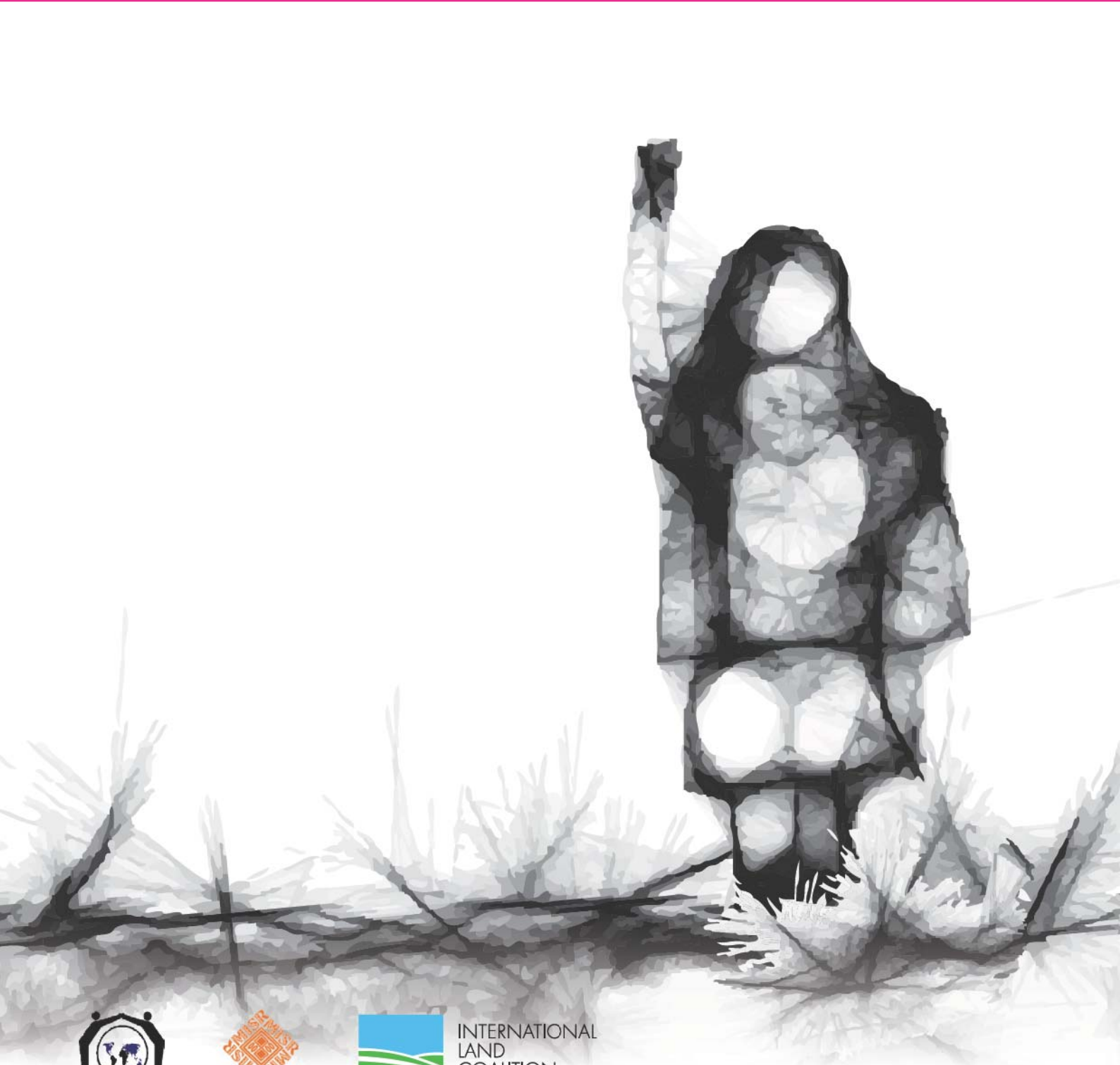


3

RESEARCH REPORT

Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy for women's rights to access and control of land. A case for Kayunga district, Uganda



INTERNATIONAL
LAND
COALITION

Illustrations: © Maria Guardia 2010

The opinions expressed in this report are those of the author and do not necessarily constitute an official position of the International Land Coalition, nor of its members or donors.

ILC would appreciate receiving copies of any publication using this study as a source.

© 2011 the International Land Coalition

IDRC  **CRDI**

ILC wishes to thank the IDRC whose support made this Women's Land Rights Initiative research possible.

Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy for women's rights to access and control of land: A case for Kayunga district

By:
Dorothy N. Kabugo
Munyango Joanittah
Bar-chimpe Yousouf
Kyumulabi Madiina

For the
Foundation for Human Rights Initiative (FHRI)

March 2011

Preface

The Foundation for Human Rights Initiative (FHRI) is an independent, non-governmental, non-partisan and not-for-profit human rights advocacy organization whose mission is to enhance knowledge, respect and observance of human rights, and to promote the exchange of best practices through training, education, research, advocacy and strategic partnerships.

Project Team

Mrs. Dorothy N. Kabugo

Ms. Munyango Joanittah

Mr. Bar-chimpe Yousouf

Ms. Kyamulabi Madiina

Acknowledgements

This report entitled “Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy for women’s rights to access and control of land. A case for Kayunga district”, is made possible by the contribution of several individuals and groups that kindly shared their information with our research team for the noble cause of advancing human rights in Uganda.

These groups include, but are not limited to, the Foundation for Human Rights Initiative, Makerere Institute of Social Research (MISR), and the local administration of Kayunga district.

We would like to thank our donor partners, who include the International Land Coalition (ILC), without whom this project and the publication of this report would not be possible.

These partners are, however, in no way responsible for the accuracy and content of this report.

