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## Customary Law, Household Distribution of Wealth, and Women's Rights to Land and Property

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Renée Giovarelli<sup>1</sup>

*"Property can't own property." Quote from a Ugandan Husband.*<sup>2</sup>

### I. INTRODUCTION

Should women and men always have an equal right to use, own, receive by inheritance, sell, purchase, and bequeath land? This question does not have a simple answer in many parts of the world. To answer with an unequivocal "yes" for all countries, at all times, is to misunderstand a fundamental tenet held by most of the non-western world—the rights of the ancestral family/tribe are valued more highly than the rights of the individual. This precept is present in much of the law and custom of the non-western world and is critical to the understanding of the context of women's property rights. Land can be held by individuals, by households, or by communities (usually, but not always, tribal). Communally held and used land was the historical norm in much of Africa, for example, while western property law historically favored individual rights. When individualization of communally held land was forced onto the African tribal system by uninformed westerners, women often lost rights to land. Unfortunately, individualization of land that has customarily been communal became the major objective of land reform in many African countries, where economic adjustment policies encouraged market forces to determine the efficient allocation of land.<sup>3</sup> This individualization of ownership of communal land, rather than giving women equal status to hold and control land, has strengthened the control of already powerful groups and led to disenfranchisement of the most vulnerable members of the

community.<sup>4</sup> When land no longer belonged to the entire community, women and other vulnerable members lost their bargaining power.

In pre-colonial Kenya, for example, women had significant access to and control over use of land used for subsistence agriculture.<sup>5</sup> Women “bargained” with their husbands and fathers within the context of mutual obligations and responsibilities.<sup>6</sup> Land was abundant and neither women nor men could alienate it.<sup>7</sup> When the British introduced private ownership of land, much of the power and control over land, even under customary tenure, was vested in powerful chiefs (men).<sup>8</sup> English legal norms of ownership did not take into account that male community members were obliged to provide women with temporary usufruct and that formal registration of only ownership rights would deprive women of this access and men of their responsibilities to women.<sup>9</sup>

In contrast, western property law has developed based on the rights of the individual, and families created by individuals, rather than the tribal/ancestral family. In his book, *The Common Law*, published in 1881, Oliver Wendell Holmes described how, in common law systems, ownership of property changed from being attached to families or the church to the individual.<sup>10</sup> Moreover, European civil law includes a system of marital property known as “community property,” reflecting the underlying philosophical premise that husband and wife are equal—together in marriage they form a kind of marital partnership analogous to a legal business partnership.<sup>11</sup> Again, the ancestral family became less important in terms of property ownership than the newly created family. The Spanish system of community property dated at least from the late sixteenth century and moved to the Spanish colonies at the beginning of the nineteenth century.<sup>12</sup> The Napoleonic Civil Code, codifying French law in 1803 and 1804, also contained community property provisions based mostly on customary law at the time.<sup>13</sup>

But is preservation of the community rather than the individual or family merely cultural relativism and an excuse for the status quo in which

women's rights are trampled on for the sake of the whole? To answer this question, one has to look at household and intra-household ownership and control of land. Where communal ownership is no longer the norm and rights to land are family-based, the position of a woman within the household has a major affect on her right to own and control land because distribution of land is part of the overall distribution of the wealth and responsibilities of family members. For women, there are two separate questions related to land rights. First, does a woman have the right to use, control, own, sell, purchase, lease, bequeath, or gift land within a marriage, a consensual union, or her natal family? Second, do women who are unmarried, divorced, widowed, abandoned, or second wives have the right to use, control, own, sell, purchase, lease, bequeath, or gift land? Household events such as birth, marriage, and death have a profound impact on women's rights to land, but they cannot be looked at independently of one another because they are part of a larger family system.

I make two main arguments in this paper: (1) as a matter of equity, and for the economic and physical security of women throughout the world, women must have a right to use, own, control, and dispose of land or other property of equal economic value, and (2) those who draft the written laws and policies developed to provide women, who live in countries with customary law, with rights to land must understand and work with the principles established in customary law that consider the distribution of wealth (not just immovable property) within the family/community as a whole.<sup>14</sup>

Written law that goes against customary law provides an opening for some women—usually those who are educated and have economic resources. But legal solutions that do not recognize customs followed as “law” are largely ignored by the rural poor because individual women who depend on their family and community for survival cannot act against those norms. The legal reform efforts of international donors and local and

international non-governmental organizations (NGOs) that are designed to enhance women's land rights seldom focus on the intra-household distribution of land, yet such legal provisions potentially have a great impact on women.<sup>15</sup>

In Section II, I will discuss why women's rights to land are important both within an intact family and as head of a family. In Section III, I will examine how wealth might be passed on and redistributed within traditional households. In Section IV, I will discuss two case studies based on qualitative and quantitative research conducted in Karnataka, India, and Uganda.<sup>16</sup> Finally, in Section V, I will discuss possible ways to economically empower women beyond legal rules that simply allow or require women to own or co-own land.

## II. WOMEN'S RIGHTS TO LAND ARE CRITICAL TO ECONOMIC DEVELOPMENT AND INTRA-HOUSEHOLD BARGAINING POWER

Land ownership/control matters to women who are *members* of a male-headed household, as well as women who are *heads* of households.<sup>17</sup> The two key benefits conferred by land ownership/control are economic strength and the ability to bargain within the household. Rights to land are critical to the well-being and economic development of women, both as members of a household and as household heads.<sup>18</sup> Property rights in land—whether customary or formal in nature—provide both economic access to key markets and social access to non-market institutions, such as household and community-level governance structures.<sup>19</sup> Land ownership clearly confers direct economic benefits as a key input into agricultural production, as a source of income from rent or sale, and as collateral for credit that can be used for either consumption or investment purposes.<sup>20</sup>

Depending on the norms or customs governing intra-household decision making and income pooling, female spouses may not fully participate in these economic benefits if they do not share formal property rights over the land; only independent or joint ownership can assure women access to

control over land-based earnings.<sup>21</sup> Moreover, women's land rights within marriage may give them greater claims on the disposition of assets in the event that they become *de facto* household heads as a result of male migration, abandonment, divorce, or death.<sup>22</sup> In both urban and rural settings, independent real property rights under these circumstances can mean the difference between dependence on support of family (or worse) and the ability to form a viable, self-reliant, female-headed household.<sup>23</sup>

In addition to the direct economic benefits of land ownership, property rights may serve to empower women in their negotiations with other household members and with the community and society at large. Intra-household economic theory suggests that the strength of spouses' "fallback positions" or "threat points"—how well they can do in the absence of economic cooperation with their partners—is an important determinant of their ability to shape household preferences and, therefore, shape resource allocation decisions.<sup>24</sup>

Unfortunately, land rights that are taken for granted by men often do not exist for women. In the Near East, for example, women rarely own arable land, although civil and religious law permits ownership as well as the buying and selling of land by women. For example, in Jordan, women own 28.6 percent of land; in the United Arab Emirates, women own 4.9 percent of land; and in Oman, women own 0.4 percent of land.<sup>25</sup> In selected regions of Egypt, 24 percent of landowners are women; in Morocco, 14.3 percent of landowners are women; and in Lebanon, 1 percent of landowners are women.<sup>26</sup> Cyprus is an exception, with 51.4 percent of the land owned by women.<sup>27</sup> However, female holdings are generally smaller than male holdings.<sup>28</sup> Similarly, in much of sub-Saharan Africa, few rural women hold land. "For instance, women hold 11 percent of agricultural land in Benin, 25 percent in Congo, and 25 percent in Tanzania."<sup>29</sup> Again, where women hold land, their plots are generally smaller than those held by men.<sup>30</sup>

In many countries, while women have access to the use of land through their husbands or fathers, they do not own land or have ownership-like rights to land because of barriers created by customs (with the force of law) surrounding marriage, divorce, bride price or dowry, and polygamy.<sup>31</sup> These customs usually dictate how family and community wealth are distributed from generation to generation and how children and the elderly are cared for. Cultural prohibitions against women's ownership of land are generally more powerful than the written law allowing women's ownership of land.<sup>32</sup> Moreover, these community customs are interrelated in such a way that one cannot look at inheritance customs and not marriage customs.

