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## ENGENDERING PROPERTY RIGHTS:

### WOMEN'S INSECURE LAND TENURE AND ITS IMPLICATIONS FOR DEVELOPMENT POLICY IN KENYA AND UGANDA

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The importance of women's contributions to the predominantly agrarian societies of Kenya and Uganda contrasts sharply with the inequity and insecurity these women face in their ability to own, inherit, manage, and dispose of land and property. This paper examines how gender equality in the design and implementation of property rights in East Africa can promote development as well as enhance the status of women in patriarchal societies. Women's insecure land tenure stems specifically from deficiencies in the constitutional order, institutional arrangements, and social norms that govern property rights systems. Accordingly, recommendations for reform in these three areas share the ultimate goal of making property rights systems not only more equitable, but also more effective.

#### INTRODUCTION

In Uganda and Kenya, as throughout sub-Saharan Africa, the agricultural sector is the most important source of income and livelihood for the countries' predominantly rural populations. In Uganda, agriculture contributes 43 percent of gross domestic product, 85 percent of export earnings, and 80 percent of employment; in Kenya, the figures are similar (Bosworth 2002, 9). Because of the significance of agriculture to rural livelihoods,

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land is the most important asset for many households in these two countries. With the aid of international donors and the World Bank, since the 1970s governments in East Africa have enacted policies that emphasize the development of effective land rights systems.<sup>1</sup>

The underlying premise of these reforms is that the establishment of a formal property rights system fosters economic growth and improves welfare. Gender inequities in law and in practice, however, have challenged land reform initiatives. For example, in Kenya, women constitute 80 percent of the agricultural labor force yet own only 5 percent of the land (Human Rights Watch 2003a, 16). Drawing primarily upon current research from the World Bank and regional development organizations, this paper examines how ensuring gender equality in the establishment and implementation of property rights in Kenya and Uganda can promote growth, development, and human rights.

The first section outlines the important relationship between property rights, development, and gender equality. The second part examines the status of women in Kenya and Uganda, focusing specifically on each country's constitutional order, institutional arrangements, and social norms. The final section contains recommendations on areas where further action can be taken by governments, donors, and civil society to ensure women's rights to own, inherit, manage, and dispose of property.

## WOMEN'S PROPERTY RIGHTS IN DEVELOPMENT

In their 1991 World Bank article on land tenure and property rights, economists Gershon Feder and David Feeny outline three key constituents of the overall structure of a society and market: constitutional order, institutional arrangements, and normative behavioral codes. The constitutional order refers to the fundamental rules about how society is organized, "the rules for making rules" (Feder and Feeny 1991, 136). Institutional arrangements are created within the rules specified by the constitutional order (e.g., laws, regulations, associations, contracts, and property rights in land). The third category, normative behavioral codes, refers to the cultural values that legitimize the arrangements and constrain behavior. The authors claim that property rights, as a category of institutional arrangements, are important because "property as a social institution . . . involves rights, duties, powers, privileges, forbearance, etc., of certain kinds" that define the uses and users of exclusive rights (Feder and Feeny 1991, 136). Institutional arrangements are generally easier to modify than either the constitutional order or normative behavior codes, and thus a promising realm for intervention.

The authors define four basic categories of property rights: (1) none (or open access); (2) communal property; (3) private property; and (4) state (or crown) property. The rising trend toward private property in particular is explained by increasing population density, favorable terms of trade toward agricultural production, and technological change that increases the returns on land investment (Feder and Feeny 1991, 135, 139). The authors argue that certain institutional arrangements for land rights have evolved in order to reduce uncertainty and increase efficiency in both land and credit markets (where land is often used as collateral). They construct a simple model of investment, production, and land price determination that assumes that the objective of farmers is to maximize their utility by allocating their initial endowment and borrowed funds to three uses: current consumption, land acquisition, and investment in physical capital. The model links the supply of credit directly to the value of landholdings and inversely to the probability of land loss. From their economic analysis, Feder and Feeny conclude that titled land results in the following social benefits, which outweigh the costs of establishing and enforcing titling systems: (1) reduced risk of expropriation; (2) better access to credit; (3) significantly higher market value of land (as compared to squatters' land); (4) larger volume of investment; (5) higher likelihood of land improvements; (6) more intensive use of variable inputs; and (7) higher output per unit of land (Feder and Feeny 1991, 145, 147).<sup>2</sup>

The works of Hernando de Soto and Bina Agarwal, which also examine the importance of property rights in development, support and supplement Feder and Feeny's findings. De Soto argues that differences in endowments of any of the three classical aggregate factors of production or access to technology do not explain variation in per capita incomes; rather, the most important explanation for income disparities across countries is the difference in their economic policies and institutions. For de Soto, the key economic institution is a formal property system, the process that converts "dead assets," or non-productive resources, into resources that generate "live capital" (de Soto 2000, 50). Capital is defined as both the "physical dimension of assets as well as their potential to generate surplus value;" in fact, de Soto asserts that 80 percent of the world is undercapitalized. Moreover, "property is the realm where we identify and explore assets, combine them, and link them to other assets" and the place "where capital is born" (de Soto 2000, 40-41, 47).