Table of contents

Preface	ii
Acknowledgements	ii
List of figures and tables	iii
List of acronyms	iii
Executive summary	iv
Introduction	1
Summary of the project	1
Legislative and policy framework	1
Purpose of the Study	2
1. Research methodology	3
Study design and scope	3
Data collection methods used	4
2. Presentation and discussion of findings	6
Limitations	6
Assessing women and men's experiences pertaining to the implementation of the spousal consent clause	7
Women's land ownership vis a vis local practices and beliefs	10
Effects of the clause on the community	12
Whether husbands consult their wives before selling family land	12
Whether complaints are received and how they are handled	13
Steps taken by LC executives to protect family land	14
Limitations/challenges for implementation	14
Impact of the sale of family land without spousal consent by the wife	15
3. Conclusion and recommendations	16
Annexes	18
Annexure 'A': Tool one	18
Annexure 'B': Tool two	21

List of figures and tables

Figures

Figure 1: Aspects known about the law governing land in Uganda, Councillors of LC I of Kayunga district	8
Figure 2: Understanding family land	9
Figure 3: Shows whether husbands must consult their wives before selling the family land	12
Figure 4: Whether complaints are received and how they are handled	13
Figure 5: Recommendations on how to protect family land	17

Tables

Table 1: Parishes and villages of Nazigo and Kangulumira sub-counties	3
---	---

List of acronyms

AHURICA	Action for Human Rights and Civic Awareness
CAO	Chief Administrative officer
CDO	Community Development officer
FHRI	Foundation for Human Rights Initiative
FIDA	Uganda Women Lawyers Organization
LC(s)	Local Council(s)
MISR	Makerere Institute of Social Research
RDC	Resident District Commissioner
ULA	Uganda Land Alliance

Executive summary

Land is a very important source of livelihood for Ugandans, especially for those who live in Kayunga district, as it is one of the main agricultural districts of the country. As women usually cultivate land and produce food both for sale and home consumption, they are greatly affected when deprived of this resource.

Women are a vulnerable group as they have a unique status when it comes to issues of property ownership. The 1995 Constitution of the Republic of Uganda provides for the emancipation of women and this is reflected in the Land (Amendment) Act, section 38A which stipulates that the consent of one's spouse must be obtained before the other spouse can make any transaction with family land, including selling, pledging, mortgaging, exchanging or transferring it. Nevertheless, many women still fall victim to land sales by their husbands. This research was carried out in Nazigo and Kangulumira sub-counties, Kayunga district and focuses on those who have suffered from the violation of this clause.

Statement of the problem

The spousal consent clause is designed to protect women's rights over family land, to accord them security of tenure and an uninterrupted livelihood. However, FHRI's experience in Kayunga district indicates that the proportion of land sales without spousal consent in a period of five years was 34 percent. In 2007 alone, about 50 percent of the land cases reported were related to violations of the consent clause.

Women's security of tenure is further threatened by social, cultural and economic impediments. Moreover, the mechanisms put in place to guarantee women's meaningful enjoyment of their rights to land are weak. Therefore, it is important to examine the practices of the Local Council (LC) to devise strategies to implement the consent clause.

In addition, communities need to engage in reflective inquiry on their practices and beliefs with the aim of nurturing support for the consent clause.

FHRI's project aims to target the lack of informed advocacy in favour of women's land rights, and the need for a statutory consent system to ensure the spousal consent law

has a palpable impact on systems of land ownership and exchange.

This report analyzes whether the consent clause has been effectively implemented in Kayunga district, especially in the sub-counties of Nazigo and Kangulumira, and makes recommendations for improvement. It highlights the general views of the community about the clause and the major causes of violation of it. The data was collected by using questionnaires for Key Informants, Focus Group discussions and Narratives.

Most people in this region were ignorant of the law and the consent clause. Following education about the clause, most of the respondents were in agreement with it, but felt that implementation was challenging. They gave suggestions as to how it was to be done.

The study also revealed that most women do not report violations of this clause until they have experienced it more than once. These women, other community members and local leaders are not empowered to ensure that this clause is implemented.

We therefore recommend that:

1. The Government should ensure that the leaders, including members of the Local Councils in Kayunga district, are sensitized and educated about this law and its applicability, so that they are enabled to educate the community. They will also know what course of action to take in cases of dispute related to violation of the clause.
2. The people in the community should also be sensitized about this law and material about it should be disseminated.
3. Community members should be advised on the procedure to follow when faced with violations of the clause.
4. The jurisdiction of Local Councils in handling land disputes in relation to violation of the clause should be clearly articulated.

5. Leaders should be trained how to counsel women who have been victims of the violation of this clause.
6. Parliament should expedite the enactment of the Domestic Relations Bill to protect women who cohabit with men for a stated period of time and who acquire property, including family land, together.
7. Local leaders and any other officers who witness land transactions on family land by one spouse without confirming the consent of the other spouse should be apprehended. This practice will deter others from doing the same.

Introduction

Summary of the project

Ugandan women do most of the agricultural work on land that they neither own nor control. Various women activists and human rights defenders have lobbied law-makers and Government to pass legislation that guarantees women's access to and control of land. Parliament has enacted different legislation and ratified international conventions to protect women's rights to property. One such law is the spousal consent clause of the Land Amendment Act No. 1 of 2004¹. The clause guarantees the right of the spouse to have access to the land, to use it and to withhold consent to transactions affecting family land. Despite the existence of this law, women still fall victim to land sales by their husbands without their knowledge, and to eviction without compensation. This deprivation of land and marginalization of women is exemplified in Kayunga district, the sample district for this study.

Kayunga district is located in the central east crescent of Uganda. According to the 2002 census, it has a total population of 297,081 people of which 144,609 are male and 152,472 are female. Out of the eight sub-counties of Kayunga district, the study focuses on the two sub-counties of Nazigo and Kangulumira. These were selected because, according to Action for Human Rights and Civic Awareness (AHURICA), a local community-based human rights organization, a total of 129 cases were reported to their offices by women who were either evicted by buyers of their family land sold by husbands who did not seek their consent, or were living in fear of being evicted because of transactions carried out on family land without their knowledge.

This study seeks to establish why, after eleven years of the spousal consent clause, women still experience this problem. Furthermore, it seeks to find lasting solutions for the proper implementation of the law with a view to safeguarding women's land rights.

1 Section 38A

Legislative and policy framework

The law governing land use in Uganda is contained in different pieces of legislation which include: The Constitution of The Republic of Uganda 1995, The Land Act of 1998, The Land Amendment Act No. 1 of 2004, The National Land Policy and International Conventions ratified by Uganda. Article 26 of the Constitution provides that every person has a right to own property either individually or in association with others.

Prior to the enactment of these laws, it was commonplace for the husband to sell, mortgage, give away or pledge land as security for a loan without informing his wife. This practice bred untold misery, domestic violence, prostitution, street children and related vices. It was based on the traditional norm that women do not own land. To counter this norm, activists have tried for years to lobby both for land laws that recognize women's rights and for co-ownership of family land. Media coverage has been extensive and academics have supported this agenda.

During the process of amending the 1998 Land Act, advocates for women's land rights backed by organizations like Uganda Women's Network, Uganda Land Alliance (ULA), Foundation for Human Rights Initiative (FHRI), and Uganda Women Lawyers Organization (FIDA) consulted widely and decided to approach the problem under the precepts of asserting the entire family's interest in the land. As a result, Section 38A of the Land (Amendment) Act which defines the boundaries of spousal consent in addition to guaranteeing security of occupancy was born and incorporated into the law. This provision is a major improvement on the original as it gives a broader definition of family land and guarantees security of occupancy. However, it falls short of giving a spouse the right to co-ownership of family land.

