Mawazo, Volume 14, No. 1, (June 2020), pp. 1-21
DOI: https://doi.org/10.70060/mak-mawazo-2020-293

Men, Marriage and Women's Land Rights: Reflections on Customary Land Tenure Relations in Rural Uganda[1]

*Josephine Ahikire**

Abstract

In broad activist and policy formulations, customary land tenure is cast as severely inimical to women's land rights. This article makes a case for closer interrogation of the reality of customary land tenure as an overly fluid nature in Uganda's land governance. This article seeks to contribute to the debate on the gendered complexities of land rights in the realm of customary land tenure and its multi-layered dynamics especially in the context of marriage. The article's core argument is that the reality of the fluidity Uganda's gendered land access and ownership rights, labelled as a customary tenure, requires careful interrogation. Ultimately, there is need to avoid orthodox perspectives that might end up masking the multiple layers of agency available to women and men in specific contexts.

Key words: Marriage, land rights, gender, customary tenure

[1] This article is derived from a research study conducted under Sida (Swedish International Agency for Development) support to Makerere University.

* **Josephine Ahikire** is an Associate Professor of Gender Studies in the School of Women and Gender Studies and currently the Principal of the College of Humanities and Social Sciences at Makerere University. She is also Honorary Professor at the Centre for Advancement of Non-Racialism and Democracy (CANRAD), Nelson Mandela University, South Africa. Her Scholarship has centred on feminist imperatives in politics, land, livelihoods, and cultural studies, her recent publications include two co-edited books *Controlling Consent: Uganda's 2016 Elections* published by Africa World Press, Trenton, (2017), and *Gender Poverty and Social Transformation: Reflections on Fractures and Continuities in Contemporary Uganda* published by Fountain Publishers (2014); her earlier book is: *Localised or Localising Democracy: Gender and the Politics of Decentralisation in Contemporary Uganda* by Fountain Publishers (2007).

Introduction

On 17 September 2015, women in Amuru District in northern Uganda stripped naked over what they called their customary land. The women apparently stripped naked to stop the demarcation of a border line between Amuru and Adjumani districts in a bid to protect the land they claimed to belong to them as habitants of Amuru. The genesis of what has been known as the Apaa land conflict dates back to colonial times when the area in question was gazetted a game reserve, which the local communities have since contested. Men and women alike refer to this land as their ancestral land rather than a reserve for animals. As part of the community's dissent, elderly women held a nude protest before government officials who had gone to supervise the demarcation of a new boundary between the two districts.[2] Earlier in 2011, women had stripped naked to protest against the establishment of the Amuru Sugar Factory by government, which was going to be located on what they considered community land. The contestations received high media coverage and public debate. The media[3] and researchers weighed in to analyse the role of women and their agency and mostly focused on the power and symbolism of the women's chosen method of protest by stripping (Ebila & Tripp 2017; Ahikire, Kanyesigye, Nassali, & Nakayi 2016).

Accordingly, women stripped as they considered their agentic power to be the last line of defence for the community land. One of the women leaders who led the protest is quoted as follows:

> … stripping naked was our only instrument because we realized that the only weapon we had was to get naked… we didn't have guns nor the energy for physical violence some say politicians used you- never! We stripped over our land, when they take it how shall we feed our children? Most of us are widows. The land does not belong to the politicians, it belongs to us (Ahikire, Nassali, Nakayi, & Kanyesigye 2016:36).

In dominant discourse, customary tenure has been framed as inimical to women's land rights. The broad formulations have posited that in this land tenure system, the custom of a specific area is applied to a great extent and since in a number of communities, customary norms position men as the land owners, women presented as mere land users are thus highly disadvantaged (Asiimwe 2002). "Women do not own land", is the seemingly stable truism. Therefore, the question that lingers is: Why would the women of Amuru passionately defend a land system that apparently marginalises them "to the core"? The women of Amuru paradoxically communicated a clear message and this was "this is *our land*". This is the message that has pushed this interrogation of the

[2] PML Daily June 2017, http://www.pmldaily.com/news/2017/06/tracing-the-roots-of-apaa-land-conflict.html).

[3] See Daily Monitor, 8 September 2016.

dominant discourse about women's marginalisation, helplessness, and victimisation under customary land tenure. This message alerts us to the need for a critical appreciation of the nested nature of gender relations, especially in as far as land rights the realm of customary tenure are concerned.

Evidently, the posture of Amuru women even surpasses recent legal innovations which were supposedly intended to improve women's access land but actually only seem to focus on legalistic aspects of protecting women's right to land. For example, Section 28 of the Land Act (1998 Cap 227) states that any decision that denies women, children, or persons with a "disability access to ownership, occupation, or use of any land or that violates Constitutional principles," shall be invalid. Section 39, which is an amendment to the Land Act 1998, requires spousal consent prior to entering into any land transaction concerning land on which the spouse resides and/or uses for sustenance. Other provisions in the Land Act 1998, such as Section 57 and 78 on the establishment of the and conduct of the District Land Board and Land Tribunal respectively require a minimum of one-third female representation on land bodies at district and community levels.