### III. CUSTOMS RELATED TO INTRA-HOUSEHOLD DISTRIBUTION OF WEALTH AND THEIR RELATION TO WOMEN'S LAND RIGHTS

Most traditional households throughout the world redistribute family wealth at two main stages: marriage and death. At the time of marriage, there is a shift in who lives in which household. The terms "dowry" and "bride price"<sup>33</sup> describe the distribution of family wealth at the time of marriage. Often these terms are used interchangeably, but generally dowry refers to the gifts given to the bride (or groom and his family) by the bride's family, and bride price is generally gifts given by the groom's family to the bride's family. Societies tend to be either matrilineal or patrilineal.<sup>34</sup> In matrilineal societies, women remain in their mother's household and husbands live with their wife's family. In a patrilineal society, men remain in their father's household, and wives live with their husband's family. Custom—not written law—determines who gives the marital gifts, what those gifts are, and who receives them. This type of tribal customary law, as I will refer to it, has much more influence over societal behavior than the written law that contradicts it.<sup>35</sup>

Often when societies are both matrilineal<sup>36</sup> and matrilineal, sons inherit ancestral land and daughters receive a dowry.<sup>37</sup> In patrilineal societies, the bride's family will often give family wealth to their daughter as she leaves

their home,<sup>38</sup> *and* in addition, the bride's family loses the value of their daughter's labor. In these societies, it is very difficult for women to inherit land from their parents because the family has already given, on her behalf, her portion of the family wealth.

For cultures that practice bride price (mostly in sub-Saharan Africa) this is not the case, but women in patrilineal tribes still rarely inherit land from their parents because ancestral land is passed down through males.<sup>39</sup> Bride price is intended to show respect for the new wife and to compensate her family for the loss of her economic services. However, because of the practice of bride price, married women are often described as "purchased property" and are therefore unable to own land.<sup>40</sup> In Uganda, if a divorce occurs, the bride price must often be repaid if there are no children born of the union.<sup>41</sup> If there are children, the husband usually keeps the children.<sup>42</sup>

#### IV. LESSONS LEARNED FROM FIELD RESEARCH IN KARNATAKA, INDIA, AND UGANDA

Below are two case studies illustrating the distribution of wealth, including land, in two customary societies.<sup>43</sup> The case studies provide an overview of how intra-household relationships determine what economic assets women can own. While these case studies are only illustrative and do not represent all societies that practice dowry or bride price, they show the critical role intra-household customary law plays in the rights of women to own and/or control land assets.

The case study from Karnataka is based on a larger study of women's rights to own and control land and related resources.<sup>44</sup> The larger study included two methods for gathering village-level information: (1) a four hundred-household questionnaire survey; and (2) in-depth rapid rural appraisal (RRA) field interviews with women.<sup>45</sup> The survey included questions on a wide variety of land, land reform, and land market topics, a portion of which was dedicated to questions related to women's access to land and related resources.<sup>46</sup> Ninety-two percent of the questionnaire



survey respondents were men.<sup>47</sup> The questionnaire survey was followed by two weeks of rapid rural appraisal<sup>48</sup> fieldwork in October 2001, which primarily focused on interviewing rural women. A team of two land lawyers with international comparative experience, and one assistant professor at the Madras Institute of Development Studies with extensive experience researching gender and local governance issues in Karnataka State, conducted the RRA research. The team interviewed groups of rural women and men, gram panchayat<sup>49</sup> members, traditional leaders, and NGO activists. The central focus was, however, to interview rural women. The authors interviewed approximately one hundred rural women, usually in small groups. The women were from a cross-section of religions, castes, and socioeconomic groups, including Hindu, Muslim, Christian, tribal, landed, landless, educated, uneducated, single, married, separated, and widowed women. The great majority of the women were Hindus, and within this larger group, the authors spoke with members of multiple castes including Scheduled Caste members.<sup>50</sup> The authors conducted the RRA research in two of the four questionnaire survey districts: Dakshina Kannada and Kolar.<sup>51</sup>

The Ugandan case study is based on research conducted in 2001. The Ministry of Water, Lands, and Environment (MWLE) was developing a Land Sector Strategic Plan (LSSP) that would establish a strategic framework for the implementation of sector-wide reforms, including implementation of the Land Act. The LSSP developers requested a systematic identification of the practical difficulties women face in accessing their land rights and for recommendations of strategic actions, which could be taken to improve the impact of legal changes on the ground.<sup>52</sup>

Two study districts, Mpigi and Lira, were selected for collection of primary data and were considered to be representative of the different tenure regimes in the country.<sup>53</sup> The team spent three weeks in the field conducting the household survey and interviewing key informants, local

community leaders, non-governmental women's organizations, women councilors, groups of village women, and other key district officials. In addition to the household survey questionnaire, the team also used a checklist to guide discussions and the key informant interviews. The individual interviews were conducted at the household level, with both women and men. Due to the fact that the study was documenting factors inhibiting women, children, and orphan's land rights, the team chose to interview more women than men.<sup>54</sup> In the two study districts, the team talked to both women and men of different age groups, educational backgrounds, religious beliefs, and rural and urban locations. To indicate different personal circumstances, marital status, religion, and education were all considered.

The focus groups were single gender groups to allow women to speak out freely without being inhibited by the presence of their male relatives or men who knew them. The data collected through the household survey was checked for consistency and completeness, coded, and analyzed. The findings of the household survey and the rapid rural appraisal are similar.

In both case studies, our research found that the disposition of wealth at the time of marriage had an impact on women's land rights within the marriage, and in the event of death or divorce within the household. Most of Karnataka, India is patrilineal, and among Hindus dowry is given from the bride's family to the groom and his family.<sup>55</sup> Dowry has been the subject of much research and writing, particularly as related to "dowry deaths" and physical violence against women, and in fact, it is illegal to give or receive dowry in India. Nonetheless, the family's dowry obligation was the number one reason given during field research for girls not inheriting land from their fathers; even though by statutory law they have a right to do so, and by statutory law, dowry is illegal.

Uganda primarily practices bride price, and the field research showed this system of purchasing a bride was clearly linked to women's inability to own land within a marriage or upon being widowed or divorced. In a small

survey we conducted, a majority of both men and women did not support married women owning land. Co-ownership of land within a marriage is not mandated by law, and when women do own land, it is generally because they purchased it themselves. Women in patrilineal tribes do not inherit land because it is passed through the male line. The inheritance law limits women's rights to inherit land as well.

*A. Karnataka, India*<sup>56</sup>

This case study exemplifies the interconnectedness of family customs related to distribution of wealth and women's rights to land and shows that formal law that does not address these customs is ineffective. The case study concentrates on the main questions of the paper: do women have formal rights to land within a household as a daughter or wife, and do women have formal rights to land when the household breaks down due to abandonment, death, divorce, or polygamy? Furthermore, do women have the right within their society to *exercise* these rights? The case study first examines women's formal rights and then women's ability to exercise these rights within the customary system, the system that determines how family wealth will be distributed. A woman's right to land in Karnataka depends on whether she is Hindu, Muslim, or Christian, as each religion has their own customs and formal law.