Another major achievement of this amendment is under section 39 (7) and (8) which allows a spouse who does not own the land to lodge a caveat on the certificate of title to indicate and/or inform the rest of the world that the property

comprised therein is subject to the requirement for consent. Once lodged, the caveat shall not lapse while the caveator's (spouse's) right to security of occupancy subsists.

However, the amendment does not define a spouse. According to Black's Law Dictionary, a spouse is one's husband or wife by lawful marriage. In Uganda, there are four types of marriages recognized by law: church and civil marriage according to the Marriage Act Cap 250, Muslim marriage, Hindu marriage and customary marriage.

In effect, the spousal consent clause does not protect unmarried persons and cohabitants irrespective of the number of years the parties may have lived together and the amount of contribution made in acquiring family land. It is here that the Domestic Relations Bill becomes relevant, though its passage into law is unlikely as it is controversial and is thought by many to create more problems than it solves.

Furthermore, Section 38A of the Land Act specifically excludes application of the spousal consent clause to legally separated spouses and widows. This specification may complicate implementation of the law as husbands may take advantage of the exemption to separate from their wives with the intention of selling off family land.

Purpose of the Study

The study set out to establish why the spousal consent clause has not been implemented in the community. It is also the objective of the researchers to find ways of fostering the implementation of the clause with a view both to protect family land and to curb the domestic violence and misery that results from violation of the clause.

To achieve this purpose, the study focuses on three major objectives:

- i. to enlist women's and men's experiences pertaining to the implementation of the spousal consent clause in Nazigo and Kangulumira sub-counties of Kayunga district;
- ii. to engage women and men in reflective inquiry on local practices and beliefs with regard to women's land ownership; and
- iii. to nurture community support for the consent clause.

1. Research methodology

Study design and scope

This was a non-experimental cross-sectional study conducted in Nazigo and Kangulumira sub-counties in Kayunga district, east of central Uganda. The targeted population were

communities with relatively high incidences of violations of the spousal consent clause in land transactions. Catchment areas included the following:

Table 1: Parishes and villages of Nazigo and Kangulumira sub-counties

Nazigo sub-county		Kangulumira sub-county	
Parish - Kirindi	Katikanyonyi Parish	Kikwanya Parish	Kigayaza Parish
1. Ddamba	1. Budooda	1. Kimooli	1. Namulaba
2. Nsiima Kibaati	2. Kiwuuba	2. Kibetu	2. Kitambuza
3. Nakakoonge booda	3. Nakatooke	3. Kyabakadde	3. Kamira
4. Zakaliya zone	4. Katikanyonyi	4. Kanyogoga	4. Nakatundu
5. Kasega		5. Kikwanya	5. Kigayaza
6. Kirindi			
Nsiima Parish	Natteta Parish	Seeta-Nyiize Parish	Kawoomya Parish
1. Kiremeezi A	1. Kinyala	1. Nakirubi	1. Mirembe
2. Kiremeezi B	2. Gombolola zone	2. Namakandwa	2. Maligita
3. Sporta	3. Kawonawo zone	3. Bukasa	3. Kkungu
4. Salaama	4. Old Nazigo zone	4. Seeta Nnyiize	4. Kawomya
5. Kkottwe A	5. Nazigo	5. Kayunga	5. Bukeeka
6. Nazigo H/Qs	6. Natteta	6. Wantaayi	
7. Nazigo village	7. Kiribedda	7. Naluvule	
	8. Busagazzi		
	9. Nakatovu		
	10. Wabirongo		
Nazigo Parish	Bukamba Parish	Nakatundu Parish	
1. Kottwe D	1. Buguvu	1. Kamuli	
2. Kirimantuungo	2. Gayaza	2. Nnongo	
3. Nakakoonge corner bar	3. Kisswa	3. Kisega	
4. Magala	4. Bukamba A	4. Wabukwa	
5. Kyampisi	5. Bukamba B	5. Bugiri	
6. Kiseveni	6. Bukamba Town	6. Mpumudde	
7. Kigobero		7. Kyampisi	
8. Ssenda			
Kimaanya Parish			
1. Kyetume			
2. Kisoga			
3. Kiziika			
4. Kimaanya			
5. Ggangama			

The sample of women who were interviewed as victims of the violation of the spousal consent clause was taken from the records of: AHURICA, the Grade 1 Magistrates Court of Kayunga district, and the Chief Development officer (CDO).

Data collection methods used

Five types of data collection tools were used to collect information from the different sources.



An interview with a Key Informant

Questionnaires for key informants

Semi-structured questionnaires (Annexure 'A') were used to conduct person-to-person interviews with a total of 75 Key Informants who included local leaders (Local Council I – III), district officials and law enforcement officers. In addition to requesting profile information about the respondent, the questionnaire solicited the respondent's understanding of land law, its implementation, reception and responses to violation as well as recommendations for protection of land.

The respondents were purposively selected to include members who were most likely to provide all or most of the information required.

At the district level, the Key Informants included: the Chief Administrative officer (CAO), the Resident District Commissioner (RDC), the Probation and Welfare officer, the officers in charge of Kayunga district police station, including the officer in charge of the Land desk and the sub-police stations in Nazigo and Kangulumira sub-counties.

From the local leader cohort, the following were selected: the sub-county chief, the LC III chairperson, secretaries for women at all the local administration levels, the LC I and LC II chairpersons of selected villages and parishes and a few councillors.

Focus Group discussions

Five Focus Group discussions with a total of 52 participants were held with different interest groups including women, men, local leaders, youth and technocrats. The key themes for discussion included aspects known about the land laws in Uganda, how each of the listed aspects affect the community and families, community views about the consent clause, challenges in implementing the consent clause and recommendations on how best to implement the clause. (Theme guide attached as Annexure 'B').

To ensure the collection of sufficient and adequate data, three researchers facilitated the process and the discussions were videotaped. The participants in each group were selected using a set of criteria discussed below.

Women:

Since the study was conducted in two sub-counties, efforts were made to recruit equal numbers from each. While six were recruited from each sub-county, only ten attended. Using a pre-designed recruitment form (Annexure 'C'), and with the help of paralegals, women were selected from each parish based on their ability to contribute to the discussion. Selection was designed to represent the life cycle of women and included those who had undergone civil, religious or



traditional marriages, those who were cohabiting, those who had never married and those who were widowed or divorced.