These legal provisions though often referred to as women-friendly could be paradoxically seen as the signifiers of a gender-blind spot within Uganda's legal system. For instance, the grouped together vulnerable groups in need of protection; it puts women together with children, youth, and people with disabilities. The language of vulnerable groups/ categories in policy documents is part of the larger discourse informed by populist politics in Uganda as well as the overall developmentalist twist in the global agenda (Ahikire 2017). The language of vulnerability is part and parcel of the patronage politics which infantilizes women and removes them from the centre, to the periphery of land rights claiming. It is an 'othering' discourse.

Placing women's need for protection in the same alley with children and youths[4] waters down the real content of women's land rights. Youths and children transit into adulthood and hence their occupancy of this category signifies different political positionality, leaving women and people with disability as permanent occupiers of this category. This consistency in protectionism in the narrative on women's land rights has blocked imagination about women as citizens with entitlements whose rights should be, respected and fulfilled globally.

Above all, the findings of this research suggest that everyday life is not as fixed as often presented in homogenizing discourses and there is a critical need to understand concrete

[4] Children and youths are transient categories and these soon become adult women and men. This therefore leaves adult women as 'the other' in the arena of land rights in need of permanent protection as defined by the law.

material and discursive processes through which men and women negotiate the meaning of being. In this case, marriage seems to be an array that creates a web of relations through which men and women negotiate different entitlements to land over time. Far from the oft mentioned stable notion of women's land rights mediated through male relationships, there are under currents in marriage that moderate men and women's identity and sense of entitlement to land. In Porro's (2010:284-5) formulation, being a woman, man, daughter, son, and the like are not fixed but rather are identities in a continuous transformation through either friction or resistance and hence the need for continuous research, in our case, to envision multiple forms of gender relations to land.

Instigated by the action of stripping, the proposition of this article is that the fluid nature of men and women's access and rights to land may seem to be well ahead of the rather orthodox perspective of rights in current legal activism and policy reform. This article seeks to critically re-examine the place of customary land tenure vis-à-vis women's and men's space in the everyday order of things and the mundane forms of living in the light of customary land tenure systems especially in the context of marriage. This analysis was inspired by imperatives from interrogation research participants' everyday life of production, power and emotional relations. Through a social historical analysis, this article attempts to bring to light the mundane layerings in women's land rights that re-centre men and women, as differentiated subjects to be analysed and understood in concrete contexts.

Methodology

This study explored the fluid norms that guide everyday life and how they blend into the gendered structuring of land rights. The motivation for the study was derived from the national policy trend towards popularization of titling customary land in a bid to increase the marketability of land and ostensibly protect land rights of owners, in a way, anchored onto Hernando de Soto's World Bank orthodoxy around 'breathing life into dead assets' (cited in Nyamu-Musembi 2008). In an astute critique of De Soto, Nyamu-Musembi refers to the perspective as:

> … breathing life into previously discredited theories on land rights land tenure reform and efficiency and enabling the current debate to proceed as though the negative lessons learned from African experiences over the last four decades never happened (2008:19).

The study draws on African feminist imperatives and seeks to interrogate rather than assume ahistoricity in traditional norms and practices that influence the making of masculinities and femininities and how these identities shape men and women's land rights. The study also draws on critical masculinities (Connell 1995;

Cornwall 2000) to examine ways in which masculinities and femininities operate in particular cultural contexts to enable and/or constrain women's rights to land. Drawing on narrative forms of interviewing (Mishler 1986; Holstein & Gubrium 1995) and other forms of qualitative dialogue, the article explores complex ways in which women and men organise, interpret and make meaning of their everyday experiences drawing on the past to moderate the present with regard to customs and traditions that guide land ownership, occupancy, usage and disposal among other rights.

The motivation for the study was originally sparked off by the current government's drive to register land currently managed under customary tenure and to provide occupants with Certificates of Customary Ownership (CCOs). The inclination of the research then, was to situate women's land rights in the customary land registration drive and to interrogate the implications of the government policy direction. Through deep conversations, the research was redirected into a more situated narrative in everyday forms of land relations in family settings especially within the context of marriage.

The article adopted an exploratory (socio-historical) and ethnographic design in purposively selected districts – Amuru District (Acholi); Kayunga District (Buganda) and Rukiga District (formerly part of Kabale District in Kigezi). The study took a rather loose comparative perspective on current practices across three different cultural governance systems, that is, Acholi where the clan system has maintained a relative presence, Buganda with prevalence of mailo land as well as a strong *heir* system, and Kigezi, with a relatively atomized land governance system.