Like Feder and Feeny, de Soto emphasizes the importance of public institutions in creating effective land title systems. Such institutions correct for inefficiencies that are the result of uncertainty and asymmetric

information, wherein the price of land may not reflect its true social value, thus leading to sub-optimal land transactions. Centralized public records and a functioning legal system are therefore essential in de Soto's model (de Soto 2000, 153-206). In addition, de Soto identifies a virtuous cycle of property rights, in which the development of property rights can generate positive externalities that may spill over into other areas of development. For example, the legal mechanisms required to establish a property system—legislation, regulations, and statutes—assume development of other institutions such as an effective legislature, judiciary, and bureaucracy. The executive also shapes the development of property systems since political will is often needed to expand the system in order to ensure equal access to all citizens. Restricted access to property makes “capitalism a private club, open only to a privileged few, and enrages the billions standing outside looking in. This capitalist apartheid will inevitably continue until we come to terms with *the critical flaw in many countries' legal and political systems that prevents the majority from entering the formal property system*” (emphasis added) (de Soto 2000, 67).

Bina Agarwal, expanding upon the issue of restricted access to property rights, focuses on women's exclusion from various property rights systems in South Asia. Her groundbreaking work, *A Field of One's Own* (1994), provides a conceptual and evidentiary link between gender inequality, low productivity, and poverty in agrarian societies. Agarwal points to potential gains in welfare, efficiency, equality, and empowerment to advocate that women not only own land, but also exercise direct control over it.

Agarwal argues that women's direct control of land may contribute to improved welfare effects, based primarily on findings that indicate women's spending patterns and earnings are positively correlated to the welfare of households (in terms of such factors as wealth, nutrition, and health). Moreover, such control may provide an incentive for women to invest more in their land, which would increase productivity. Finally, Agarwal writes that promoting women's equal land rights enables women to fight for their economic, social, and political rights in other domains of society (Agarwal 1994, 27-44).

Agarwal acknowledges, however, that women's land access neither fully nor necessarily assures the realization of these four benefits. She emphasizes that in order for the land to be productive, women need equal access to credit, inputs, technical information, and infrastructure, which are complementary to land ownership rather than substitutes for it. She argues that the process by which rights are acquired is especially important:

It is not just an increase in women's command over economic resources, but also the *process* by which that increase occurs that has a crucial bearing on gender relations.... Acquiring those rights ... will require simultaneous struggles against many different facets of gender inequalities embedded in social norms and practices, access to public decision-making bodies at every level, gendered ideas and representations, and so on.... Land thus has a strategic importance that other gender concerns such as employment and education appear not to share in equal measure.... But it is precisely the complex and wide-ranging nature of these obstacles that gives the struggle to overcome them a transformative potential...(Agarwal 1994, 44-45).

Agarwal suggests that the basic unit of economic analysis—the household—be re-evaluated in terms of gender dimensions within the family. Like some feminist economists, she argues that male dominance of household decision-making results in an unfair and burdensome allocation of labor to women, which consequently forces them into subordinate roles (Braunstein and Folbre 2001, 25-44).

## WOMEN'S UNEQUAL LAND RIGHTS IN KENYA AND UGANDA

Agarwal's assessment of South Asia is applicable to the situation in East Africa, where gender inequalities are pervasive in the constitutional order, institutional arrangements, and normative behavioral codes. This section of the paper examines the case of women's unequal land rights in Kenya and Uganda by analyzing each of these three categories. While I employ the categories used by Feder and Feeny, I diverge slightly from their view that property rights are simply a subset of institutional arrangements; instead, I take the broader view that property rights crosscut all three categories.

### Background

In Kenya and Uganda, women provide 70 to 80 percent of farm labor but own only 5 to 7 percent of the land (Bosworth 2002, 10). Increasingly, women and women-headed households account for the majority of the extreme poor. According to Kenya's 1996 World Bank Participatory Poverty Assessment, 25 percent of the study population was categorized as very poor; however, in this group there were twice as many female-headed households (44.1 percent) as male-headed households (20.8 percent) (see appendix, Table 1) (World Bank 1995, 23). The study defines female-headed households as "those in which there was no adult male living

with the woman or supporting her from another location” (Narayan and Nyamwaya 1996, 22). Compared to the very poorest class, the gap between male- and female-headed households is roughly proportionate within the middle (medium) class, but smaller within the poor class and even larger within the upper (rich) class.