The men and members of the research team who attended the Focus Group discussion

Men:

Using the same criteria for selecting women, twelve men were chosen and all attended.

Local leaders:

Seventeen local leaders, both male and female, were selected from the two sub-counties. Efforts were made to eliminate those who had participated as Key Informants. These local leaders included some LC I and LC II chairpersons of selected villages and parishes, councillors, secretaries for women's affairs, local council representatives, and Community Development officers of selected parishes.



Women who attended the Focus Group discussion

Youth:

A total of 15 youth; 5 male and 10 female, between the ages of 18 and 22 years of age were selected from different secondary schools.

Technocrats:

A total of eight technocrats, seven of whom attended, were selected from key district officials who are assumed to take part in decision making and implementation of laws in the district; some of whom receive complaints about conflicts over family land. They include the Chief Administrative Officer, the Magistrate Grade I, The Community Development officers of the two sub-counties, the community liaison officer of Kayunga Police Station, and the district-based community service officer.



The youth who attended the Focus Group discussion

It should be noted that a different guide was used for this Focus Group discussion (*Annex 'D'*).

Narratives

Narratives were one-on-one recorded discussions held with twelve women who had been victims of the violation of the consent clause by their husbands.

2. Presentation and discussion of findings

This section presents the findings of the study both qualitatively by narration and quantitatively through tables and graphs. The findings are also classified according to categories of informants/participants/respondents/interviewees.

Limitations

The research team had some protocol violations and faced limitations in relation to data collection. The protocol violations were: change of title of the research topic, change of the scope of the study, etc.

Change of topic of research topic

The title of the research project was changed from "*Inroads into the implementation of the spousal consent clause of the Land Act, 1998, Kayunga District*" to "*Assessing the implementation of the spousal consent clause of the Land Act 1998 and upscaling advocacy for women's rights to access and control of land: A case of Kayunga district*".

Change of scope of study

The scope of the study was first proposed as Nazigo sub-county but expanded to include Kangulumira sub-county because most of the women had either withdrawn or abandoned their initial complaints while others had changed their physical addresses and were impossible to trace.

Inability to fulfil the third objective

Due to the short time-frame of the project, the third objective was not fulfilled.

Concealment of information by the victimized women

Considering the sensitivity of land matters in Uganda along with the African belief that home affairs should be kept secret, some of the women refused to share their experiences, while others would not provide any concrete information. They feared that their husbands would be imprisoned if they exposed them, and that they would lose the sole breadwinner of the family.

Failure to locate some of the targeted respondents

The numbers of the target group were reduced because most of the women who had reported their cases at AHURICA or at Court had relocated and were untraceable.

Non-computerized system in the Court

The Grade I Magistrate Court in Kayunga district does not have a computerized system of storing data, so data collection was slow as it was retrievable only by manual searches through old files and records.

Court representation dropped

Court representation of the women with complaints was dropped because of lack of available time.

Assessing women and men's experiences pertaining to the implementation of the spousal consent clause

Narratives revealed that some women were aware of the spousal consent clause while others were not, but in either case women were deprived of their family land by their husbands. One woman called Sarah said that even though she was aware of the spousal consent clause, she was powerless to do anything about the fact that her husband sold a piece of the family land without her consent. Narratives established that some men violate the consent clause because they are ignorant of the law, while others deliberately refuse to request consent.

Safina² (41), of Kangulumira sub-county has been married for 20 years and has eight children. She separated from her husband in 2008. One night in March 2009, she was allegedly woken up and taken to the LC I of a different village where she was forced to sign an agreement for the sale of her family home:

I later realized that I had signed an agreement to sell our family house in the presence of my husband, brothers-in-law and a member of the LC I. The following day, when my property was thrown out of the house, I reported the matter to the LC I of my village and then to police. I later on instituted a suit court for cancellation of the agreement and for repossession of my home in court. My husband failed to pay back his brother the money he was owed and so decided to transfer our house to him without my knowledge. Court cancelled the agreement as it was void.

2 Not real name

Stella³ of Kangulumira sub-county has been customarily married to her husband for 18 years and they have eight children:

My husband sold the first and second plot we had bought without my consent. He now wants to sell the third plot on which our home is but I have refused. He is threatening to throw us out forcefully and sell it. He abandoned us and now lives with another woman.

Though aware that their consent is required, some women ignore the fact that transactions on family land occur without it. This reluctance to challenge men, has encouraged these men to go ahead and sell more land. By the time women seek legal redress, it is often too late.

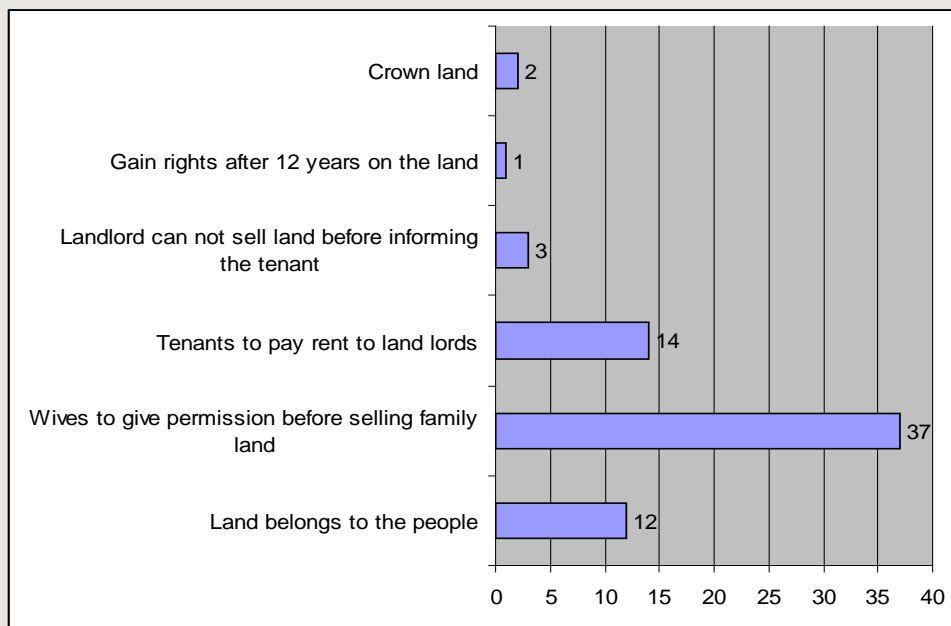
Another woman called Nangobi has been with her husband for about 18 years and they have eight children. When her husband took another wife, he started chasing Nangobi from the home she had built together with him and threatening her eviction. He sold two plots of their land on which they were residing and growing food for the family without her consent.

