitted having encroached on his neighbor land and requested buyer to leave vacant possession but purchaser insisted on the land. A surveyor was brought and	Without proper land documentation, women are insecure from land speculators. Because they don't have enough resources; they are targeted by wealthier

	would compensate her to the tune of UGX 2,000,000. When she raised her objection, the purchaser demolished her huts and cut down trees and went ahead to plant his fence.	confirmed that the boundary was not observed. Purchaser continued to occupy the land illegally while trying to negotiate with her to accept the two million. Amicable settlement failed. A case of malicious damage and trespass was reported against the seller and the purchaser of the land, arrest effected and respondents released on police bond.	individuals. They are being forced to sell off their land against their will
5	A 75 year old woman is pursuing a land case. A fact of the case is that she took a refuge in the camp during insurgency. Being an old person and as extremely vulnerable person, her settlement took longer period than for other able persons as a result she started the process later and was slow. Her neighbors took advantage and encroached on her land and never wanted her to cultivate, claiming the entire land was theirs. The old woman took the matter to the Local Council I (LCI) and later to LC II for settlement. Before the LCII matter was settled in her favor but the neighbors appeal to the sub county committee court, which convened a meeting without her notice and ruled against her. She did not appeal, after 14 days neighbors applied for execution order against the old woman.	She sought legal assistance from FIDA. FIDA searched for records of the proceedings from all previous courts. It was learnt that at the time of the sub county committee hearing, the old woman was very sick, but still attempted to attend the court without being given a notice and some committee members barred her from entering the court premise. FIDA applied to the chief magistrate's court seeking an appeal out of the time through miscellaneous application, requesting for restrain from execution and was granted by the magistrate's court.	The ability of the locally instituted justice system in handling land dispute is questionable. It is an extension of male dominance, bias towards women's rights to land. There is need for good governance in administering gender land relations.
6	A 48 years old woman whose grandfather acquired land in 1948 was later inherited by her father who used it for planting trees. Her father later died. During the insurgency, she reallocated to internally displaced person's camp. During the resettlement, she found a man, not even related to her was on her land, clearing her compound, claiming that the land was given to her deceased father in 1977 for temporary occupation. The woman reported the case to the Local Council I and Local Council II, who ruled in her favor. However, the man did not heed to the Local Council II ruling and continues to encroach on the land without any appeal against the Local Council's ruling.	She sought legal assistance from FIDA. The records of proceedings from the Local Council II courts were got. Through FIDA a warrant was applied for to let him leave the land vacant. Any execution on the land should not take place. The encroacher did not give any feedback. This case is pending eviction order against the encroacher.	Women have low value when it comes to claim over land. Land is for men who can authoritatively claim ownership.
7	A 48 years old widow whose husband was given the land in 1980 enjoyed using the land when the husband was alive. A friend to her husband was also given a small portion adjacent to her husband land in 1986, but the husband's friend left the two years later in 1988. When her husband died, insurgency got tense; the woman took refuge in Internally Displaced Person's Camp and returned to the village in 2008, and resumed to use her land. In	Through legal assistance from FIDA on behalf of the woman the Local Council II chairperson was demanded to release a copy of the proceeding and judgment to aid in the preparing the ground of appeal so that justice is offered to her.	Because the local court system is male dominated; they even passed wrong judgments in favor of their male counterparts. This is common when a husband whose father was given the land is dead. Males

	<p>July 2011, a claimant emerged from nowhere and sued her before Local Council II, claiming the piece of land was temporarily given to him in 1986. The Local Council II then ruled in his favor but denied giving out copies of the proceedings. The proceeding did hear from the woman and her witness.</p>		<p>are recalling the will of their grandparents who gave out some parts of the customary land to their trusted relatives and friends.</p>
8	<p>Her husband died leaving her in a customary land. Upon the death of her husband, the brother of her husband started claiming part of the land stating that the land is customary; any member of the family has the right to sell it. He went ahead and connived with the Local Council II and sold off the land without her knowledge and consent. When the matter was reported to Local council III, it did not prevent the brother in law from selling the said piece of land.</p>	<p>Through the assistance from FIDA, a meeting was held with the Local Council II. All parties were represented and FIDA was mediating the meeting to arrive at amicable settlement.</p>	<p>Land is owned customary and women don't have control rights, only user rights. She could not stop him from selling off the land because control rights lie with the patrilineal background. She was only married to that family. Yet, in the national provision, consent must be sought first from dependents on the land before selling off any piece of land, and must be observed by the local authorities.</p>
9	<p>Before leaving for Internally Displaced Person's Camp, she lived on her land. During resettlement, her brother in law went and settled on her land. When the mother in-law tried to intervene to have him leave the land in question, he did not heed to his mother's plea stating that his sister in law is just a mere a woman who cannot live in the whole alone and that it will be better if he takes up the land. The matter was referred to the Local Council II court who ruled in her favor but her brother in law went to the Town Council court who again ruled in her favor. Lastly, the brother in law now appeals the magistrate court. Since then, she is not accessing her land.</p>	<p>On behalf of the woman FIDA files a notice of representation in the chief magistrate's court in order to offer legal representation for the woman.</p>	<p>Women's exclusion in land access is commonly originating from the greed of brother in-laws who want to own large tracts of land.</p>
10	<p>A woman had been paying money by installment for a purchase of 1.5 ha at the tune UGX 4.500.000. On completion of the payment of the agreed sum of money, measurement was conducted and the land was less by 0.5 ha. The seller threatens to resell the land to another buyer.</p>	<p>When she reported for assistance, FIDA revoked the sale because there was breach of agreement. The ruling in favor of the woman was upheld.</p>	<p>Women do not have adequate protection and ignorance of the law exposes them exploitation by the sellers.</p>