In Uganda and Kenya, women have the statutory legal right to inherit land. Male domination and customary practice, however, constrain the degree to which women are able to exercise this right. Women’s access to land typically is derived through male relations, who own and/or control the land. Table 2 in the appendix outlines the various modes of land acquisition in two districts in Uganda. In the district of Bushenyi, 69.9 percent of 103 respondents reported that landholdings are acquired through customary means, including family access, donations, and inheritance. In these cases men are given priority over women, so that women who do have access to land are given inferior landholdings. Ugandan and Kenyan women also rarely purchase land. Explanations for women’s lack of access to land markets include shortage of funds, fear of dispossession by male relatives, and fear of retaliation from male relatives (particularly women who must purchase land without their husbands’ knowledge) (Bikaako and Ssenkumba 2003, 247-255).

### **Constitutional Order**

To evaluate gender equality within the constitutional order of property rights, a report sponsored by the regional organization Technical Center for Agricultural and Rural Cooperation (CTA) outlined the following questions in order to frame an analysis of substantive, administrative, and strategic issues in gender-based legal reform of property laws:<sup>3</sup>

1. Under marriage, succession, and property laws, do married women have full proprietary capacity, equal with men, to acquire and hold property in their name, to occupy, manage and dispose of property, and to defend these rights against others?
2. Does custom abrogate the statutory rights of women to acquire and own property?
3. How does the legal definition of ownership affect the property rights of women?
4. Does the Constitution bar sex discrimination in property ownership? (Joshi and Kirjavainen 2002, 9)

Based on these four questions, this section assesses the constitutional order in Kenya and Uganda and presents legal recommendations in the third and final section of the paper.

The colonial imposition of the British legal system upon customary land tenure systems in Kenya and Uganda undermined women's property rights. The British system had the effect of giving family heads, who were predominantly male, greater autonomy in making decisions regarding land access, use, and control, thus rendering women's rights insecure. Land could be sold without consulting the family or community. At the same time, British colonialism left intact patriarchal customs and traditions. Legal dualism still exists in both Kenya and Uganda, despite constitutional amendments that specifically outlaw customary laws that discriminate against women. The impact of legal dualism upon women in these societies "has confined the majority (both male and female) to an arbitrary and contradictory world, governed at one moment by universal laws which apply to all citizens, and at another moment by laws which apply solely to members of a given tribe, clan, and ethnic group" (Bikaako and Ssenkumba 2003, 240).

In response to gender inequality in land and property rights, marriage, and succession, the governments of Kenya and Uganda both initiated constitutional review processes. In Uganda, this took place in 1995, when a new constitution was adopted. Subsequently, the Land Act of 1998 was passed to implement specific provisions of the constitution; namely, to create a system of tenure, ownership, and administration of land (Tripp 2004, 5). Regarding the four questions posed above, Uganda's constitutional order satisfies the first two requirements for formal gender equality. In regard to the first question on gender equality within family and property law, the law prohibits any administrative act that discriminates against women (Section 6-1g); provides for improved or equal representation in land administration bodies (Sec. 48-4, 58-3, 66-2); requires spousal consent for any transfer of household land (Sec. 40-1); recognizes customary rights as fully legal and registrable (Sec. 3-4); and provides for family and group tenure in registrable form (Sec. 4). Additionally, in reference to the second question on legal dualism, the Land Act prohibits any customary action that deprives women of rights (Sec. 28) (Joshi and Kirjavainen 2002, 24-25).

The Ugandan government failed, however, to make equal rights with men a stated principle of law (question three) or to establish spousal co-ownership or equitable partition among spouses in a polygamous marriage (question four). The absence of spousal co-ownership in the Act is

particularly contested by women's activists (Asiimwe 2001). Moreover, the legal prohibition against discriminatory customary laws has not been enforced in practice.

In Kenya, the constitutional review process initiated in 2002 has faced continuing opposition from Parliament, which has yet to adopt the revised text because of a political struggle between two main parties (Mulama 2004). The current constitution prohibits laws that discriminate on the basis of sex, but exempts certain laws vital to women's property rights (such as marriage, inheritance, and the application of customary law). For example, article 82(6) of the current constitution provides that if an official body controlling transactions in agricultural lands (e.g., a land control board) gives or withholds consent to a transaction, this decision may not be deemed discriminatory. So if a woman disagrees with a man's sale of family agricultural land, according to the current constitution, she has no legal recourse.