The study was conducted through qualitative research methods including life histories, key informant interviews, community dialogues and group discussions. These were intended to facilitate the sharing of experiences by participants of their traditional customs (in their diversities) that regulate men and women's ownership, access, and use of land. Through their narratives, participants shared their everyday experiences with regard to how customs regulate(d) men and women's ownership, usage and management of land, land transfer and disposal as well as the cultural shifts and their implications to the construction of masculinities and femininities.

Interview conversations and focus group discussions sought to explore and discover from women and men how life in selected communities is organized around land ownership and management. These conversations sought to understand traditional customs (and possible changes) that guide(d) ownership, occupancy, usage, management and disposal of land amongst family members and how this should inform the current discourses on land rights. In Rukiga District three community dialogues

were conducted in Rwamucuucu Sub-county. In Amuru District, two community dialogues were held in Pabbo and Atiak Sub-counties. In Kayunga District three community dialogues were conducted in Kayunga sub-county. I also conducted key informant interviews at district and national levels.

The study covered a small sample and cannot make claims to generalization even of the communities included in the study. However, the focus of the study was not to derive generalizable findings. The findings were rather intended to bring to the fore the fact that some of the generalisations about land rights by academics, government and the women's movement alike, are rooted in the under-theorized nature of gender relations in customary land tenure system which has also tended to recreate and legitimate patriarchal discourses on land in contemporary times, thereby infusing itself into policy and new modes of land access. In very specific ways, the making of men (and women) through marriage and other social institutional practices and the layered nature of women's land rights in this regard, deserves more attention than it has attracted so far.

On ethical considerations, I recognize that the question of land is sensitive, emotive and highly volatile. For this reason, all respondents remain anonymous (pseudo names have been adopted throughout this article) though they consented to the participation. Participants were notified to be free to withdraw from the study at any moment and were not required to respond to questions they felt uncomfortable with. The promise to the study participants was that the results were to be used as broad formulations to understanding the terrain of land relations and possibly contribute to new narratives that can inform policy and advocacy efforts in Uganda and elsewhere.

Women's Land Rights and Customary Land Tenure: An Enigma or an Under-theorised Life Experience?

Land rights are property rights and in general, property rights are social conventions backed up by the power of a state or community at various levels that allow individuals or groups to lay a claim. Land rights can then be seen as legitimate claims to land and the benefits and products from that land. In terms of conceptualisation, land rights refer to a group of rights and not one bundle around ownership as often projected in conventional policy debates (Brock 1969, Whitehead and Tsikata 2003). To Brock (1969) land rights include rights of allocation, use, disposal and reversion.

Land rights entail a continuum spanning from informal to formal bases of recognition and deal with access to the natural resources associated with land, for example, water sources as well as right to fruits of labour out of investments on the

land, relating to rights to use, control and manage land and the resources thereon. Land rights can be defined in terms of the right to exclude others or in terms of the right to be included as a member of a specific community. The former rights tend to be situated in market-based relations with registered individual interests while the latter rights are situated in the rights of utilisation. In this sense therefore, land rights are much broader than the ownership definitions that are often employed in policy contexts.

Land rights can then be seen as legitimate claims to land and the benefits and products produced of that land. As according to Bina Agarwal, land rights are claims that are legally and socially recognized and enforceable by a legitimated authority be it at local at national level (1994:19). Land rights may comprise access for gathering, usufruct for a specified period of time, or more complete rights (often referred to as full ownership), with or without the ability to transfer the rights to the resource temporarily or permanently (Deininger 2003:25). Hence land rights can be primary (ownership) or secondary (access, use). Defined in this way, it means that land rights are a layered bundle of rights and when it comes to customary tenure it becomes important to employ nuanced perspectives so as to concretely appreciate the dynamics that underlie different modes of access and control.

More than 80 per cent of land in Uganda is held under customary tenure which is overly dynamic, fluid and complex (Nakayi 2015). Customary land is largely undocumented and tenuous with contradictory levels of inclusivity and exclusivity. At certain points in time, customary land tenure systems may offer opportunities for inclusive practices that accommodate women's rights on the land. In an extensive engagement with the question of custom and land rights, the Land Equity Movement (LEMU) posits that principally:

> … under custom, everyone who is born, married into or accepted as a member of a family has automatic rights. This is true for both girls and boys, men and women. What changes in the land management responsibility, which is passed on to members of the family through the actualisation of events such as marriage… divorce… and death… 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. Unfortunately, overtime, this management role has been confused with actual individual land ownership, bringing about confusion, misconception, distortion and abuse. In other words, trustees have turned themselves into owners, in the process disenfranchising weaker family members in the trust (Adoko et al. 2011:2).

The issue at hand is that the fluid norms are slowly being eroded by multiple processes of marketization

and individualisation thereby weakening customary safeguards and as well, brewing a climate of uncertainty, abuse and violations of customary rules (Nakayi 2015; Leslie 2014) which abuses are rather erroneously referred to as custom. As well, dominant discourses including those espoused by the women's movement are that women do not own land.