Hindus, Muslims, and Christians in India are each governed by different testamentary and intestate succession laws.<sup>57</sup> When a Hindu dies intestate, his or her land devolves according to the Hindu Succession Act.<sup>58</sup> If a valid will has been written, the Succession Act does not apply and the property devolves according to the owner's wishes. Because few people in rural areas have a written will,<sup>59</sup> the Succession Act governs the devolution of property in most cases.

As a simplistic description, Hindu personal law divides property into two classes: separate (usually self-acquired) property and joint family (ancestral) property.<sup>60</sup> Separate property, which includes land the deceased

purchased or received from the government, devolves in the first instance in equal shares to the deceased's sons, daughters, widow, and, if the deceased is a man, mother.<sup>61</sup> The devolution of joint family property is more complicated than that of separate property. Traditionally, only males gained a share of the joint family property at birth and are known as "co-parencers." In Karnataka, however, daughters (through an amendment to the Hindu Succession Act), like sons, are co-parencers and receive a share of the undivided joint family property (including land) at birth.<sup>62</sup> Under the Karnataka Amendment, daughters are thus treated exactly the same as sons with regard to joint family property and inheritance.<sup>63</sup>

Field research, however, indicated that the Succession Act is rarely followed and property, especially land, usually devolves to sons, sometimes to widows, and rarely to daughters. If a widowed woman does not have children (either adult or young children), she does not generally inherit land and she often completely loses access to her husband's land. Most Hindu women in this position do not regain access to their birth family's land. Furthermore, in our interviews no widows stated that they received maintenance from their in-laws as provided for by law.

Muslim intestate succession in India is governed by uncodified (but very formalized) Muslim Personal Law, which grants widows and daughters the right to a share of some family property, though smaller than that of men.<sup>64</sup> Muslim inheritance rules are quite complex, but, essentially, if there is both a woman and a man at the same degree of relation from a person who dies intestate (i.e., a brother and a sister), the woman will receive a share half the size of the man's share.<sup>65</sup> Muslims, like Hindus, can bequeath their property by will. Unlike under Hindu law, however, the amount of property that a Muslim can bequeath to those outside of the family is limited to one-third of his property, so wives and daughters cannot be completely disinherited, as they potentially can be under Hindu law.<sup>66</sup> While Muslim widows generally do not become owners of agricultural land, they are almost always taken care of by their adult children or birth family, which is

not necessarily true among Hindus or Christians. In field research, respondents reported that the Muslim son who cares for his mother is often given a larger share of the family property.

The Indian Succession Act of 1925 generally governs the succession of property if a Christian dies intestate. If a Christian man dies without a will and he has children, his widow receives one-third of the estate, and sons and daughters get equal shares in the rest.<sup>67</sup> If there are no children, but there are other more distant heirs, the widow receives half the estate; otherwise she takes the whole estate. Under customary law, Christian women are more likely to inherit land than Hindu or Muslim women.<sup>68</sup>

If women have the formal right under written law to inherit land, why are they not enforcing this right? Daughters gave two common reasons for not asserting their rights under the Succession Act. Most stated that they were not willing to ask for land from their family because: (1) their family already paid or would pay very high dowries and other expenses to get them married; and/or (2) their families had limited land, and they felt uncomfortable asking to take a share of that small parcel of land away from their brothers. From these women's perspective, they received their share of the family property through their dowry and wedding expenses.

Parents responded similarly: their responsibilities to their daughters were met by seeing that they were married. Moreover, daughters also pointed out the impracticality of inheriting land from their birth families, as they customarily move to their husband's village at the time of the marriage and, therefore, would not be in a position to use the inherited land. Field research respondents also reported that the community was generally not sympathetic to daughters asserting land rights.

In Karnataka,<sup>69</sup> especially among the Hindus, the bride's family pays dowry to the groom and his family, who control it throughout the marriage.<sup>70</sup> Dowry is practiced by most families and is viewed as a way to improve the daughters' socioeconomic status (by marrying her into a relatively wealthier family). Even though dowry has not historically been

demanded in some communities in India, the practice developed and spread within the last few decades.<sup>71</sup> In most cases, the bride's family pays nearly all wedding expenses as well; although, occasionally, the groom's family pays for some wedding-related expenses.

Dowry is not returned upon divorce. The girl's family is essentially purchasing someone to take care of their daughter, but not actually providing their daughter with any economic power of her own. Nonetheless, much of the family's wealth goes toward paying the dowry, and it is considered a daughter's pre-mortem inheritance. In the 400-household survey, the most commonly cited reason for selling land was to pay for dowry and wedding costs.<sup>72</sup>

Under customary law, then, Hindu women have no right to land or property brought into the marital community and no right to land or property from their parents' home. This creates a situation where women have little ability to leave their marriage no matter how difficult or violent it may be.

Even though the practice of dowry as described above is wide-spread and increasing, dowry has been illegal throughout India since the 1961 passage of the Dowry Prohibition Act.<sup>73</sup> The Act prohibits both the taking and giving of dowry, regardless of whether it is given on behalf of the bride or groom.<sup>74</sup> Under the law, taking or giving dowry is punishable by a five-year imprisonment and a fine of at least 15,000 rupees or the value of the dowry, whichever is more.<sup>75</sup> Demanding dowry alone, without necessarily receiving it, is also illegal and punishable.<sup>76</sup> However, legitimate gifts to the bride or groom are permissible, and "permissible" is specifically defined by the law because the Act does not apply to wedding celebration expenses, which are often higher than the dowry.<sup>77</sup> Furthermore, *mahr*—the amount Muslim brides are promised by the groom and his family in the case of divorce or widowhood (though technically it can be demanded at any time)—is not considered to be dowry and is legal under the Act.<sup>78</sup>

The law itself takes into account that customs are stronger than statutory law and provides that *if* dowry is given (even though it is illegal), the recipient is considered by law to have received the dowry in trust for the bride and is required to transfer it to her in the event of divorce or separation.<sup>79</sup> Because dowry has been the cause of much domestic violence (because husbands and in-laws want more dowry), there are several provisions in statutory law that are intended to protect women if the tradition of dowry is not in fact eradicated by the Dowry Prohibition Act. If a woman dies from other than natural causes within seven years of marriage, the dowry must be transferred to her children, if she has any, or to her parents.<sup>80</sup> Similarly, if a married woman commits suicide within seven years of marriage, a court can presume that the suicide was abetted or encouraged by her husband or his relatives.<sup>81</sup>

Like inheritance laws, laws regarding separation and divorce are specific to each religious community in India. Laws governing Hindus, Muslims, and Christians all allow for monetary maintenance in some form, but none permit a woman the right to any of her husband's ancestral or separate property.<sup>82</sup> Hindu women, according to the Hindu Marriage Act, have the right to maintenance from their husbands.<sup>83</sup> Although, in reality, women rarely receive maintenance and usually must support themselves unless they have adult sons who might assist them. By custom, separated or divorced Hindu women are often socially stigmatized, making their lives very difficult. In field research in Karnataka, many women said that to move back to their natal family would be socially awkward and that there would not be enough land, money, or room, especially if their brothers were living in the family home. Moreover, their brothers would be angry at their intrusion because once a daughter's dowry is paid, the remainder of the wealth of the family belongs to the sons.

Furthermore, separated Hindu women are generally socially barred from moving back to their birth family's household. They are considered a shame to their family, no matter why they are separated. The community views

these women as having been raised incorrectly, which decreases the chances of their younger sisters marrying well. However, there are exceptions. Our field research found that women who were members of the upper castes (Bunt or Brahmin for example) could turn to their birth family for support and could move back to their birth family's home in case of divorce.