Feminists and women's activists have supported the provisions of the revised constitution, stating that it would promote the protection of women's property rights. In regard to the four questions of analysis posed above, the Kenyan draft constitution satisfies two of the four criteria. Regarding question one on gender equality within family and property law, the draft constitution provides for equal rights relating to marriage and its dissolution (Art. 38.4); guarantees every person the right to acquire and own property (Art. 54.1); ensures that every person has the right to adequate housing (Art. 59); and requires Parliament to enact laws to protect matrimonial property and laws protecting spousal rights to inherit land (Art. 235). Moreover, per question four, the draft text prohibits discrimination on the basis of sex and marital status (Art. 34.1).

But on the issue of statutory law versus customary law, the provisions of the draft constitution are mixed. Article 35 guarantees men and women equal rights, including equal rights to inherit, have access to, and control property, and prohibits any law, culture, custom, or tradition that undermines women's dignity, welfare, interest, or status. But article 31(4) qualifies article 35 by allowing for the application of Islamic law in relation to personal status, marriage, divorce, and inheritance (Human Rights Watch 2003c). As in Uganda, moreover, the Kenyan government failed to establish spousal co-ownership or equitable partition among spouses in a polygamous marriage (question four).

### **Institutional Arrangements**

Since Kenya's draft constitution has not yet been adopted, this analysis

focuses on institutional arrangements in Uganda, which were introduced in the 1995 Constitution and made operational by the 1998 Land Act. The salient question is whether these legal provisions have given rise to effective institutions that can enforce gender equality within the national property rights system.

As previously defined, institutional arrangements are created within the rules specified by the constitutional order (e.g., laws, regulations, associations, contracts, and property rights in land). Uganda's constitution specifies two key institutional arrangements related to land and property rights: devolution of tenure administration procedures to the local level and/or to prominent local actors (Sec.57-69) and devolution of dispute resolution mechanisms to civil authorities and/or to prominent civil authorities (Sec.75-90). As for the 1998 Land Act, section 40(1) is particularly relevant for women. Here the law prohibits family members from selling, leasing, or giving away land without the consent of the residential spouse or children of majority age. Spouses and children of majority age may also add a caveat to the land title indicating that their consent is required in any land transaction; however, "consent shall not be unreasonably withheld" (Joshi and Kirjavainen 2002, 22). Finally, at least one woman must stand on each of the key administrative bodies, including the Uganda Land Commission, District Land Boards, and Parish Land Committees (Joshi and Kirjavainen 2002, 22).

The latter provision is in line with World Bank and CTA recommendations, which advocate for greater decentralization of decision-making to local levels (Gopal 1999, 33-34; Joshi and Kirjavainen 2002, 62). Since 1987, Uganda has carried out a process of decentralization, which emphasizes informal legal systems over the formal, state-sponsored legal system to regulate key institutions such as property rights. In 1987, Resistance Councils—referred to as Local Councils (LCs) since 1997—were established nationwide in Uganda at the village, parish, sub-county, and district levels. The LCs handle simple civil cases, including land disputes. The Local Government Act of 1997 required that at least one-third of members on the LCs (at all levels of government) be women.

A study carried out in 2000–2001 by the World Bank and Uganda's Ministry of Gender, Labor, and Social Development sought to assess whether the newly decentralized structures with their emphasis on gender representation had enabled women to enforce their socio-economic rights at the local level. The study found that the decentralized political and legal environment in Uganda had increased women's access to legal and judicial services, since 84 percent of the women interviewed who filed

legal claims had felt the decentralized system had achieved justice (Joshi and Kirjavainen 2002, 42-43). In general, the prevailing logic among World Bank advisors is that informal legal systems, or dispute-resolution mechanisms invested in local authorities, are “procedurally simpler, less costly, and more informal—in line with African traditions and practices” (Gopal 1999, 34).

In contrast to the mainstream development literature, Lynn Khadiagala has been among the few to argue that “popular justice” in Uganda has failed, particularly in protecting women’s property rights (Khadiagala 2001, 55-56). She states that the LCs, or “tribunals of popular justice,” were actually more expensive, gender-biased, and limited in the access they provided to women. She attributes these problems to high levels of corruption and rent-seeking, the strong element of social stigma in small communities, and the rule of persons versus the rule of law (or “gate-keeping” by elected council officials). As evidence of the decline in women’s perceptions of the LC’s legitimacy, she cites quantitative data on court usage in the Kabale District. She shows that the number of cases filed annually by women before LCs declined from an average of twelve cases in 1986 to eight in 1995; in contrast, the number filed by women before the chief magistrate rose from two cases to thirty cases between 1985 and 1996. Moreover, Khadiagala argues that the one-third quota for female representation on the Land Council was merely symbolic, because conservative women were elected and commonly faced pressure from male colleagues (Khadiagala 2001, 64-65).