3 Not real name

Aspects known about the law governing land in Uganda

The graph below shows that 37 of the 40 who responded to the questionnaires were aware of the spousal consent clause.

Figure 1: Aspects known about the law governing land in Uganda, Councillors of LC 1 of Kayunga district



However, none of the respondents in the Focus Groups, apart from the technocrats, expressed an awareness of



Local leaders taking part in the Focus Group discussion

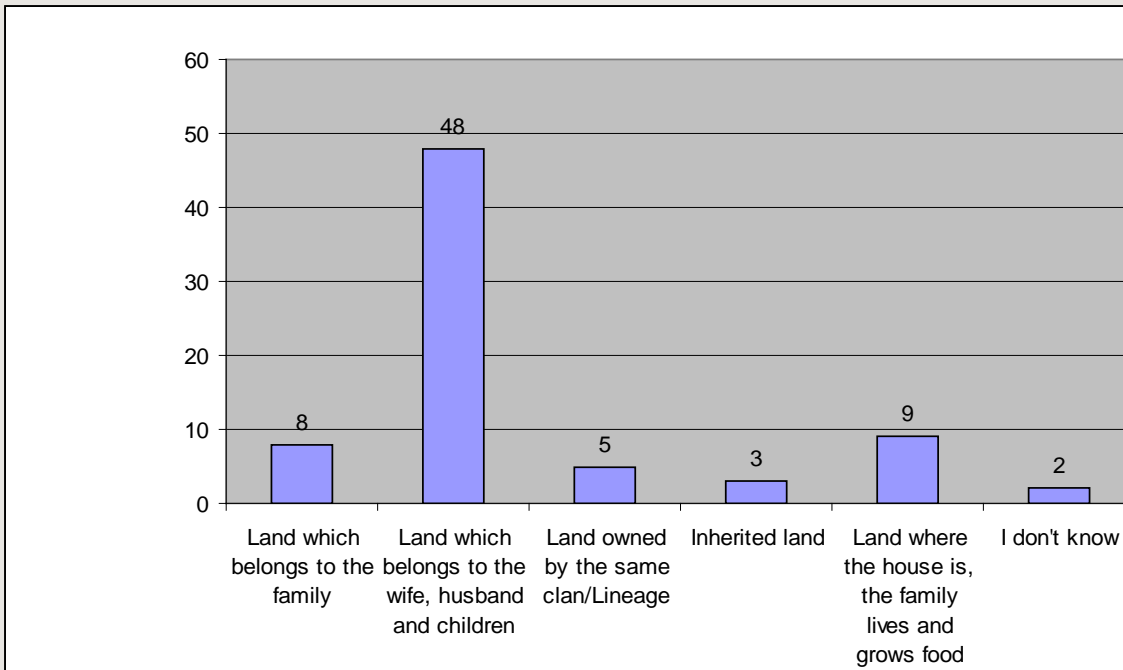
the spousal consent clause. Instead, they seemed to have a good understanding of the relationship between *mailo* landowners and the *bibanja* holders. They expressed the opinion that the land law has antagonized this relationship and that the *mailo* owner no longer benefits from their land. Consequently, they have sold land to investors who then evict the *kibanja* holders without compensation.

Interestingly, the youth did not demonstrate any knowledge about land laws in Uganda. They believed that all land and power over it in Uganda belongs to Government. This great misconception needs to be addressed before these youth take up positions of responsibility in Government.

Understanding family land

This graph shows the responses generated by participants when requested to define family land.

Figure 2: Understanding family land



Source: Women and Men's Focus Group Discussions

The majority of the respondents interviewed defined family land as that which belongs to the husband, wife and their children. Others defined it to include land owned by the same clan or lineage acquired through succession. The respondents' major concern was that they did not know the difference between family land and any other land. The moderator explained the legal definition of family land as provided by Section 38A of the Land (Amendment) Act No. 1 of 2004. The youth thought that all land is family land and did not see any rationale for the definition.

Interpreting the word "spouse" and the spousal consent clause

Most of the respondents did not understand the meaning of a spouse and defined it to mean a man and woman who stay together and have children. When the facilitator of the Focus Group discussion explained the legal implication of a spouse, women were left wondering if the law is actually

addressing the issue of women's access and control over land. On understanding the nature of the spousal consent clause, the respondents expressed the following views:



One of the women making a contribution in the Focus Group discussion

The majority of the men understood this clause to be an infringement on their rights to take decisions for the better planning and management of their land. **Peter**⁴ (38), exclaimed that

If I bought my own land using my own resources, how can a spouse stop me from planning its use.

However, they later conceded that ignorance of the law and lack of gender sensitivity have led them to believe that as house heads, they have every right to do whatever they want with their land without necessarily consulting anyone. By the end of the discussion, they resolved that the law was very good, but that they needed further education to appreciate it.

In emphasizing the goodness of the law, **Hajji Musa Sekitoleko**⁵ (60), explained:

The beauty of the clause comes out when your daughter is sent home by her husband with her children after he has sold their family land without consulting her. As a father, no one would want his daughter to experience this.

They also vowed to respect their partners and where possible legalize their relationships with them.

On the contrary, when the women found out that the spousal consent clause applies equally to husbands and wives, they were astonished by the fact that the men had a say regarding the pieces of land women either bought using their own resources or inherited from their parents. They were especially disturbed by the fact that men are very reluctant to consult them about the issues affecting family land despite the fact that they are the ones who till the land and generate the family income from it.

4 Not real name

5 Not real name

Women's land ownership vis a vis local practices and beliefs

The following practices were identified as the major hindrances to women's land ownership in Kayunga District.

Patriarchy:

Many Africans still believe that women have no rights over family property as they are property themselves and subject to male authority. **Joshua**⁶ (20), emphasized this fact when he said that:

When I wed my wife she also becomes part of my property and therefore I can deal with my property the way I want to including the family land.

Namukwaya⁷ (49), of Nazigo Sub-county, said that her husband did not accept her challenge to his authority when he sold their family land without her consent:

My husband said that he cannot be given instructions by a woman as he has all the authority over all family matters.

6 Not real name

7 Not real name

Barrenness

Contrary to the legal view of marriage, most of the respondents believe that children are a major component of the marriage institution and if a married woman fails to bear children for her husband, then she cannot benefit from the spousal consent clause. **Christine**⁸ (38), of Nazigo sub-county, told her story:

My husband of 14 years wanted us to separate because I had not given birth at all, which I refused. He sold our land which was a source of our livelihood without my consent because he no longer needed me and wanted start his own business. We had acquired so much land and even built many houses. When he got a girlfriend who gave birth to a baby boy, he threw me out of our house and told me never to come back because I am barren. I now stay at a friend's house.