Another vulnerable, and often invisible, group of women are second or third wives. Polygamy<sup>84</sup> is illegal for all groups in India, except for Muslim men (and some tribals,<sup>85</sup> depending on their customs) who are legally permitted to have multiple wives.<sup>86</sup> Under the laws governing Hindu and Christian marriage, marriage is not legally permissible if either party already has a living spouse.<sup>87</sup> Muslim women, regardless of which chronological wife they are, have the right to maintenance and a portion of their husband's property upon his death.<sup>88</sup> All Muslim wives, regardless of the number, share 1/4 (if there are no children) or 1/8 (if there are children) of their husband's estate equally among themselves.<sup>89</sup>

In spite of the formal law, polygamy is practiced by men of all religions in Karnataka State. Generally, for non-Muslims who practice polygamy the first wife is abandoned but not officially divorced when the husband takes a second or third wife. Thus, these subsequent "wives" are not recognized under the law, even though they may have gone through a marriage ceremony and live together as husband and wife. One of the most common reasons cited for multiple marriages was that a man's first wife was unable to conceive (this may have been actual or perceived infertility). Frequently, there are disputes between multiple wives over their husband's land and other property after he dies.

While the formal law in India has attempted to protect women's rights to land by providing for daughters to inherit land, this legal right is, for the most part, not effectuated. As discussed above, women will not enforce their right to inherit land against their parents because their parents have already contributed so much wealth (and often land) to them in the form of



dowry. The focus, then, of changes within formal law and women's rights to land has to shift to the marital community, taking into account customary law that dominates the cycles of a woman's family life.

### *B. Uganda*

Unlike in Karnataka, women in Uganda have few formal legal rights to land. However, as in Karnataka, customary law controls every cycle of a woman's life. While the customary system of distribution of wealth is not as onerous on a woman's family as it is in Karnataka, women still have very limited rights to land as daughters, wives, or widows.

In Uganda, as in many other African countries, rights to access, control, and own land are the determining factors in overall living conditions; these rights in land are essential to everyday survival, economic security, and physical safety for women, children, and orphans. Women's reliance on land for economic security and survival is deepening as the number of women-headed households and children-headed households increases, due primarily to HIV/AIDS. The life expectancy for men in Uganda is forty-two years old, as compared to fifty-eight years old for women, leaving many landless widows, children, and orphans.<sup>90</sup>

Much of the literature on gender and access, ownership, and control of land in Uganda comes to the same conclusions. There are "clear and constant gender-based distinctions in the rights to land of men and women throughout Uganda."<sup>91</sup> While women provide from 70 to 80 percent of the agricultural labor, few (7 percent) have the rights to own or control use of land.<sup>92</sup> Women provide the bulk of agricultural labor in food crop cultivation, although they also work on cash crops even though they receive no benefit from these crops.<sup>93</sup> Only 30 percent have access to and control over proceeds from land.<sup>94</sup> Regardless of tenure type, basic differences between men and women in land access, ownership, and control exist. Both men and women have access to land, but ownership and control over land is ultimately with men.<sup>95</sup> Women have little control over crop income and

little control over decisions regarding which crops to plant.<sup>96</sup> There is some evidence that this lack of land tenure security, lack of input into decisions related to land, and lack of control over land-related income has an overall negative affect on agricultural production in Uganda because the women—who are the majority producers—have little incentive and ability to introduce new crops and adopt new technologies.<sup>97</sup>

The literature also shows that large numbers of land disputes relate to intra-family disputes and many involve women. Widows and women involved in a polygamous relationship are especially vulnerable, but women's lack of control over land can also lead to domestic violence for all women.<sup>98</sup> Our field research indicated that during harvesting, cases of rural domestic violence increased. The reason most commonly cited by women was that after harvesting the men want to take control of the produce and then sell it as they wish without their wife's consent. Hence, when the women challenge this, it usually leads to wife battering and abuse.

In traditional African communal tenure systems, land was used communally, mainly for cultivation and grazing—it was not owned by individuals.<sup>99</sup> Women moved to their husbands' clan and the clan's land.<sup>100</sup> Daughters did not need to inherit the property of their parents to protect them, except when they were unmarried or were divorced and had returned home, at which time an arrangement was negotiated with their parents' clan so that they would have access to land.<sup>101</sup>

As is typical for African countries, the written law in Uganda is broadly supportive of women's rights.<sup>102</sup> The Constitution (1995) guarantees women equal rights on par with men; provides special help and protection for mothers and women because of previous historical discrimination against women; and prohibits any customary laws, traditions, or customs that discriminate against women.<sup>103</sup>

Additionally, The Land Act (1998) provides that any decisions related to customary land tenure, which are based on the customary traditions and practices of the community, are void if the decision denies women,

children, or the disabled the right to ownership or occupation of land.<sup>104</sup> However, the same Land Act does not provide women with equal rights to land, but rather provides two legal protections against the *loss* of the *use* of land within the marriage.<sup>105</sup> First, spouses must provide consent before their residence and land surrounding their residence can be sold.<sup>106</sup> Second, wives have the right to occupy and use “family land”—land that is a residence and from which she receives subsistence.<sup>107</sup>

These provisions represent a weak political “compromise” perpetrated by the legislative and executive branch and imposed on women policymakers. Co-ownership of marital land has been vehemently debated in Uganda since the Land Law was being drafted in 1998. The issue took on a momentum of its own when various interest groups made specific demands during the law making process.<sup>108</sup> As part of the public debate on the Bill, NGOs that supported improved rights for women initiated public dialogue and advocacy mainly in relation to the landless poor and marginalized groups. They developed an agenda more closely focused on issues of women’s land rights. Different women’s groups made submissions to the parliamentary Sessional Committee on Lands, Water, and Environment, which sought to influence the Committee to adopt a clause on co-ownership of the matrimonial home in its report and the draft Bill to be debated in the full house.<sup>109</sup> The Bill as presented to the full house, however, did not include this provision.<sup>110</sup> At the second reading of the Bill in the house, Honorable Miria Matembe expressed her intention to move an amendment to introduce the co-ownership clause.<sup>111</sup>

The Speaker to Parliament instructed that these principles be accepted for drafting into the appropriate language.<sup>112</sup> There were differing opinions among lawmakers and the public over whether the amendment was passed or not. A year after the passage of the Bill into law on July 2, 1998, the Speaker ruled that the amendment had never been passed by Parliament due to a procedural omission during the Land Bill debate.<sup>113</sup> Therefore, an amendment would need to be made to the Land Act of 1998 for it to enter

law. Not surprisingly, co-ownership of marital property is still not the law today. The clause is described in Uganda as the “lost clause” because it was conveniently and covertly dropped from the bill at the last moment.

Under customary law in Uganda, women generally do not own land, either separately or with their husbands, primarily because of the distribution of wealth at the time of marriage in the form of a bride price.<sup>114</sup> The family of the prospective husband provides gifts and money to the prospective wife’s family. During our interviews, bride price was often the reason women and men gave for why they do not or should not own land while they are married. Payment of bride price simultaneously indicates respect and love for the bride and deems her the property of her husband, spawning the very common statement heard by men in field interviews regarding women’s rights to land: “property cannot own property.” Female property ownership is a threat to the family and the community. In focus group interviews with men, they stated that if a woman owned property, she would have no need to stay married and could leave anytime. Rural women interviewed were often indifferent to rights of ownership within their marriage as long as they had access to land, although a majority of women thought that married women should have the right to buy and own land.

Women who are separated or divorced have no legal rights to land or property that was acquired during their marriage under the Marriage, Divorce, and Adoption Rules of 1998.<sup>115</sup> Co-ownership of marital property is not the norm; rather, each spouse owns land separately. This is primarily true because ancestral land must stay with the tribe,<sup>116</sup> and women move to their husband’s home. Thus, women have only use rights to marital property unless a woman purchases land for herself.