Khadiagala argues that women’s increasing reliance on the formal legal system suggests that a national legal system containing a unified body of law and an independent judiciary may be necessary for the emergence of local self-governments envisioned under the decentralization scheme. Khadiagala thus urges a separation of the branches of government based on a lesson of English legal history: “the critical nexus lay in the institutional relations among parliament, the judiciary, and the localities ... [W]ithout a separate body of law through which the Crown could exercise direct control over the localities, local officials were ‘answerable not to the central state, but rather to the courts and ultimately to Parliament’” (Khadiagala 2001, 72).

Khadiagala asserts that informal justice ultimately fails because “people want authority rather than informality” (Khadiagala 2001, 73). Thus, the divergence between Khadiagala’s findings and those of the World Bank and the CTA can perhaps be best explained by the gap between principle and practice. While decentralized adjudication and enforcement of land

rights may be favorable to women in principle (particularly given the equal representation clause), patriarchal norms and customary law trump any statutory guarantees of equality in practice.

### **Normative Behavioral Codes**

While there are many reasons for higher poverty among female-headed households, the World Bank identified limitations on women's ownership and access to land as a critical factor. Although women can and do legally inherit land, African customary law and practice support a patrilineal mode of inheritance premised on a widespread belief that women do not deserve or are incapable of handling property. This trend is observable across a range of ethnic groups, social classes, religions, and geographic regions. Moreover, the British colonial legacy in both countries undermined women's extensive usufructuary rights on land allocated to them at marriage and originally guaranteed under customary tenure. The dualistic legal systems resulting from the merger of colonial and traditional legacies tended to reinforce patriarchal patterns that endangered women's property rights (Bikaako and Ssenkumba 2003, 240).

An additional matter that complicates the issue of women's equal property rights is polygamy, which is socially and legally accepted, especially within Muslim communities. Partitioning land and property among multiple wives and offspring has not been adequately addressed by either the Kenyan or Ugandan governments.

Most frequently, property rights violations occur in the inheritance and the division or control of matrimonial property, which encompasses the home and personal belongings, as well as the land itself (Bikaako and Ssenkumba 2003, 247-248). Although all women are vulnerable to these abuses, divorced or separated women and widows have been known to suffer some of the most extreme violations, including destitution, homelessness, and/or violence. Tables 3 and 4 in the appendix illustrate how the customary division of assets upon divorce or separation is commonly unfair to women in Kenya and Uganda. Even though it is traditionally recognized that a woman should be granted the house upon separation or divorce, it is increasingly more common that her in-laws will nevertheless attempt to claim the house in a dispute. In such circumstances, divorced or separated women who are unable to return to their family's home are vulnerable to homelessness and destitution.

In other cases, in-laws may evict widows from their homes, especially when the husband died of AIDS or AIDS-related complications (Walsh 2003). Land grabbing is especially acute in Uganda, where land pressure is

high. According to a 2001 study in Uganda financed by the U.S. Agency for International Development (USAID), 29 percent of widows reported they had been victims of property grabbing. One in five teenage orphans claimed that outsiders had seized their belongings after their parents had died (LaFraniere 2005). Moreover, in some places, widows are forced to undergo customary sexual practices such as “wife inheritance” or ritual “cleansing” in order to keep their property. In situations of wife inheritance, a male relative of a dead husband takes the widow as a wife, often in a polygamous family. Cleansing involves sex with a social outcast who is paid by the dead husband’s family to “cleanse” the woman of her dead husband’s evil spirits. In both cases, safe sex is rarely practiced. Women who object to such practices are often beaten, raped, or ostracized (Walsh 2003).

Violations of women’s property rights reinforce women’s vulnerability not only to high rates of poverty, but also to violence and sexually-transmitted diseases such as HIV/AIDS. Consequently, the importance of engendering women’s property rights and supporting their secure land tenure is especially acute in light of the AIDS epidemic. In 2003, national infection rates among adults in Kenya and Uganda were 6.7 percent and 4.1 percent, respectively; in Kenya, women constitute 60 percent of the infected adult population (UNAIDS 2004, 191).