Polygamy

It was further noted that most men who sell family land without the consent of their wives have polygamous tendencies. When these men acquire new girlfriends, they sell part if not all of the family land to 'marry' a new bride without taking into consideration the effects this will have on their wives. **Carol**⁹ (37), of Kisoga Parish, Nazigo sub-county, related:

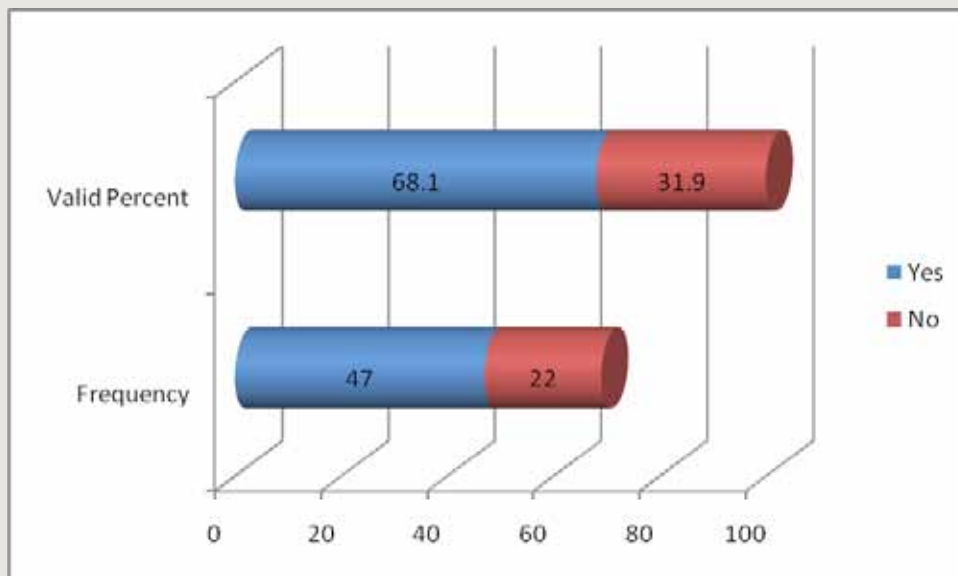
He did not tell me anything about selling the plot of land on which we were growing food for home consumption and for sale. He sold it when I was away and when I came back he had moved out of our home and was staying with another woman. I asked him why he sold the plot of land and he just abused me..

The data collected indicates that the majority of the leaders know that husbands should consult their wives before selling off family land, but this information does not seem to reach the intended beneficiaries. Therefore, there is a need for massive sensitization on the importance of the clause, especially at the community level.

8 Not real name

9 Not real name

Figure 3: Shows whether husbands must consult their wives before selling the family land



Source: Men's Focus Group discussion

Effects of the clause on the community

According to the technocrats, the consent clause gained momentum in the early days of the land tribunals, but many cases took so long to process that they were abandoned. Land conflicts, too, were a breeding ground for domestic violence, and, in some cases, led to the breakdown of marriages. However, in most disputes, the parties reconciled or vowed to protect family land.

Where sensitization has taken place there are fewer cases of land sales carried out without consent, and peace in homes.

Whether husbands consult their wives before selling family land

Contrary to the women's and men's views expressed during the Focus Group discussions and in one-on-one interviews, 47 percent of the Key Informants interviewed said that husbands consult their wives before selling family land. The

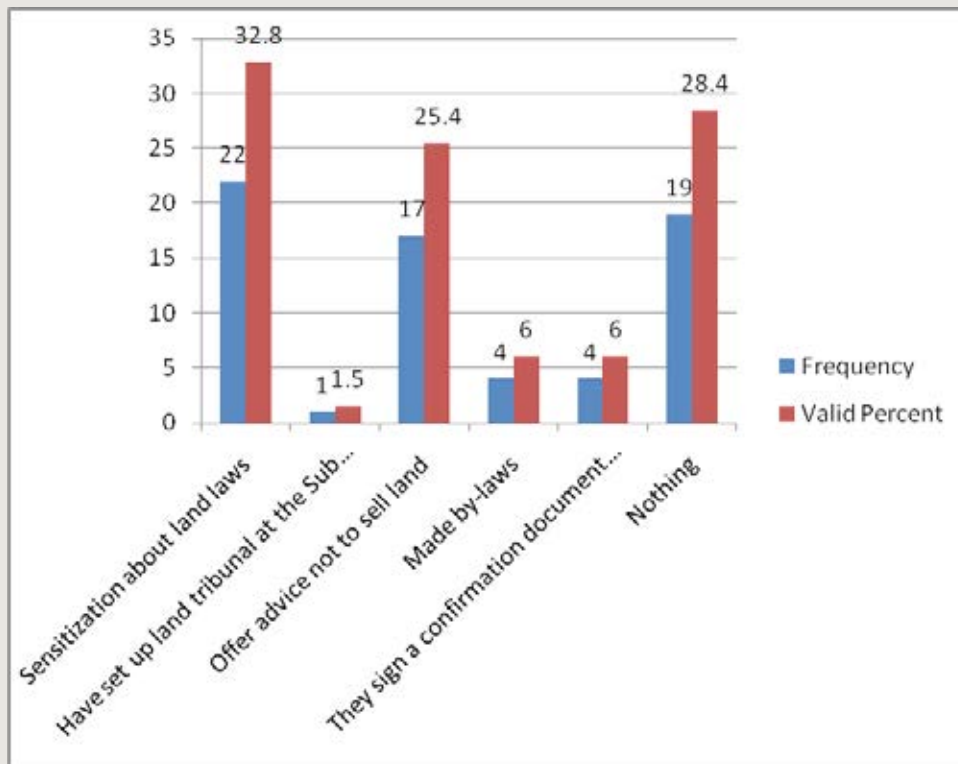
number of transactions in which women participated is low at 45.2 percent. However, the majority of the Key Informants who participated in these sales did not keep copies of their agreements. The credibility of their responses is in question as there is no legal way of verifying that the wives actually signed these agreements. **Alice**¹⁰ (35), says:

My husband and I had a big plot of land on which we used to grow food for home consumption and sale, however, my husband kept dividing it and selling it in parts without consulting me. I would only realize later that he has sold part of it and when I asked him why, he said that it is because we had a big piece of land and that for him he wanted to make money. Ever since we separated, he is threatening to sell part of the small land he left for me on which I grow food. This is why I reported the matter at AHURICA.