The delicate combination of these lived experiences and dominant discourses in the domain of policy and activism threaten to roll back even the few spaces of contestation and therefore, freeze customary land tenure in space and time. Tripp (2004) also presents this whole debate on customary land tenure as a paradox in that if women were benefitting from the customary system, why is preservation or even modification not one of the desirable goals of the women's movement? Yet, rather than a paradox, it could be, indeed a direct product of the simplification that results from the codification of complex custom into what is officially labelled as customary law and, in this case, the freezing of complex relations to land into customary land tenure.

This view validates Ossome's (2014) argument about whether or not law can secure women's rights to land in Africa on the basis that the liberal framing of gender equality particularly in the arena of land rights carries with it a set of assumptions regarding women's position in the political economy that inadvertently limit their social citizenship. In this case, a concrete understanding of women's land rights within the realm of customary land tenure system requires a prudent recognition of the fact that this very system has often been treated in very simplistic ways. Indeed, customary land tenure relates to multiple systems rather that one single system as often presented in policy discourses.

Furthermore, complexity may now come to the fore with current imperatives of land acquisition and documentation of rights held under customary tenure. On registration of customary land, under the Land Act (1998), communities, families, or individuals holding customary tenure may apply for a certificate of formal customary ownership with the government. General procedures are provided under section 5 and 6 for how to register obtain Certificates of Customary Ownership (CCOs), and under sections 9-14 for converting customary tenure to freehold. In the context of land acquisition for development projects, consent for sale is normally made with the men who are the identifiable 'owners' of land and this makes women secondary citizens in the whole land governance. For instance, inquiries with the Ministry of Lands Housing and Urban Development revealed that compensation is often made to the head of the household who is assumed to be male by default, unless the woman in question is a widow or

has purchased land in her name. What needs to be signposted is that the generalist posture to customary land may have the danger of 'freezing' the more or less fluid and inclusive land rights into a title especially given the fluid and inherent cracks in the land terrain.

What needs to be underscored is that 'customary' is not one, but rather multiple and layered systems of access and control. Recognition and allocation of rights to land under customary tenure is not uniform across the country. Rights are instead allocated and sanctioned or recognized following the customs of a given community through layered pathways. Unfortunately, complex relationships through which women and men interact with each other in customary tenure systems tend to be constructed and reproduced in homogenising public discourses that deny women's ownership of customary land. In some cases, abuse of culture has also been labelled as custom hence instigating an overly anti custom stance in the realm of women's land rights.

An enquiry into these communities reveals diverse and complex land ownership, usage and management practices which are informed by Uganda's different pre-colonial, colonial and post-colonial experiences. Juanena and Debska (2013) alert us to the fact that colonial laws gave more weight to men's rights and the existence of women as legal persons was generally ignored. Hence what we may be talking about may not necessarily be custom per say but rather, a whole nested and historically constructed realm of access layered with sporadic notions of norms and values. According to Bomuhangi, Doss, and Meinzen-Dick, land rights in this realm can be in many ways, such as access, right of withdrawal, management, exclusion and alienation (2011:3). Land rights, particularly in the context of customary tenure manifest in form of a continuum as opposed to a fused state, presenting various conventions and norms with a mix of claims that can only be understood in their concrete manifestations.

Hence customary tenure systems mean that these aspects can be deployed in very diverse ways and depending on specific contexts, lead to different inclusion or exclusion outcomes. Customary systems also vary in how members access, use, manage, and transfer land. For example, while most of the land in Buganda is held under *mailo* tenure, most of the land holdings in the Kigezi area are held under customary tenure, through traditional forms of land inheritance. In Acholi most of the land is governed under a clan system which is also grouped under customary tenure. Despite complex variations in customary land tenure systems, there are certain shared commonalities amongst the communities this study focused on, in particular, on the layered practices that regulate rights to land as well

as women's subtle negotiations of land rights, particularly within the institution of marriage. I proceed to utilize selected cases to elaborate on this fluidity and what all this should mean for politics of policy and social mobilisation.

Rukiga: Men, Marriage and Collective Ownership of 'Family Land'

In all the three cases, marriage emerged as a common cultural context within which land was traditionally passed on from parents to their children. However, the centrality of marriage was much more pronounced in the conversations held in Rukiga. Accordingly, amongst the Bakiga traditions, for example, land was inherited by male children from their parents on marriage. In almost all the focus group conversations, men and women participants recalled what they termed '*okutekyesa amahega'* – a cultural practice where a young Mukiga male would be given land on the onset of marriage. *Amahega* is the fireplace signalling food, livelihood and basic joint living. *Okutekyesa* signals the state of being independent with one's own hearth.

