

**ACCESS TO LAND AND LAND RIGHTS IN POST CONFLICT  
SOCIETIES IN UGANDA: A PERSPECTIVE ON WOMEN'S  
AND CHILDREN'S RIGHTS**

**Submitted in partial fulfilment of the requirements for the award  
of the Master of Laws in Human Rights and Democratisation in  
Africa**

**By**

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**29 October 2010**

## **DECLARATION**

I, GINAMIA MELODY NGWATU, declare that the work presented in this dissertation is original. It has not been presented to any other University or Institution. Where the work of other people has been used, references have been provided. It is in this regard that I declare this work as originally mine, and it is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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**Signature:** \_\_\_\_\_

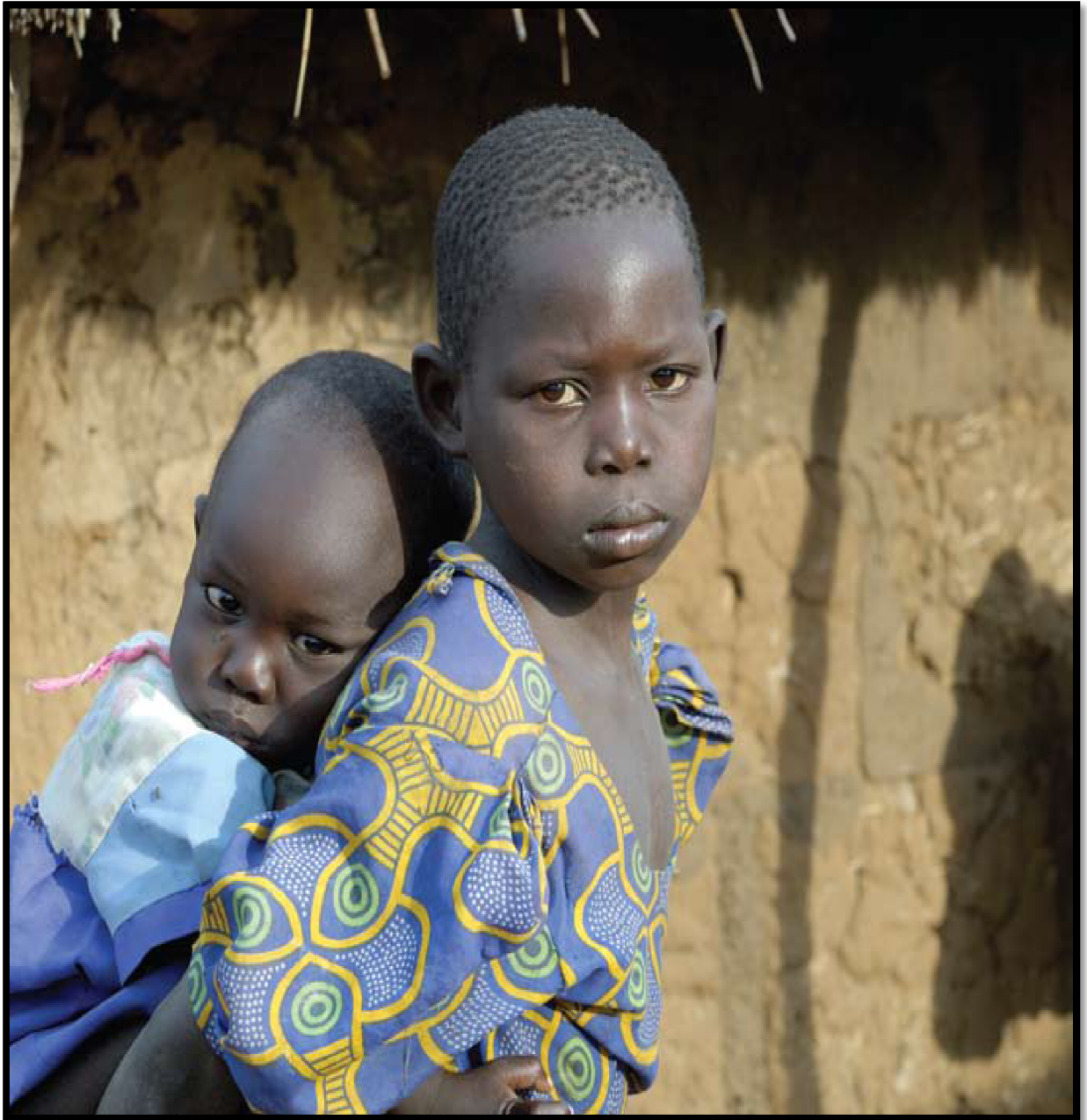
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## DEDICATION

This dissertation is dedicated to my loving mother, a true embodiment of an African woman who defied all odds to fulfil her dreams and those of her children.