But this issue is not the greatest concern to rural women. Female responses to the question, “should women who are married, or widowed, or single be able to buy and own land,” indicated that there is still significant ambivalence about married women owning land but no ambivalence about widowed women’s right to own land.

## Female Response to the Question: “Should women own land?”

	Should Married Women Own Land?	Should Widowed Women Own land?	Should Single Women Own Land?
Yes	55.3%	100%	96.5%
No	44.7%	0%	3.5%

Male respondents were even less likely to support married women’s ownership of land, but a majority supported widows’ rights to own land.

## Male Response to the Question: “Should women own land?”

	Should Married Women Own Land?	Should Widowed Women Own Land?	Should Single Women Own Land?
Yes	30.4%	71.7%	67.4%
No	69.6%	28.9%	32.6%

The Ugandan Succession Act and the Succession (Amendment) Decree—not the Land Act—apply to widows.<sup>117</sup> Under the Succession Act, if a man dies intestate, all of his property (except his residential holding) is distributed as follows: children receive 75 percent, shared equally; wives receive 15 percent of the estate, shared equally; dependant relatives receive 9 percent, shared equally; and customary heirs receive 1 percent.<sup>118</sup>

Under the Succession Act, widows and widowers are treated similarly, although customary law favors widowers. Under the formal intestate law, spouses only have the right to occupy, not own, their houses and the land immediately adjoining the holdings, even if they farmed land at a distance from their houses during the time of marriage.<sup>119</sup> This right to occupy is quite limited. Widows and widowers must farm the land and cannot cut down trees, erect or change buildings, or use the land for other purposes.<sup>120</sup>

They also have no right to sell the land. To other property, including other plots of land, spouses only have the right to a 15 percent share.<sup>121</sup>

Rural women in Uganda are most vulnerable when they are widowed, when their husband enters a second marriage, or when they are divorced—at these times they can lose access rights to the land they have been farming. In spite of the formal legal rules, a serious problem in Uganda is “property grabbing” by the husband’s family. In one study, out of 204 widows, 29 percent said that property was taken from them at the time of their husbands’ death.<sup>122</sup> Property grabbing means that the widow’s house and/or the land she had been farming is taken from her by her husband’s male relatives, many of whom may have assisted in raising the bride price at the time of her marriage and also have an ancestral claim to the land.<sup>123</sup> Our one hundred household survey found that women were most concerned about being widowed and their continued right to land upon their husband’s death.<sup>124</sup> Widow-headed households are the most over-represented among the poor, with 13 percent of the poorest quartile of the Ugandan population.<sup>125</sup>

Moreover, even though the Succession Act provides that children have the right to share 75 percent of their parents’ land equally among themselves, few daughters inherit land in this patrilocal society. Those who do usually only retain the right to use the land while they are living with their family and do not have the right to sell the land.<sup>126</sup>

Finally, polygamy, which is allowed under the law, creates a difficult situation vis-à-vis land ownership and control for a woman within her marriage and at the time of her husband’s death.<sup>127</sup> Men choose fields for their new wives, often at the expense of their previous wives. Children’s inheritance may depend on their mother’s status at the time of their father’s death. In some sub-Saharan African countries, the eldest son of the most senior wife is likely to receive the largest share of the property.<sup>128</sup> He is the heir and is responsible for administration of the estate, including allocation

of the father's land among siblings.<sup>129</sup> He usually is not very well disposed to the children of other wives.<sup>130</sup>

As in Karnataka, formal law in Uganda provides some protection for women's land rights.<sup>131</sup> Unfortunately, customary law in Uganda, which originally did protect women's land rights,<sup>132</sup> has changed over time so that as it is currently practiced, it empowers men but disempowers women. In much of rural Uganda, women feed their families and receive income from the land, and the loss of land during a family crisis (divorce, death, or polygamy) can be economically devastating.

#### V. INTRA-HOUSEHOLD DISTRIBUTION OF FAMILY WEALTH AND THE PROPERTY RIGHTS OF WOMEN

The case studies of Karnataka State and Uganda are meant to provide two examples of how intra-household relationships, and customary law controlling these relationships, affect women's actual and perceived rights to own or control land. The distribution of wealth through bride price or dowry and inheritance *assumes* the family will stay intact. And when families stay intact, women generally at least have rights to use land. However, when the family unit breaks down because of divorce, death, or the taking of a second wife, women often lose their right to access and use the "marital" land, which is under the ownership and control of their husbands and his family and tribe. At the same time, women in patrilineal societies rarely have a customary right to inherit land from their parents.

Even when formal law allows daughters or wives to inherit land, customary law makes it impossible to enforce the formal law. Daughters who leave their families to live with their husband and his family often receive moveable property as a pre-mortem inheritance, but not land, which would be an impractical inheritance in many cases, as the daughters live in another village. Moreover, women often cannot inherit their husband's land, as it is passed through the male bloodline, or because it belongs to the husband's family or tribe.

The exchange of wealth at the time of marriage, while intended to strengthen the position of brides, may have the opposite effect, keeping women in marriages even when their husbands are abusive or violent. In both Karnataka and Uganda, women stated that they would never choose to divorce their husbands because they would have no place to go and no way to support themselves.

While formal laws are important, they are often ignored as unenforceable—other interventions are necessary as well. Legal solutions that focus on only one aspect of family relationships or only on individual rights within a family cannot be effective in a customary system that looks at the life of a family as a whole. The focus has to be on economically and socially empowering women within the system in which they live, not an idealized world.

Rather than only focusing on equal distribution of land within a family through co-ownership or inheritance laws, the law should ensure that women have the economic power and social right to purchase land within their marriage, after a divorce, and upon the death of their father or mother. If ancestral land is passed down through the male bloodline and women move to their husbands' families' ancestral land, then the law should focus on ways to ensure that women receive the value of their share of the land upon divorce or death of their husband or father, so they can purchase other land. To begin with, written law should provide that all property used by the marital community, whether it was brought into the marriage, acquired at the time of the marriage, or acquired following the marriage, will be held in co-ownership by the married couple with no exceptions for inherited property or property kept "separate" from the marital union. If, under customary law, *land* must remain with the husband and his family, then the law should require that the value of all property in the marital community (including property given at the time of marriage to only one spouse) be calculated, and the wife's share given to her in money or goods so that she can purchase other land or otherwise have the means to economically



survive alone or as head of the household. Mechanisms for this valuation and distribution should be provided.

Rights to land must be both legally and socially recognized to be effective. Therefore, such a legal change would require wide publication and public education. Education, training, and communication are valuable tools in promoting gender equity, raising general awareness about the rights of men and women with respect to land and property within the country, and thus encouraging the longer term sustainability of legal interventions. Education must make communities more aware of the social and cultural implications of land ownership for women.<sup>133</sup>

Moreover, policymakers need to ask women what would be required for them to farm land once they are widowed or divorced. In some countries, customary law does not allow women to dig, carry mud, or use oxen, for example.<sup>134</sup> Often, when women receive land, they cannot use it effectively because of other customary limitations.<sup>135</sup> The entire system of customary use and distribution of land and other resources must be examined as a whole, and solutions must come out of this examination.

Finally, it is critical for policymakers to identify where customs that favor men are eroding and in turn create room for female ownership rights. For example, in Uganda, field research indicated that there seems to be some consensus that widows should be able to keep the land they have been farming. This would be a major shift in custom away from the rights of the male clan members, but with the HIV epidemic, the shift has become necessary.<sup>136</sup> The law should reflect this shift,<sup>137</sup> strengthening the position of women and reflecting the change in the social norm. In India, there seems to be growing consensus that dowry requirements are too onerous. The law should capture this sentiment, and policymakers should design legislation that would diminish the economic benefit of demanding high dowry. For example, if the dowry were, by law, considered the property of both the husband and wife and not the husband's family, the incentive for pressuring for dowry would be greatly reduced. The key to finding cultural

shifts that create openings is to engage women and men in conversations about the customs that control their lives. Too often, local policymakers and foreign advisors do not solicit or receive input from rural communities.