In this practice, land carried different symbolic meanings, as a marker of independence and a rite of passage that ushered young men and women into ideal notions of manhood and womanhood as well as a social gesture towards joint ownership of property in marriage. Accordingly, "no male child would acquire land under the Kiga customary system without taking a wife in marriage". Since single unmarried young men could not inherit land, bequeathing land to male children on the onset of marriage signalled women's and men's joint customary rights to own, occupy and use land for sustenance. Despite male centred inheritance customs, such practices, such as *Okutekyesa amahega* constructed land as a collective family resource. Hence, this practice ensured that the land bequeathed to a son was only used for the benefit of his wife and *her* children consequently guaranteeing livelihood for women and their children in an otherwise patrilineal system.

One Komugisha (not real name) narrates her experience of this practice:

> When I married, my husband's parents gave us land to utilize. It is my land. If my husband wished to marry a second wife, he will have to buy or will be given another piece of land *(ekibira*) by the parents.

Men and women's everyday relationship with land in Kigezi highlights a web of rights and interests rather than the presumed homogeneity of rights to land. In a group discussion, Mirembe – a 62-year-old married resident of Ibumba village, Kabale – characterises land as a social context within which marriage relations, gender division of labour and the construction of masculinities and femininities occurred. In the extract below, Owomugisha recounted thus:

> In the early days, the land was covered by hill and forests. A man would go out and clear the forest in a given part and bring his wife to that place where they would build their home. The man would give a part of the land to his wife and keep the rest on which they would derive sustenance for the family. The man would use the remaining land in consultation with his wife. The wife had a right to use and develop her part of the land as she pleased. Where the man would marry a second wife, he would have to give her separate piece of land on which to grow food for her children. When the man and his wife grew older, they would sit together with their children and distribute the land amongst the sons leaving a piece for themselves. The family home was left to the daughters and it was never to be sold. This was in order for the daughters to have a place to return to in case they were unsuccessful in marriage.

In this excerpt, Owomugusha recalls a history of abundance with regard to land and the traditional gender division of labour that underpinned their everyday life. In this setting, she reflects on men's benevolent ownership of land, in trust of the family, and talks about how they (men) distributed the land they received at marriage to the family members. A specific piece of land would be allocated to the first wife, and where possible, the second wife, to enable them to perform their expected roles of providing food to families. Besides these rather diverse yet complementary rights (anchored in a traditional gender division of labour) to land amongst women and men at the family level, Owomugisha reveals ways in which land, where the family resided was entrusted collectively to the female children in the family especially as their parents aged, to ensure non-transference. This particular practice of allocating socially valued land collectively to females to avoid its sale, is also noted strongly amongst the Baganda as I will discuss later. These dynamics of distribution of land, for example, to the first wife, ensured that the wife not only had the right to access and usage of a particular piece of land but also had control over usage, that is, what to grow and how often. Such a piece of land would not be re-distributed if the man married a second wife. Instead the second wife would be allocated a piece of land from what the man had acquired outside inherited land. This piece of land was often referred to as *Eitaka lyengaragazi*.[5]

These narrative reveals rich and varied ways in which customary land tenure produced men as the primary owners/custodians of land. This is noticeable through repeated narratives on how land was first and foremost given to the sons and the unique circumstances in which girls in a family inherited land.

[5] This refers to land inherited from a parent that remains under the direct control of the husband after he divides his property with his wife. It is separate from family land. This division is done in consultation with the wife. This can also be a piece of land purchased by the husband that remains under his control after he gives his wife a piece considered family land.

It also shows ways in which girls or women inherited/owned land through paternalistic filial relations – as young brides or after the death of their parents. Furthermore, there is a notable pattern in which women are viewed as socially *different* from men amongst the Bakiga and the Baganda. Through collective allocation of land to females, land that families wished to preserve in their lineage in perpetuity, such traditional practices constructed females as trusted custodians of land. For these cultures, land was not *simply* an individual economic resource but more of a cultural site upon which cultural identities were nurtured, maintained, legitimised and passed on to future generations, by men and women alike.

Kayunga: Layered Men's Control and Women's Right to Land

According to the conversations held with men and women in Kayunga Sub-county, Kayunga District, rights to land are understood in diverse ways – that is, in terms of access, ownership and use, as well as other resources related to it; one is able to benefit from by virtue of possessing land, for example, using land as collateral in securing a financial loan. Participants noted that while women might encounter challenges in claiming ownership of land, they nonetheless, have different forms of rights to it as provided for under customary land tenure.

Participants reflected on ways in which customary land tenure opens up diverse opportunities (beyond ownership) within which rights to land are articulated and negotiated. In particular, participants shared subtle micro-ways through which women negotiate their rights to access, occupancy, and use of land in marriage relationships. Women and men in both male-only and female-only FGDs talked of how women use family land productively and gain proceeds which they draw upon to purchase their own plots of land. In a female-only FGD, one of the participants noted:

> You get a hoe and dig on your husband's land until you buy a plot of land, you move from the plot and buy land (Women only-FGD 13 February 2018).