## RECOMMENDATIONS FOR ENGENDERING WOMEN’S PROPERTY RIGHTS

Deficiencies in the constitutional order, institutional arrangements, and social norms governing property rights systems in Kenya and Uganda serve to undermine gender equality and potentially constrain economic development. Therefore, stakeholders in land tenure systems including governments, donors, and civil society should reevaluate efforts to establish property rights and implement land reform. How should constitutional provisions, laws, institutions, and social norms be revised in light of the aforementioned challenges and constraints? This section addresses some of these issues and outlines several recommendations.

### Constitutional Order

Constitutional revision is ongoing in Kenya but has ceased in Uganda, where a new constitution was adopted in 1995. Consequently, constitutional reforms are a more expedient means to engender women’s property rights in Kenya than in Uganda. In November 2003, the Consensus Bill was passed in order to allow the Kenyan Parliament to alter the draft constitu-

tion with a simple legislative majority. Over the past two years, Human Rights Watch and local NGOs have lobbied the Kenyan government and its donors to support the adoption of the Kenyan draft constitution as a means of protecting women's equal rights to property. Their argument has been based mainly on human rights considerations, rather than development-based arguments that emphasize women's economic contributions. Citing the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979) to which both Kenya and Uganda are signatories, grassroots activists have pushed for women's equal property rights within the broader context of promoting women's dignity and welfare (Oxfam 2003; Rugadya 2003).

In order to assuage activists' concerns that the Consensus Bill subjected the new constitution to political manipulation, the government announced that a national referendum on the final draft of the proposed constitution will be held in October 2005 (Mulama 2004). Since the current draft of the new constitution does not guarantee spousal co-ownership nor the rights of women in polygamous relationships, local movements should focus on incorporating these legal guarantees into the final draft.

### **Institutional Arrangements**

As previously noted, economists Feeny and Feder argue that institutional arrangements are easier to modify than constitutional orders or normative behavior codes. Consequently, this paper recommends that stakeholders focus the largest share of their efforts in this domain.

In 2001, the World Bank produced a Framework for Law, Gender, and Development that identified gender-biased laws and customs in Africa. In particular, the report recommends that strategies based on an economic and development rationale will be most effective (World Bank 2001). Following this recommendation, the Uganda Land Alliance has initiated a campaign to amend the current Land Act to include spousal co-ownership. The alliance relies on in-country research to demonstrate how the patriarchal system of land ownership has marginalized and devalued women's contributions to the household, thus limiting agricultural productivity (Rugadya 2003).

Other institutional arrangements that need to be addressed in Uganda are the Local Councils and their role in enforcing women's property rights. Donors need to increase resources to strengthen the legal environment, to provide gender-sensitivity training to local officials, and to increase the general capacity of local government to respond to land disputes. Technical and financial assistance should also be provided to local NGOs that

offer legal aid to women for the purpose of defending themselves in land disputes. For example, in Uganda, the Austrian Development Cooperation provided funding to the Rukungiri Gender Development Association (RUGADA) to establish a legal aid clinic in 1997 in the rural district of Rukungiri. Another promising initiative is the Community Legal Advisors (CLAs) Program, which provides elected leaders with basic legal training to strengthen the legal support system at the grassroots level and increase the access of rural communities to legal services. CLAs are community based and are trained to increase legal awareness, give advice, help solve legal and social welfare problems, assist in mediating disputes, conduct preliminary investigations, make referrals, and provide lawyers with written statements, evidence, and other relevant information. The goal of CLAs is to “bring the law down to the level of the people and then let it rise from the people to the institutions of the State” (Joshi and Kirjavainen 2002, 48). By 2001, forty-five CLAs had been trained.

Finally, land registration has done little to protect women’s rights, despite the provision in Uganda’s constitution that provides for family and group tenure in official form (Sec. 4). As land has become more valuable in Uganda, land grabbing has increased and women face greater threat of dispossession (Giovarelli 2003). Yet when land disputes are brought before the courts, women are unable to defend themselves legally because land titles only register their husband’s or father’s name.

One example of an administrative solution that has worked successfully to resolve legal disputes is the World Bank’s land titling program in Vietnam. Similar to the situations in Kenya and Uganda, wives in Vietnam previously could assert their rights to land only if accompanied by their husbands. Divorced women were often left without enforceable land rights, because estranged husbands could transfer property based on titles bearing only their names. In response to this situation, a successful pilot project was established in north-central Vietnam to reissue Land Tenure Certificates (LTCs) for households in two rural communes in Nghe An province. The certificates were revised to enable two names to be registered so that, as joint holders of LTCs, women and men could take advantage of the opportunities that such property rights entail for the well-being of the rural economy. Moreover, the World Bank worked with the local government to produce leaflets about laws on gender equality in land use rights. Once the LTCs were re-issued, consultants worked with the government to update the cadastral record books.