## VI. CONCLUSION

Women's rights to land and property must be both legally and socially recognized to be usable and enforceable. Legislation is necessary but cannot alone affect the necessary changes. Cultural norms, customary law, discriminatory policies, and institutions may all have an impact on women's ability to effectuate their rights to land.

Laws legitimize the possibility of change, but at the same time, it is not useful for international organizations to push for legislation that does not take into account the culture and social norms in which it must function. While legislation does not itself change custom, it allows those who are brave enough, desperate enough, or organized enough to use the law to support change. There are many examples of the effect law can have on custom. Even where legislation does not have an immediate and binding effect on women's rights to own land, it provides active women with a specific platform from which to argue for change.

Where land is the primary asset owned or controlled by a household, a woman's right to land, as a member of the household or as head of the household, will have an impact on her economic and social well-being. Customs developed over a long period of time to protect all members of a family have, in many cases, broken down so that they support the strongest member of the family at the expense of the weakest members. The critical issue in addressing women's rights to land in many developing countries, however, is that women's rights to land are part of a larger tribal system of customary rights and responsibilities. Legislation and policy changes must take into account the well-being of the family as a whole, as well as of the well-being of individual members, and customary law cannot be ignored if written law is to be effective.

<sup>1</sup> Renée Giovarelli has been practicing in the field of international development since 1994. She has a LL.M. from the University of Washington in Sustainable International Development, and a J.D. from Seattle University School of Law.

<sup>2</sup> Interview with resident in Mpigi District, Uganda (Oct. 2001).

<sup>3</sup> Kaori Izumi, *Liberalization, Gender, and the Land Question in Sub-Saharan Africa*, in WOMEN, LAND, AND AGRICULTURE 9, 9 (Caroline Sweetman ed., 1999). However, the notion that individualization of land is necessary for investment in communal land has been challenged by studies that found that customary communal tenure has a strong positive impact on investment as well as land values. See Klaus Deininger & Gershon Feder, *Land Institutions and Land Markets* 5 (World Bank Development Research Group, Policy Research Working Paper No. 2014, 1998), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/02/24/000094946\\_99031911105637/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2000/02/24/000094946_99031911105637/Rendered/PDF/multi_page.pdf).

<sup>4</sup> See The Secretary General, 1999 World Survey on the Role of Women in Development: Globalization, Gender and Work, ¶¶ 6-21, delivered to the General Assembly, A/54/227 (Aug. 18, 1999). See also Susana Lastarria-Cornheil, *Impact of Privatization on Gender and Property Rights in Africa*, 25 WORLD DEV. 1317 (1997); Jennie Dey-Abbas, *Gender Asymmetries in Intrahousehold Resource Allocation in Sub-Saharan Africa: Some Policy Implications for Land and Labor Productivity*, in INTRAHOUSEHOLD RESOURCE ALLOCATION IN DEVELOPING COUNTRIES: MODELS, METHODS, AND POLICY 249 (Lawrence Haddad et al. eds., 1997).

<sup>5</sup> Gita Gopal, *Gender-Related Legal Reform and Access to Economic Resources in Eastern Africa* 10 (World Bank Discussion Paper No. 405, 1999).

<sup>6</sup> *Id.* at 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> OLIVER WENDELL HOLMES, THE COMMON LAW 275-79 (Mark DeWolfe Howe ed., Harvard University Press 1963) (1881).

<sup>11</sup> Renée Giovarelli, *Women and Land*, in *Legal Impediments to Effective Rural Land Relations in Eastern Europe and Central Asia* 253, 259 (World Bank Technical Paper No. 436, Roy Prosterman & Tim Hanstad eds., 1999).

<sup>12</sup> DEENA J. GONZALEZ, REFUSING THE FAVOR: THE SPANISH-MEXICAN WOMEN OF SANTA FE, 1820-1880, at 22 (1999).

<sup>13</sup> Tom Holmberg, *The Civil Code (the Code Napoleon)*, NAPOLEON SERIES.ORG, [http://www.napoleon-series.org/research/government/code/c\\_code2.html](http://www.napoleon-series.org/research/government/code/c_code2.html) (last visited Mar. 23, 2006).

<sup>14</sup> These laws would include family laws related to marriage, divorce, and inheritance, as well as land legislation.

<sup>15</sup> See generally WORLD BANK AGRIC. & RURAL DEV. DEP'T, GENDER ISSUES & BEST PRACTICES IN LAND ADMINISTRATION PROJECTS: A SYNTHESIS REPORT, Report No. 32571-GLB (2005) [hereinafter GENDER ISSUES & BEST PRACTICES].

<sup>16</sup> The author has personally participated in the field research required to produce both of these case studies.

<sup>17</sup> Without exception, in all the work I have done in both matrilineal tribes and patrilineal tribes, if the household has a husband or father, that person is considered by custom to be the head of the household.

<sup>18</sup> GENDER ISSUES & BEST PRACTICES, *supra* note 15, at 3-5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Marcel Fafchamps & Agnes R. Quisumbing, *Control and Ownership of Assets Within Rural Ethiopian Households*, 38 J. DEV. STUD. 47, 75-76 (2002).

<sup>23</sup> GENDER ISSUES & BEST PRACTICES, *supra* note 15, at 3-5.

<sup>24</sup> See generally Elizabeth Katz, *The Intra-Household Economics of Voice and Exit*, 3 FEMINIST ECON. 25 (1997).

<sup>25</sup> See Food & Agric. Org. of the United Nations, *Women, Agriculture, and Rural Development: A Synthesis Report of the Near East Region* (1995), available at: [http://www.fao.org/documents/show\\_cdr.asp?url\\_file=/docrep/X0176E/X0176E00.htm](http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/X0176E/X0176E00.htm).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Lorenzo Cotula, Food & Agric. Org. of the United Nations, *Gender and Law: Women's Rights in Agriculture*, FAO Legislative Study 76, at 29 (2002), available at [http://www.fao.org/documents/show\\_cdr.asp?url\\_file=/DOCREP/005/Y4311E/Y4311E00.HTM](http://www.fao.org/documents/show_cdr.asp?url_file=/DOCREP/005/Y4311E/Y4311E00.HTM)

<sup>30</sup> *Id.*

<sup>31</sup> John W. Bruce et al., *Overcoming Gender Biases in Established and Transitional Property Rights Systems*, in LAND AND LAW REFORM, ACHIEVING DEVELOPMENT POLICY OBJECTIVES (forthcoming 2006).

<sup>32</sup> See Cotula, *supra* note 32, at 10.

<sup>33</sup> Also called bride wealth.

<sup>34</sup> There are many variations on these two main themes. Other terms include uxorialocal, in which a newly married couple lives with the wife's family and virilocal, in which a newly married couple live with the husband's family.

<sup>35</sup> Bruce et al., *supra* note 31.

<sup>36</sup> Patrilineal refers to tracing ancestry through the male line.

<sup>37</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>38</sup> In some instances, as is seen in the case of Karnataka, India, the dowry is given to the husband and his family and not to the bride, although presumably the gifts are to benefit their union.

<sup>39</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>40</sup> Richard Strickland, *To Have and to Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa* 31 (ICRW Working Paper, 2004), available at [http://www.icrw.org/docs/2004\\_paper\\_haveandhold.pdf](http://www.icrw.org/docs/2004_paper_haveandhold.pdf).

<sup>41</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>42</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>43</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>44</sup> Jennifer Brown et al., *Women's Access and Rights to Land in Karnataka* (Rural Development Institute, RDI Reports on Foreign Aid and Development No. 114, 2002).