¹⁰ Not real name

Whether complaints are received and how they are handled

Figure 4: Whether complaints are received and how they are handled



Source: Local leaders of the sub counties

About half of the respondents who were local leaders (LCs) admitted receiving complaints of the improper sale of land, including the sale of family land without consent (44 percent of land transactions), and the sale of family land by the local leaders. When such complaints are received, the local authorities mediate them. Where they fail to reach an understanding they refer them to police, courts of law, Community Development officers (CDOs), and local NGOs, like AHURICA. However, Local Council officers handle the majority of the cases.

Some of the places where disputes are resolved

- i. **Local Councils:** During the Focus Group discussion, the local leaders, especially at LCI said that they are the first people that women come to regarding land disputes:

Mary¹¹ (29), of Nazigo sub-county, says:

She only realized that her husband had sold their plot of land on which they used to grow food when she saw strange people coming to clear it. When she asked her husband why this was so, he said that he had sold it. He is now forcefully demanding for the agreement on which their family residence is because he has got other people who want to buy it. She reported to the LC I Chairperson who advised her not to give him the agreement. Her husband no longer stays with the family.

However, as Safina's case indicates, some of these LCs collaborate with the husbands by witnessing the illegal sale of property. Women do not know who to trust.¹²

- ii. **Court:** Some women prefer to take their complaints to court, in this case, the Grade I Magistrate's Court in Kayunga. When Safina reported her case to the police she was advised to go to court where she instituted a suit for the cancellation of the agreement of transfer and sale of her house.
- iii. **Community based-organizations:** AHURICA is one of the community-based organizations where spouses have appealed for help in land disputes.
- iv. **Police:** Some women choose to report their complaints to the Land desk of the police.

¹¹ Not real name

¹² As narrated to the Research officer at Nazigo

Steps taken by LC executives to protect family land

Local council executives work to sensitize people about land laws when cases are reported to them, and mediate disputes by discouraging spouses from the sale of family land. When they fail to resolve those disputes, they refer the parties to either the Community Development officers or the courts of law. They also educate the population during village meetings, introduction meetings and funerals. Before executing transactions involving family land, they ensure that the spouse signs the confirmation of sale document. They have set up a land tribunal at the sub-county level to handle all land-related matters.

Limitations/challenges for implementation

Lack of awareness and ignorance of the law

Ignorance of the law is a problem for the community as a whole.

Cultural norms and beliefs

Traditional beliefs are responsible for violations of the spousal consent clause, but they also breed demoralization and low self-esteem in women that inhibits them from seeking recourse for these transgressions.

Corruption

Communities have lost confidence in their local leaders because of corruption. Male respondents explained that it is common practice for Local Council leaders to connive with the sellers of family land because they receive commissions on every land transaction. In addition, the LC charges file-handling fees ranging between 10,000 and 100,000 UG Shillings which are unaffordable for most rural people. In some cases, even if the money is paid, officials do not follow up cases or secretly meet with the defendants to defeat the woman's interest.

Invalid relationships maintained by the community members

Because the law only protects those in recognized marriages, it is not implemented often because the majority of couples in Nazigo and Kangulumira sub-counties cohabit. Men are free to exploit these legal loopholes and to practise irresponsible polygamy without repercussions.

Impact of the sale of family land without spousal consent by the wife:

The sale of family land without consent fosters a number of social problems.

Poverty

Poverty and suffering has resulted from the sale of family land without consent, as most women do not have alternative sources of income apart from farming:

Sarah¹³ (37), says:

She used to grow food including matooke, coffee and cassava on the family land which her husband sold without her consent, but the person who bought it took everything without her harvest anything from there. She no longer has a source of income and cannot provide for her family since her husband is now starving together with her children whom her husband abandoned her with because she does not have any other source of income anywhere to grow food and lack basic requirements.

Breakdown of family relationships:

Interviews indicated that illegal land transactions create family conflicts and cause their break up.

¹³ Not real name

3. Conclusion and recommendations

The following observations and conclusions can be drawn from the study carried out in Nazigo and Kangulumira sub-counties:

Conclusion:

Generally, the largest part of the community in Nazigo and Kangulumira sub-counties is ignorant of the consent clause although the leaders are not. The Deputy Chief Administration officer, the CDO, and the LC III chairpersons of these sub-counties all need further education about the clause. Its implementation is minimal because men know that women are not empowered to seek legal redress. Even though 80 percent of the women who have experienced violations of the clause were aware of their rights, they lack the assertiveness to claim them and to stand up against patriarchal authorities. They also fear the repercussions by their spouses if they do report them to authorities.

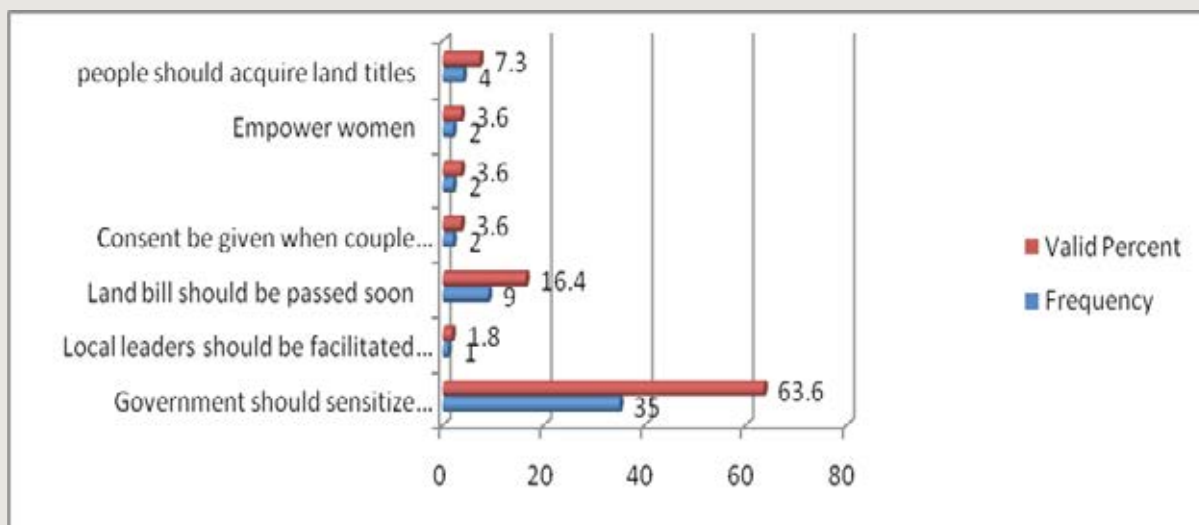
Furthermore, there is corruption of the LCs at the parish level who receive commissions of up to 10 percent of the sale for witnessing and processing land transactions.