While this narrated experience points to new ways women draw upon to own land, it also covertly alerts us to the challenges that underlie women's struggles to acquire land, that is, women's wariness about men's control over land that individually belongs to women. This fear of men's control over women personally owned land (whether it is individual freehold or inherited from their maiden homes) is highlighted through the participant's appeal for assistance from the researchers.

Kigezi, women also shared similar worries. Bakeetunga, a 50-year-old married female noted that "when a woman acquires property from her parents, the husband usually ensures that this is the first property to be

sold whenever they are trying to raise money". This plays out as a masculine fear associated with feminine power that comes with ownership of land hence, pointing to intrinsic masculine vulnerability (Clowes 2013). Selling off such a piece of land is thus seen as an attempt (by the men) to get rid of any form of women's sense of power, otherwise perceived as transgressive in patriarchal discourses, in as far as it is seen as compromising men's attainment of hegemonic power (Connell 1995).

In the analysis of masculinities, as part of the broader relational theory of gender, Connell draws on the notion of hegemonic masculinity and demonstrates how "masculinities tend to occupy [or aspire to occupy] a "higher ranking than femininity in the gender hierarchy" (Pilcher & Whelehan 2004:82). In this context – men seeking to sell off land owned by their wives – land becomes a key social resource in the construction of gender power relations particularly aspirations of hegemonic forms of masculinity.

Women too acquire land from their parents though under stringent measures. Some of these included bequeathing the land to female children as a group which limits chances of selling such land. In other cases, females would be allocated land by their parents but were also prohibited from selling it especially outside the clan. These restrictive measures produced land as a cultural resource rather than entirely an economic asset to be disposed of. In cases where land selling (converting land from customary to freehold) was not prohibited, women opted to sell land inherited from their parents and buy and register alternative land in their own names elsewhere. Women's negotiations to access, occupy, use, manage and dispose of land points to women's profound awareness of patriarchal discourses (Nnaemeka 2004) that guide land relations and ability to go around these limiting regulative frameworks.

There were, interestingly, alternative modes of access through what is known as *Ekijja* (graveyard). Conversations in Kayunga revealed often taken-for-granted ways in which women owned, managed, occupied land in Buganda. Participants enthusiastically talked of how customs in Buganda increasingly entrusted family land especially land earmarked as burial grounds (*ebijja*) to women through the fear that men would often sell off the land and either marry another wife or spend the money on their individual needs.

Ekijja is a Luganda word that comes from another Luganda noun – '*Olujja*' meaning compound/yard. In traditional Kiganda setting, *Olujja* is perceived as the front view/space in every traditional Kiganda home, one that is attractive and where both household members and guests arrive at. Such spacious receptive open areas become negated when they are used as a burial ground for household members. It is after *olujja* (good,

attractive and a receptive compound) when re-designated as a burial ground that it acquires negative meaning as "*Ekijja*" or its plural – *Ebijja*. Although such land is stigmatized and construed in negative ways, it is traditionally accorded very high social value compared to other pieces of land, since it is symbolic of cultural identity/heritage of a given clan/family in Buganda.

In the research process, participants both women and men noted that this land – which may at times be expansive – is usually entrusted to females since families feared that boys would sell it off. To ensure that such land remained intact, it is often allocated *collectively* to girls in the family, who hold user rights to it but are not allowed to sell it under any circumstances. Besides the social stigma associated with *Ekijja*, the idea of allocating it to women instead of men and the social value it holds as a symbol of cultural identity cannot be taken for granted. Allocating this piece of land to women not only enables them access rights but it also highlights the significance such traditional systems attach to women as responsible and trusted guardians of cultural identity.

> Women are not given the same share of the family land as men. In most cases they (women) turned into "guards at homes". They assume the responsibility of taking care of the graveyards and they are not allowed to sell that land. Most girls are given houses of their parents to guard them, the reason is that they should never sale the land. They are given the house near the burial ground, cultivate, grow crops and eat (Men only FGD).

Furthermore, participants noted that land marked out as burial grounds may not necessarily be limited to a small piece of land where the dead are buried (graveyard) but it could relate to big portions set aside by families as burial grounds among other functions. Such pieces of land could also be utilized for other family enterprises. Women can decide how to use but this land was not to be sold. That such land which is highly socially valued is placed in the hands of women, signifies the importance traditional systems places on women with regard to land as a cultural symbol. This does not only symbolize the value attached to land but also demonstrates the intrinsic value not elaborated by the visible performativity of patriarchal norms.