<sup>45</sup> The 400-household survey was conducted in Karnataka State in early 2001 by the Rural Development Institute (RDI), of Seattle, Washington, U.S.A. in collaboration with Dr. Tajamul Haque; the University of Agricultural Sciences in Bangalore, India; and the National Institute of Rural Development in Hyderabad, India. The author did not participate in the development or implementation of the survey. See *id.* for more information.

<sup>46</sup> The 400-household questionnaire survey was conducted in the districts of Bijapur, Kolar, Dakshina Kannada, and Shimoga. These districts were chosen as being broadly representative of the diverse agro-climatic variations of the state. *Id.* at 5.

<sup>47</sup> *Id.*

<sup>48</sup> In rapid rural appraisal interviews, rural interviewees are not respondents to a questionnaire, but active participants in a semi-structured interview. The researchers use a checklist of issues as a basis for questions, not necessarily addressing all questions in each interview and sometimes departing from the basic questions to pursue interesting, unexpected, or new information.

<sup>49</sup> Gram panchayats are democratically elected bodies of local governance.

<sup>50</sup> The author of this article was one of the two lawyers who conducted this qualitative field research.

<sup>51</sup> These two districts were selected for their contrast, both agro-climatically and socially. In Kolar, of all main workers 70 percent of men and 88 percent of women were engaged in agricultural and related activities in 1991. Brown et al., *supra* note 44, at 6. Dakshina Kannada has more diverse employment opportunities than Kolar, including, fisheries, port work, quarrying, and beedi rolling, in addition to agriculture. As a result, the percentage of main workers engaged in agriculture and related activities were lower in Dakshina Kannada at 45 percent of men and 38 percent of women. *Id.* Social indicators for women are generally better in Dakshina Kannada than in Kolar. In each district the team interviewed women in four *taluks* (blocks). In each taluk the team visited two villages. In Kolar the taluks included: Bangarpet, Bagepalli, Malur, and Mulbagal. The Dakshina Kannada taluks included: Mangalore, Bantval, Beltangadi, and Puttur.

<sup>52</sup> The two researchers for this report to the Ugandan Government were the author and Elizabeth Eilor, a Ugandan gender expert.

<sup>53</sup> Within each sample district, two sub-counties and two villages were selected with the help of the district leadership. The counties selected and visited by the team were:

Mpigi District: Kibibi Sub-county  
 Buwama Sub-county  
 Lira District: Dokolo sub-county  
 Kyoga sub-county

In each of the sub-counties the team selected two villages for focus group interviews and two for the household survey. The purpose here was to ensure greater coverage of the districts and also capture different socio-cultural settings and land tenure regimes.

<sup>54</sup> The household survey questionnaire was administered to 114 women as compared to 46 men. In Mpigi, where the study team was only able to administer the questionnaire to ten men, most of the views from the men were collected through focus group discussions and key informant interviews.

<sup>55</sup> In Dakshina Kannada, there is a matrilineal caste called Bunts.

<sup>56</sup> This case study is based on research that is discussed in more detail in: Brown et al., *supra* note 44.

<sup>57</sup> In Karnataka State 85 percent of the population is Hindu, 12 percent is Muslim and 2 percent is Christian. Registrar General & Census Commissioner, *Karnataka State District Profile*, in CENSUS OF INDIA 1991, available at <http://www.censusindia.net/data/krn.pdf>.

<sup>58</sup> Hindu Succession Act No. 30 § 8 (1956) (India).

<sup>59</sup> Based on field research (both qualitative and quantitative) in which the author participated.

<sup>60</sup> Hindu Succession Act §§ 8, 15.

<sup>61</sup> *Id.*

<sup>62</sup> Hindu Succession Act (Karnataka Amendment) § 6A.

<sup>63</sup> There are two exceptions to this rule. *Id.*

<sup>64</sup> Muslim Personal Law (Shariat) Application Act No. 26 (1937) (India).

<sup>65</sup> This is the general rule under the Hanafi School of Sunni Law, which most Indian Muslims follow.

<sup>66</sup> Muslim Personal Law (Shariat) Application Act.

<sup>67</sup> Indian Succession Act No. 13 § 33 (1925) (India).

<sup>68</sup> See comments to note 57. Few Christian women were interviewed.

<sup>69</sup> Property law is state law in India and varies significantly from state to state.

<sup>70</sup> The exact amount paid for dowry and wedding expenses varies with the socioeconomic status, religion, caste, and education of a family. For Muslim women, in addition to the expenses of the wedding celebration and dowry, jewelry and/or gold gifting requirements are quite high as well. However, unlike dowry (which goes to her husband and his family), many women retain control over the jewelry received at the time of the wedding and can keep it in the event of separation or divorce, providing them with some economic support.

<sup>71</sup> Brown et al., *supra* note 44, at 19.

<sup>72</sup> *Id.*

<sup>73</sup> Dowry Prohibition Act No. 28 § 3 (1961) (India).

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* § 3(1). Though the court is permitted to impose a shorter term for “adequate and special reasons.”

<sup>76</sup> *Id.* § 4.

<sup>77</sup> Under the law, dowry is defined as: (1) any property or valuable security; (2) given either directly or indirectly; (3) by one party to the marriage (or that party's parents) to the other party to the marriage (or that party's parents); (4) at, before, or at any time after

the marriage; (5) in connection with the marriage. *Id.* at § 2. *Mahr*, as provided for in Muslim Personal Law, is specifically permitted.

<sup>78</sup> The gifts must be: (1) given without being demanded; (2) recorded in a list maintained and signed by the person the gift was given to (bride or groom); (3) “customary in nature;” and (4) “not excessive,” taking into account the financial status of the giver. *Id.* § 3(2)(b). *See also* The Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules § 2 (1985) (India).

<sup>79</sup> Dowry Prohibition Act § 6.

<sup>80</sup> *Id.* § 6(3).

<sup>81</sup> Indian Evidence Act No. 1 § 113A (1872) (India).

<sup>82</sup> *See* Brown et al., *supra* note 44, at 24-34.

<sup>83</sup> Hindu Marriage Act No. 25 § 24 (1955) (India).

<sup>84</sup> Having more than one spouse at one time.

<sup>85</sup> Aboriginal or hill tribes in India.

<sup>86</sup> MANJULA BATRA, *WOMEN AND LAW* 63 (2001).

<sup>87</sup> Hindu Marriage Act § 5(1); Indian Christian Marriage Act § 60(2). Despite that polygamy is illegal among non-Muslims the law may provide some limited protection to bigamous “wives.” First, in terms of inheritance, the Hindu Succession Act recognizes the right of a man’s “widows” to take one share (i.e. multiple wives share an amount equal to what one wife would have received had the husband only been married to one woman). Hindu Succession Act § 10, Rule 1. However, it is unclear if a bigamous wife would meet the definition of a “widow.” Furthermore, one court has recognized a second bigamous wife’s right to maintenance upon separation. *Krishnakant Mulashankar Vyas v. Reena Vyas*, 1999 A.I.R. 127 (Bom.).

<sup>88</sup> Muslim Personal Law (Shariat) Application Act § 2.

<sup>89</sup> *Id.*

<sup>90</sup> *See* Simon Appleton, *Women-Headed Households and Household Welfare: An Empirical Deconstruction for Uganda*, 24 *WORLD DEV.* 1811, 1819 (1996). In Appleton’s nationally representative statistical study, he found that nationally 4 percent of households are headed by divorced women, 10 percent headed by widowed women, 9 percent headed by women who are still married but living separately from their husbands, and 3 percent who were never married (for a total of 27 percent of households headed by women). *Id.*

<sup>91</sup> Irene Ovonji-Odida et al., *Land, Gender and Poverty Eradication: Is There a Case for Spousal Co-Ownership of Primary Household Property?* 1 (Study for the Land Act Implementation Project, 2000).