The failure to implement the spousal consent clause has led to poverty in homes, breakdown of families and low self-esteem for women who are often left helpless after the sale. However, with education of the leaders and the community at large, the clause may have better implementation in the future.

Recommendations

- i. The Government should build the capacity of local leaders by providing the resources for the necessary education and sensitization programmes. However, there is need for all stakeholders, Local Councils and the community at large to be more responsive to women's needs so as to protect them from abuse.
- ii. The government should disseminate literature and conduct awareness-raising campaigns about the clause using both the media and community gatherings.
- iii. Women should be sensitized about the meaning of family land, their rights over that land and the resources available to them when land has been sold without their consent.
- iv. Cohabiting partners should be made aware of the exclusions within the spousal consent clause and should be encouraged to legalize their marriages.
- v. Spouses should be encouraged to acquire land titles because with registered land they can lodge caveats in case of any threats to sell it without the consent of either spouse.
- vi. People should be sensitized about the equal rights enjoyed by married couples as provided in by the Constitution. Local leaders can facilitate such education through seminars or village meetings.
- vii. Parliament should expedite the passage of the Domestic Relations Bill that protects the rights of parties who have cohabited for a period of time and have financially or in any other way contributed to the acquisition of the family land.
- viii. Civil society organizations should lobby for the enactment of the Domestic Relations Bill. They should further cultivate and implement projects in these communities that will change the attitudes of society about women, their roles, and their rights.
- ix. There is need for more staffing of the land office so that people have more access to land officials who can advise them and deal with their complaints.
- x. The LCs should be cautioned to ensure that before they act as witnesses to any family land sale, the husband's and wife's name should always appear on the family land agreements. They should take initiative to ascertain whether the woman has freely consented to the transaction.

Figure 5: Recommendations on how to protect family land



Source; FGD For women

Annexes

Annexure 'A': Tool one

Questionnaire to local, religious and opinion leaders

A: Local Information

Kayunga District

(1) Sub-county

(2) Village LC 1

(3) Interviewer

(4) Date of interview

Phone contact of Interviewer

B: Introduction:

My names are

I am attached to the Foundation for Human Rights Initiative Organization. We strive to educate and advocate for rights of people in the country. My colleagues and I are here to look into how lower decision bodies and law enforcement institutions are dealing with the issue of spousal consent in selling or otherwise dealing with land.

I have a few questions to ask you as one of the leaders in this village; the time you spare to guide us in this effort will very much be appreciated. Everything you tell me will be confidential and will only be used as a voice for all, not yours as a person.

C: Particulars of the respondent:

1. May I please know your name (optional)

2. What position do you hold at the Community?

Chairperson

Vice Chairperson

Secretary for Education

Secretary for information

Secretary for Defense

Treasurer

Chairperson Land Committee

Chairperson Land Committee

Other (specify)

3. How long have you served in this current position?

1. 1-5 years

2. 6-10

3. Other specify

4. Please tell me five (5) aspects you know about the law governing land in Uganda [Land Act 1998].

Land belongs to the people

Wives to give permission before selling family land

No building in wet-lands

Tenants to pay rent to landlords

People can get titles

Landlord cannot sell land before consulting the tenants

Tenant cannot sell land before informing tenant

Gain rights after 12 years on the land

5. What do you understand by the term 'Family land'?

6. Do you think that this provision that husbands must consult their wives before selling the family land is being followed? (circle the one mentioned)

- 1. Yes
- 2. No.

7. Why do you think this is the case?

8. In your position as a member of the LC, religious leader or elder, how many land sales have you witnessed?

- 1. None
- 2. 1-3
- 3. 3-5
- 4. More than 5

9. How many women (wives), were consulted by the LC officials to confirm **if** they were in agreement with the sell of the land?

10. In how many were women involved as sellers or buyers of land?

11. Can I have a look at copies of agreements of sale of land you have witnessed? **(If available, try to get a copy, read it through and take note of particulars of interest. You can also request to photocopy)**

12. Are there reports of complaints you have heard of or handled concerning husbands or wives selling land without informing their partners?

- 1. Yes
- 2. No

13. What was the particular complaint?

14. Where do you refer such cases/complaints which you fail to handle?

15. Do you follow up on cases/complaints you have referred to be handled elsewhere?

16. What steps has the LC executive taken to make sure that family land is protected?

17. Has the LC executive received any complaints from the wives about the sale of family land without the wives or husbands being consulted?

- 1. Yes
- 2. No

18. What did you as the LC executive do about it?

19. Why do you think some spouses (wives especially) have not come forward to complain?

20. In your opinion, do you think it is right for men to sell off the land on which the family depends without consulting their wives?

- 1. Yes
- 2. No

Give reasons for your answer.

21. What can be done to improve the protection of family land?

22. Do you think the land law as it is will help Ugandans come out of poverty?

- 1. Yes
- 2. No

23. Give reasons for your answer.

24. Please give me some suggestions on how family land can be protected.

THANKS FOR YOUR CO-OPERATION

Annexure 'B': Tool two

Focus group discussion theme guide

- a. Aspects known about the Land law.
- b. How each one of the listed affect the community and families in the district and sub-county
- c. Community views about the consent clause
- d. Recommendations on implementation of the consent clause



Our Mission

A global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing and capacity building.

Our Vision

Secure and equitable access to and control over land reduces poverty and contributes to identity, dignity and inclusion.

International Land Coalition Secretariat

Via Paolo di Dono, 44
00142 – Rome, Italy
tel.: +39 06 5459 2445
fax: +39 06 5459 3628
info@landcoalition.org
www.landcoalition.org

This work was carried out by the **Foundation for Human Rights Initiative (FHRI)** as part of a 3-year collaborative project entitled “Securing Women’s Access to Land: Linking Research and Action,” coordinated by the International Land Coalition (ILC), the Makerere Institute for Social Research (MISR) of Makerere University in Uganda, and the Institute for Poverty, Land and Agrarian Studies (PLAAS) of the University of Western Cape in South Africa.

Its overarching aim was to learn from women and respond to their needs through action-oriented research. The purpose of the research carried out under this project was not only to provide an evidence-base for advocacy on women’s rights, but also to strengthen the research and advocacy capacity of civil society organizations, and to build a platform to advocate for a transformative agenda that supports rural poor women to improve their access to and control over land and other natural resources, including the building of linkages with the wider advocacy relationships and programmes of the ILC.

This report is part of a wider initiative on Women’s Land Rights (WLR). If you would like further information on the initiative and on the collaborating partners, please feel free to contact the International Land Coalition.