The social value attached to the land, which value is entrusted to women rather than men for fear of the latter selling it off, is something that has not been articulated as a means of according women primacy over cultural land. In this case women inherit the cultural land and become custodians of culture resources, a move that ought not to be ignored in the social stigma that surrounds *ebijja*. The other significance drawn here is that while women are constructed as lacking belonging, in that they supposedly marry and go away, in actual effect they are seen as the ones

able to look back and conserve. Men on the other hand are assumed to be present and away; while the women are away but present at the same time.

Amuru: Marriage and Clan Power in Community Land Access

> In Acholi, the issue of ownership by men and women is generally misleading. There is no individual who owns land, we have the clan which is the sovereign authority and sets rules which must be followed by everybody. Also, the most worrying aspect of the land system is the diminishing authority of the traditional leaders who were custodians in terms of setting rules and regulations governing the land due to increased individualisation (Key informant).

During group discussions in Atiak and Pabbo, participants had several views, some of which are presented below:

> Women's land rights have various dimensions. For example, a married woman who is living happily with the partner will enjoy all the rights to use of land but in the event that there is a misunderstanding leading to separation then that right over land ends.
>
> The common practice is that when a man marries a woman, he takes her to their home and she is given land to till and this land is what she cultivates with her children and she passes on the children inherit and keep using it. Land is passed over from generation to generation. And women acquire this land through marriage and it is the father in-law who gives the land to the daughter in-law for cultivation to feed her children and this does not mean you have rights to ownership but it exclusive to usage rights for cultivation only and you cannot be sure when they can recall it back if they want.
>
> Traditionally women did not have rights over land because they paid bride price for you and I have never seen any woman being called for a meeting regarding land matters in this area because they don't have any rights to land. "*Tekwaro pa Acholi mon pe ki twero pa ngom kwaro*" literally meaning-women in Acholi do not have any rights over customary land.

Several people who participated in the discussions tended to swing from one position of 'women in Acholi do not own land' (Kindi 2010) to the one that that posits that in actual effect there is no question of ownership of land in Acholi and that clans hold land in trust of the present and future generations. In fact, during one of the discussions, a direct question was asked as: 'Who owns this land on which you live?' And the answer was: 'This land belongs to our ancestors (locally translated as: *ngom pa kwaro wa*)'. In this case ownership and exclusion is merely a product of abuse in the present times. Accordingly, under the Acholi traditional land management system, land is owned by the clan and sub clans. Land is seen as a collective asset and no clan or men as individuals would be allowed to sell land. This land is passed on from generation to generation and within this system, women acquire

land rights through marriage, by way of gift and inheritance. Each family is allocated a portion of land which has specified boundaries.

Back to where we started, the women's stripping; far from the symbolism of motherhood and signification of a curse and the like, the narrative around this incident had deeper material meaning. In an interview with one of the women leaders in the area, she intimated that women realized they were the last line of defence of community land. As the last line of defence, they asked the men to take a step backwards so that the women would take the lead (see Picture 1). Accordingly, the response of the security forces to men would be violence in form of beatings and arrests. When the women stepped out to lead, they changed the terms of engagement and stripped naked. Hence, in addition to the symbolism around womanhood and motherhood, there seems to be a very explicit political statement about the land and its layered and gendered identifiers.

This takes us back to the debates around customary land tenure and women's land rights. In the Amuru scenario, women took leadership in the struggle for what was seen as the community's ancestral land. In other words, the terminology of men's exclusive ownership of land does not neatly apply and whence the narratives around the fact that women do not own land would seem to be more or less a new view not rooted in what has been assumed as culture. Yet, questions framed in terms of who owns land at the intra-household level would invite an almost uniform answer on men's exclusive power over land. The nested and layered notions of rights are hence pushed into obscurity.

Picture 1. *Women in leadership: Defence of community land*

Beyond Widowhood: Women, Men and Nested Family Land

The plight of widows has been at the centre of policy and advocacy. Historically, activism by middle class women has revolved around women's failure to inherit their deceased husbands' properties. In Uganda, this concern has led to the creation of Uganda Council of Women that later heralded the formation of the full-fledged women's rights movement in Uganda (Tamale 1999). On the broad front, the idea of women inheriting land at the death of their husbands was noted as a common practice across all the study areas that ensured direct transfer of property ownership rights. This practice only became contentious when abused.

While women's rights to own, occupy, and use family land in circumstances of a husbands' death is commonly reflected upon and is a key issue in women's rights activism; there are hardly reflective studies that explore what becomes of 'family land' and what happens to the man's rights to land when his wife dies and leaves children. This kind of silence on the status of men's rights to land after the death of their wives tends to assume universal male ownership of land and constitutes women as a "'target group' [that] exists as an entity that lies outside the nexus of social relations in which individual members are embedded" (Cornwall 2000). Constituting men and women as binary opposites in relation to land rights is something that this study critiques in the context of customary joint ownership of 'family land'. In the conversations below, FGD participants raise complexities with regard to men's rights to land when a man's wife dies leaving children.