<sup>92</sup> Jacqueline Asiimwe, *Making Women’s Land Rights a Reality in Uganda: Advocacy for Co-Ownership by Spouses*, 4 *YALE HUM. RTS. & DEV. L.J.* 171, 173 (2001).

<sup>93</sup> Ovonji-Odida et al., *supra* note 91, at 2.

<sup>94</sup> *Id.* at 24.

<sup>95</sup> *Id.* at 1.

<sup>96</sup> *Id.* at 2.

<sup>97</sup> *Id.* at 2-3.

<sup>98</sup> *See id.* at 2.

<sup>99</sup> *See* Cotula, *supra* note 29, at 9-10.

<sup>100</sup>Gopal, *supra* note 5, at 13.

<sup>101</sup>*Id.* at 11.

<sup>102</sup>For example, the Constitution (Article 22) of Ghana states that assets jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage; the 1997 Constitution of Burkino Faso calls for community property for spouses; the Mozambique Constitution (Article 12) states that norms and practices cannot violate a person's equal rights; the Ethiopian Constitution calls for equality among men and women; and the Tanzanian Constitution stipulates equality for men and women. U.N. Human Settlements Programme (UN-HABITAT), *Shared Tenure Options for Women: A Global Overview* 39, HS/785/05E (July 2005), available at <http://www.unhabitat.org/programmes/landtenure/publications.asp>.

<sup>103</sup>Constitution, Art. 33 (1995) (Uganda).

<sup>104</sup>Land Act, Act 16 § 28 (July 2, 1998) (Uganda).

<sup>105</sup>*Id.* § 40.

<sup>106</sup>No one can transfer land without the prior written consent of the spouse if: (1) the spouse ordinarily resides on this land, and (2) the spouse derives sustenance from this land. *Id.* Transfer includes: sale, exchange, transfer, pledge, mortgage, lease or inter vivos gift, or entering into a contract for these purposes.

<sup>107</sup>An amendment to the Ugandan Land Act (June 18, 2003) provides:

“security of occupancy on family land”

(1) Every spouse shall enjoy security of occupancy on family land.

(2) The security of occupancy prescribed under subsection (1) shall mean a right to have access and live on family land

(3) For the purpose of subsection (2), the spouse shall in every case have a right to use the family land and give or withhold his or her consent to any transaction referred in Section 40 which may affect his or her rights

(4) In this Section, “family land” means land-

(a) on which is situated the ordinary residence of a family; or

(b) on which is situated the ordinary residence of the family and from which the family derives sustenance; or

(c) which the family freely and voluntarily agrees shall be treated to qualify under paragraphs (a) and (b); or

(d) which is treated as family land according to the norms, culture, customs, tradition or religion of the family;

“ordinary residence” means the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in place when he or she intends to make that place his or her home for an indefinite period;

“land on from which the family derives sustenance” means-

(a) land which the family farms; or

(b) land which the family treats as the principal place which provides the livelihood of the family; or

(c) land which the family freely and voluntarily agrees shall be treated as the family's principal place and source of income or food.

Land Act §§ 39-40 (amended 2003).



<sup>108</sup> ELIZABETH EILOR & RENEE GIOVARELLI, LAND SECTOR ANALYSIS: GENDER/FAMILY ISSUES AND LAND RIGHTS COMPONENT 22 (Government of Uganda 2002).

<sup>109</sup> *Id.* at 22-23.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* (citing Ovonji-Odida, *supra* note 91).

The amendment as recorded in Parliamentary Hansard, 1998, is as follows:

1. Where land is acquired by either spouse before or during a marriage, on his or her own behalf, and where that property is not the normal abode of the household or the only or main source of production, supporting the family, then it will be regarded as the property of the spouse who acquired the land;
2. Where the land is held or acquired for joint occupation and use of the spouses, the spouses will hold the land as joint owners and the record shall register the spouses accordingly;
3. In case of polygamous union each wife shall jointly own with her husband, the piece of land on which she resides and works;
4. In cases where the wives occupy and work on the same piece of land, they shall hold the land jointly with their husband.

*Id.*

<sup>112</sup> *Id.* at 29.

<sup>113</sup> *Id.*

<sup>114</sup> These findings are based on the field research conducted in Uganda in 2001.

<sup>115</sup> EILOR & GIOVARELLI, *supra* note 108, at 23.

<sup>116</sup> See generally Max Gluckman, *Property Rights and Status in African Traditional Law*, in IDEAS AND PROCEDURES IN AFRICAN CUSTOMARY LAW 252 (Max Gluckman ed., 1969); John W. Bruce, *Do Indigenous Tenure Systems Constrain Agricultural Development?*, in LAND IN AFRICAN AGRARIAN SYSTEMS 35 (Thomas J. Bassett & Donald E. Crummey eds., 1993); Michael Kevane & Leslie Gray, *Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa*, 42 AFR. STUD. REV. 15 (1999).

<sup>117</sup> Succession Act, Ch. 139 § 43 (1906) (Uganda); Succession (Amendment) Decree §§ 28-31 (1972) (Uganda).

<sup>118</sup> Succession (Amendment) Decree § 28(1)(a).

<sup>119</sup> *Id.* § 27, Schedule 2 ¶ 4.

<sup>120</sup> *Id.*, Schedule 2 ¶ 7.

<sup>121</sup> See *id.*

<sup>122</sup> LAELIA ZOE GILBORN ET AL., MAKING A DIFFERENCE FOR CHILDREN AFFECTED BY AIDS: BASELINE FINDINGS FROM OPERATIONS RESEARCH IN UGANDA 1 (The Population Council Inc., 2001), available at <http://www.popcouncil.org/pdfs/horizons/orphansbsln.pdf>.

<sup>123</sup> EILOR & GIOVARELLI, *supra* note 108, at 13.

<sup>124</sup> See *id.*

<sup>125</sup> Appleton, *supra* note 90, at 1819.

<sup>126</sup> EILOR & GIOVARELLI, *supra* note 108, at 12.

<sup>127</sup> John Kigula, *Land Disputes in Uganda: An Overview of the Types of Land Disputes and the Dispute Settlement Fora* 12-13 (Makerere Institute of Social Research & The Land Tenure Center, Research Paper 3, 1993).

<sup>128</sup> Thea Hilhorst, *Women's Land Rights: Current Developments in Sub-Saharan Africa*, in *EVOLVING LAND RIGHTS, POLICY AND TENURE IN AFRICA* 181, 186 (Camilla Toulmin & Julian Quan eds., 2000).

<sup>129</sup> *See id.*

<sup>130</sup> *See id.*

<sup>131</sup> However, the formal law in Uganda is much weaker than the formal law in Karnataka.

<sup>132</sup> Before colonialism, much of Uganda's land was held communally, except in areas where feudalism had begun. Women in the pre-colonial era were given land upon marriage on which they had the exclusive rights to cultivation in addition to owning the produce from the land. EILOR & GIOVARELLI, *supra* note 108, at 2.

<sup>133</sup> GENDER ISSUES & BEST PRACTICES, *supra* note 15, at 44-46.

<sup>134</sup> Bruce et al., *supra* note 31.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> In the Kyrgyz Republic, the Governor of the state of Osh Oblast passed an initiative to reduce expenses at festivities. Families were being economically stressed by the cultural requirements for food and gifts for weddings and funerals. The initiative provided limits to what could be offered in terms of number of sheep or horses slaughtered. This legal initiative provided a framework for the community to agree on how many slaughtered animals would be respectful to the deceased without being a burden on the family.