Obviously, the re-issuance of LTCs is meaningless without a strong regulatory, institutional, and legal environment that can enforce women’s

equality in the property rights system. However, the World Bank land titling project in Vietnam stands as an example that can promote both women's and men's rights to secure land tenure in a cost-effective and noncontroversial manner (World Bank 2002). Strong political will should be mobilized to support such land reform efforts, by developing lobbying strategies which emphasize the contributions to economic development and fulfillment of human rights obligations.

### **Normative Behavioral Codes**

Proponents of women's secure access, use, and ownership of land commonly cite the need to change cultural attitudes that limit women's ability to exercise control over land. Indeed, patriarchal customs and practices are the primary reasons why legal reform has not resulted in widespread social change at the grassroots level. Most people in Kenya and Uganda interpret gender equality as disruptive of family harmony and the status quo. In a local survey conducted in Uganda, 60 percent of respondents were against gender equality and the manner in which it is promoted (Bikaako and Ssenkumba 2003, 270). As such, civil society, including NGOs, the media, and development institutions have an important role to play in empowering women and eliminating gender-based stereotypes that subordinate women.

One means of empowering women is simply to increase their knowledge about their rights, particularly to land and property. Information dissemination campaigns about land rights targeted at both men and women are perhaps a more neutral way to empower women, as opposed to more aggressive interventions that focus on women's rights exclusively. Relevant information could be made available at administrative offices at the sub-county level for easy access (Busingye 2002, 27).

Additionally, public awareness campaigns can also take the form of behavior change communication (BCC) strategies that employ mass media to educate men and women about the socio-economic benefits of women's land rights. In Uganda, for example, there is an emerging recognition among parents that land allocations to daughters are more secure than land allocations to sons, who are perceived as profligate. In light of rampant land sales and fragmentation of family and communal lands, this is a point that could be emphasized in order to promote the equal rights of daughters in the inheritance process. In Uganda, an alliance of women's NGOs has lobbied government and local officials to promote spousal co-ownership of property. Their main strategy has been to organize sensitization workshops comprised of elders, clan leaders, religious

leaders, and local communities in order to target both men and women to change societal behaviors that oppress women. Additionally, a campaign to sensitize the legislature and other policy makers on women's property rights abuses has been in effect since 1999. Meetings of several committees and caucuses of members of Parliament and public dialogues were organized, and radio programs have been used to initiate public debate on women's land rights (Busingye 2002, 25-26). The lessons of Uganda's civil society could also be applied in Kenya to promote women's property rights, particularly now when legislators and policy makers are involved in revising the constitution.

## CONCLUSION

Engendering property rights—that is, promoting women's equal access, control, and ownership of land and property—is a challenge for developing countries, not least because property rights systems are difficult to establish in general. The costs and complexity of property rights systems must be carefully balanced against competing development priorities. Thus, in the least-developed countries, stakeholders may need to question whether to fund the establishment or reform of property rights in the first place. But in Kenya and Uganda, there has been sufficient political will to drive efforts undertaken since the 1990s to reform land and property rights systems. Promoting women's rights within these systems is critical in order to prevent their marginalization in the process of state reform. Partnerships among donors, civil society, political leaders, and international organizations are essential to ensure effective gender-based strategies.

There remain many complicated issues that need to be addressed within initiatives to establish land and property rights systems, such as consensual unions (more common in Latin America than Africa) and partition of property in polygamous marriages. Reform of the property rights system therefore must adopt a holistic view of the legal system and address gender inequities not only in land and property law, but also in family, marriage, and divorce law. Even in developed nations, this is a daunting task. Efforts by the development community to recognize these complexities through increased research initiatives, participatory policy-making, and enlightened assistance programs could make strides toward ensuring equal property rights for women in sub-Saharan Africa.

## NOTES

- <sup>1</sup> “Beginning in the early 1970s, the World Bank, which has been a major influence on African macroeconomic policies as well as land policy, initially pushed for land reform with a strong emphasis on individual ownership through registered freehold titled land. The Bank funded a series of land registration and titling projects in the 1980s. Their aim was to promote development by eliminating communal tenure systems through more efficient land use and more secure land ownership” (Tripp 2004, 9).
- <sup>2</sup> However, the authors do note that where credit and land markets are underdeveloped, the benefits may not outweigh the costs of land title systems. They suggest that in these cases, it may be better to legalize the authority of local institutions rather than invest in expensive systems of titling and land registration (Feder and Feeny 1991, 147).
- <sup>3</sup> According to the organization’s website, the Center was established in 1983 under the Lomé Convention between the ACP (African, Caribbean and Pacific) Group of States and the European Union Member States. Its tasks are “to develop and provide services that improve access to information for agricultural and rural development, and to strengthen the capacity of ACP countries to produce, acquire, exchange and utilize information in this area.” <http://www.cta.int/about/index.htm> (accessed February 24, 2005).