Source: Case interviews

Cases studies were also examined so as to find out the experience of patriarchal exclusions of women to land rights in Northern Uganda. A total of 10 cases were recorded from women who experienced exclusions from customary land during the post conflict reintegration process in Northern Uganda. Together through the FIDA – Uganda, Gulu Office, different accounts of women's exclusion are discussed in Table 3.

Women's access insecurity to customary land in Acholi sub region of Northern Uganda is fueled mostly by the greed of brother-in-laws after the death of their husbands. Since the post conflict resentment process began, male relatives have claimed ownership of land and have denied women access to land. Widowed have been denied access to land as grandchildren are recalling the will of their grandparents who had given the land outsiders. To make matter worst for women, land is owned under customary regimes without legal document. And women in northern Uganda don't have access to legal assistance. In fact, very few women can afford paying for justice in land matter in the extra-legal society in Acholi sub region.

RECOMMENDATIONS AND CONCLUSIONS

The concept of gender justice in land is relevant in welfare improvement of women. Women's access to land will provide incentives for better use of the land and will help to move them beyond subsistence production, therefore giving control of land to women, a fundamental status in the family and society (Nyamu-Musembi 2007:179-80). As noted by the World Bank (2001:115), "legal, social, and economic rights provide an enabling environment in which women and men participate productively in society, attain a basic quality of life, and take advantage of the new opportunities that development affords."

Transforming a society to include the poor requires comprehensive legal, political, social as well as economic reforms. Ownership of property is a human right. Productive assets must be formally recognized. Customary rights must be recognized, with standards recording, titles, and contracts, in accordance with the law, and to protect poor households. The legal empowerment within the property rights domain must promote efficient governance of both individual and collective property, integrating extralegal economy into formal economy for all citizens. Enforceability of legally recognized property rights to ensure owners have the same rights and standards; and promote an inclusive property-rights system that recognizes co-ownership of property. Customary regimes must pass the test of the fundamental human rights obligations. Inclusion of the poor can be ensured by using a broad range of policy

considerations including: formal recognition, adequate representation and the integration of a variety of forms of land tenure such as customary rights, women's rights, and certificates (CLEP and UNDP 2008).

Despite the numerous debates on land reforms, women in Acholi sub region of Northern Uganda still lag behind. Women own titles on behalf of their husband. The social practices deny women their right to land. The customary practices disempower women and their rights to land. Because 80 % of land in Acholi sub region is owned customarily, statutory and customary laws must protect the rights of women. Traditionally, customary rules provide women access to land. Unfortunately, it is only the use right. The existing practices and values disempower women from making independent choice. There is need to reconstruct the constructed social exclusion. Girl child should be encouraged to inherit land from their fathers. Customary practices should be revised to promote equal access to inheritance. Co-ownership should be encouraged.

To ensure gender justice in land policy, land registration that protects a woman's interests in patriarchal society is a viable option. The enactment of co-ownership in the patriarchal property is needed. Unfortunately, there is lack of political commitment, especially by men who dominate policy formulation, to change the practice.

In the Acholi sub region of Northern Uganda, land remains patriarchal and male rights. Women are supposed to marry someone to access land. The fear is that women will bring men to their land and inherit their land. Women are presumed to be protected under customary arrangements. This is only the use rights as opposed to ownership rights. This article therefore proposes that the rules governing inheritance be changed to eliminate bias and discrimination against women.

In conclusion, although land for agricultural production is available in Acholi sub region, women seeking to invest in land and cultivate individual plots face resource constraints for buying inputs. Based on what extend do women have effective rights in practice, whether access land rights through customary, purchased or other transfers; inheritance is the most common one in Northern Uganda. Women lack control over productive resources and assets. Inequality in marital status and property rights combined with cultural attitudes and beliefs create a formidable obstacle to change. Acholi's culture and its patriarchal system uphold values that privilege men, especially customary laws privilege men. Achieving property rights for women can be done by transforming cultures and customs, especially on land allocation practices and inheritance to realize

economic empowerment. The continuation and maintenance of the status quo perpetuate landlessness for women. These changes will determine women access to key resources, including credit, land and property is important in poverty eradication.

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