Male Respondent 1: Even men have problems. When a man loses his wife, he has the land which he inherited from his father and the other which he bought, but when he loses the wife, the children will say all the land belongs to them, they will say the land belonged to their mother.

Male Respondent 2: I also tell them that the land I bought together with your mother is your own, the one I inherited from my father is mine. I work hard together with their mother; she passes on and they chase me!!

Researcher: I have not understood that because as we discussed, it felt like the man has control over the land, gives land to the woman to till it.

Male Respondent 3: Women got rights and for us men are suffering. Women became sorted. But on land, men we are suffering when we toiled to have it.

Female Respondent 1: Did you have land before marriage?

Male Respondent 1: Before I married, my father had not given me land.

Female Respondent 1: When I am no longer living, my children should share with you at least.

Male Respondent 1: They refuse, haven't you seen them?

Female Respondent 1: You sit and agree.

Male Respondent 1: Will they accept?

The conversation above highlights contentions regarding men's and women's relationship to land. These debates challenge the taken-for-granted assumptions that men own and control land and that on the death of their spouses, they remain in privileged positions regarding land ownership.

Initially, the first male respondent, in the discussion, alerts us to an unusual complaint, that is, that besides the common knowledge on women's apparent marginalisation in land rights debates, "even men have problems". He goes ahead to elaborate on the problems he has noticed regarding men's relationship with land in marriage – "When a man loses his wife, he has the land which he inherited from his father and the other which he bought, but when he loses the wife, the children will say all the land belongs to them, they will say the land belonged to their mother".

This submission – about problems that men face in recent times – is not only acknowledged but it is also re-echoed by several other male and female participants. This shared knowledge among the participants shifts from the previous narratives in which participants had presented men as having control over land as indicated by the response from the researcher who constitutes the shift as a contradiction. This led to more conversational clarity as men pointed out ways in which, on the death of the wife, children often say that land belonged to their mother and limit certain transactions by their father.

Another interesting turn to the conversation was in the way men presented themselves as the 'new victims'. This sense of tension in men's identities (masculine loss of power) is implicitly attributed to intensive advocacy on women and children's rights to land, which are informed by gender discourses that homogenize men as universal privileged category. Yet, another rather unintended angle from the conversations was the whole location of motherhood not only in the question of land rights but which stretches its tentacles to affect men's quality of life. A strong voice from Rukiga pointed out men are presumed heads of households with the right to make decisions on land but the under current was the power of motherhood.

Men talked of the way they are increasingly isolated as children tend to coalesce around the mother – starting from the hearth – *amahega*. In their childhood and maturing into a "coalition" of sorts in their adulthood. Men talked of the enormous power that women have on their children such that if a man dies first, the children are concerned about the mother, they build a good house for her, when she falls sick they take her to the city for proper treatment and when she is still alive the children visit the village home more often.

Accordingly, if the reverse happens and the mother dies first, the children begin by placing a caveat on the land to the effect that this was their mother's land. 'Only lucky widowers are looked after by their children', men seemed to assert in chorus. Majority widowers often re-marry and that sets in another point of battle over the land and other property that were under the control of the late wife and her children. Accordingly, some children go to the extent of demanding that if the father remarried, he would have to vacate their mother's bedroom or even leave the house completely. The father is henceforth isolated and the new wife is seen as an intruder. In other words, the land, which was initiated by the marriage of their mother cannot be easily bequeathed to another marriage especially if the children are not close to their father. The conversation in Rwamucuucu became rather highly emotive as men recounted the number of widowers apparently living as paupers despite the fact that they had accumulated some level of wealth (particularly land parcels) when their wives were still alive.

Conclusion

As seen from this reflection, land rights present themselves in very intricate ways and in the case of customary land tenure, there exists multiple modes of access, inclusion and exclusion. It is a complex web of rights, lived and experienced. With this complex web of rights, policy reforms should equally be elaborate and surpass simplistic notions. Equally too, advocacy on land rights for women should as of necessity surpass the very basic and simplistic understandings around: "women do not own land."

It is very clear that there is not one but multiple customs and at another level what we are talking about is merely abuse of custom as opposed to custom itself. Also, notions, such as co-ownership may not capture the realities already on the ground where we are talking about family land in the broader sense, as opposed to individual ownership. In this case, imperatives of advocacy which require simple and stable messages for policy makers may in the end erode some of the spaces for women's negotiation in the realm of customary land.

The paradox that faces us is that the acknowledgment of fluidity and multiplicity of experiences may seem to dilute the need to address patriarchal domination as it presents itself in the realm of land rights. But this ought not to be the case. Rather, the spaces of inclusion and negotiation especially in the realm of identity, family and marriage should form part of what is to be processed as material for advocacy in women's land rights. Borrowing from Oyeronke Oyewumi's (2013:97) critique of generalist notions of gender relations in the South, the thinking around gender and land rights is at once 'in serious need of repair'.

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