## APPENDIX

**Table 1: Male- and Female-Headed Households by Poverty Ranking in Kenya (1996)<sup>1</sup>**

Entire Sample	Male Head		Female Head		Total	
	No.s	Percentages	No.s	Percentages	No.s	Percentages
Very poor	594	20.8	293	44.1	887	25.2
Poor	1083	37.9	235	35.4	1318	37.4
Medium	899	31.4	118	17.8	1017	28.9
Rich	283	9.9	18	2.7	301	8.5
Total	2859	100	663	100	3523	100

Source: Narayan and Nyamwaya 1996, 23.

**Table 2: Modes of Land Acquisition in Two Districts in Uganda (2003)<sup>2</sup>**

	Bushenyi		Mubende		Total	
	No.s	Percentages	No.s	Percentages	No.s	
Inheritance	6	5.8	12	15.4	18	9.9
Purchase	23	22.4	40	51.3	63	34.8
Donation	35	34.0	17	21.8	52	28.7
Borrowing	6	5.8	8	10.3	14	7.7
Family access	31	30.1	1	1.3	32	17.7
Landless	2	1.9	0	0	2	1.1
Total Respondents	103	100	78	100	181	100

Source: *Bikaako and Senkumba 2003, 247.*

**Table 3: Women's Assets in Divorce or Separation in Kenya (1996)<sup>3</sup>**

Items	In Divorce/Separation	
	Man	Women
Furniture/radio	X	
Animals (oxen, sheep, donkey, etc.)	X	
Farm implements/tools (hoe, etc.)	X	
Kitchen utensils	X	
Food stuffs	X	
Ornaments		X
Fly-whisk	X	
Baby	X	
Child care (e.g., bathing)	X	
Land	X	
House		X

Source: *Narayan and Nyamwaya 1996, 24.*

**Table 4. Women's Assets in Marriage and Divorce or Separation in Uganda (2003)**

Items	In Marriage		On Divorce/Separation	
	Man	Women	Man	Women
Furniture/radio		X	X	
Animals (oxen, sheep, donkey, etc.)		X	X	
Farm implements/tools (hoe, etc.)		X	X	
Kitchen utensils		X	X	
Food stuffs		X	X	
Ornaments		X		X
Fly-whisk	X		X	
Baby		X	X	
Child care (e.g., bathing)		X		X
Land	X		X	
House		X		X

Source: *Bikaako and Ssenkumba 2003, 247-248.*

<sup>1</sup> For tables 1 and 3, the study was undertaken by the Kenyan Government and the World Bank during February-April 1994 in order to complement conventional statistical studies of poverty in Kenya. It used open-ended, interactive and qualitative data collection methods to understand poverty, particularly from the perspective of the poor. Five of the poorest districts in the country were studied, as well as a small sample of female-headed households from two Nairobi slums, with a total of 3,500 people and thirty-five villages. To establish the levels of poverty, a wealth ranking method was used, which entailed a four-step process carried out in large groups meeting in public; wealth was defined both in terms of level of consumption as well as earnings (Narayan and Nyamwaya 1996, 1-2; 12-13; 22).

<sup>2</sup> For tables 2 and 4, two districts – Bushenyi and Mubende – were randomly selected from the central and western regions, areas which the authors found representative of all the different types of land tenure systems in the country. Households were selected based on a male-female sex ratio of 1:2, resulting in eighty and seventy households chosen in Bushenyi and Mubende districts respectively. A structured questionnaire with open-ended questions was given to each of these households, with individual responses used to construct the findings produced in table 2 (Bikaako and Ssenkumba 2003,243-244, 247).

<sup>3</sup> The data was collected with a gender analysis visual tool, which consists of three pictures of a man, a woman and a couple, along with fifteen smaller cards

depicting assets commonly held by households. The three large pictures are placed on the ground and the smaller cards are given to the participants, who are asked to assign each asset to the person most likely to own it (i.e., “Does it belong to the man, the woman, or the couple? How does this change in cases of death, separation or divorce?”) (Narayan and Nyamway 1996, 24).

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