Not forgetting the women and children of northern Uganda who have endured over 20 years of conflict with its accompanying human rights violations, abuses and marginalisation.

*May your spirit not be broken!*



A displaced girl cares for her younger sister. (Photo by Paul Jeffrey/Action by Churches Together)

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I would not have been admitted to this course nor completed it had it not been for the grace of God. For this, I am eternally grateful.

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*Aluta Continua!*

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## **ABBREVIATIONS**

ACRWC	African Charter on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
APRM	African Peer Review Mechanism
AU	African Union
BPA	Beijing Platform for Action
CEDAW	Convention on Elimination of all forms of Discrimination Against Women
CHA	Cessation of Hostilities Agreement
CRC	Convention on the Rights of the Child
DHRPP	District Human Rights Protection and Promotion
EVI	Extremely Vulnerable Individuals
FIDA	Federation of Uganda Women Lawyers
HIV	Human Immune Virus
IDP	Internally Displaced Persons
LC	Local Council
LRA	Lord's Resistance Army
NGO	Non Governmental Organisation
NRC	Norwegian Refugee Council
PAC	Public Accounts Committee
PRDP	Peace Recovery Development Plan
RDC	Resident District Commissioner
RoU	Republic of Uganda
TASO	The AIDS Support Organisation
UHRC	Uganda Human Rights Commission
UNHCR	United Nations High Commission for Refugees
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UPDF	Uganda Peoples Defence Forces

# CHAPTER ONE

## Introduction

### 1.1. Background / Justification

Issues of access to land and realisation of land rights have always existed in Uganda as women are considered to be potential land owners. Such rights usually have to do with the rights of individuals to particular plots of land, but also with rights to land held collectively.<sup>1</sup> The situation in post conflict northern Uganda was brought about by the displacement of people from their villages, but it only served to perpetuate this situation.<sup>2</sup> The conflict in northern Uganda began in 1988 between the government of Uganda and the Lord's Resistance Army (LRA).

From 1996, the government forced people to move into camps under its 'protected villages' policy. This measure was repeated in 2002 and 2004 when the government intensified its military operations against the LRA.<sup>3</sup> Women and children were forced out of their homes, and those who resisted were shelled out by the military. The districts that were most affected were Gulu, Amuru, Pader and Kitgum. There have been no LRA attacks in northern Uganda since 2006, when the government of Uganda and the LRA signed the Cessation of Hostilities Agreement (CHA)<sup>4</sup>. As a result, there has been relative peace and stability in the region that led to the encouragement of internally displaced persons to return to their homes and the phasing out of internally displaced persons' camps.

With the ongoing phasing out of internally displaced people's camps, and return and reintegration processes, there is concern that women and children are finding themselves in a difficult situation as they cannot access their land nor exercise their land rights at their original homes. Most of these women and children are either stuck at the original camps or transit sites with nowhere to go. They are vulnerable to having their land rights abused as they are widows or orphans, some of whom are heading households and need to survive. This survival is dependent on their ability to access their land and enjoy the ensuing land rights, which access is being hampered. It is this concern that has prompted interest in this topic. The study will focus on the post conflict setting in northern Uganda.

### 1.2. Research questions

This research seeks to address the following questions:

1. How are women and children marginalised in accessing land and exercising land rights?

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<sup>1</sup>J Pottier *Customary land tenure in sub-Saharan Africa today: Meanings and contexts* in C Huggins & J Glover, *From the Ground Up: Land Rights, Conflict and Peace in Sub-Saharan Africa* (2005) 55.

<sup>2</sup> The war in northern Uganda started in 1986 when the Lord's Resistance Army (LRA) led by Joseph Kony begun their fight against the government of Uganda. It ended with attempts to sign the Juba Peace Agreement in 2008 between Government of Uganda and LRA.

<sup>3</sup> GO2009\_Uganda report [www.internal-displacement.org](http://www.internal-displacement.org) (accessed on 4 July 2010).

<sup>4</sup> Uganda report (n 3 above).

2. Does the post conflict setting in Uganda aggravate the marginalisation of women and children in accessing land and realising their land rights?
3. Are there mechanisms in place that try to protect these rights?
4. Are women and children in northern Uganda societies emerging from conflict entitled to special mechanisms for the protection of their access to land?

### **1.3. Hypotheses**

The hypotheses of this study are as follows:

1. The post conflict in northern Uganda contributes to the further marginalisation of women and children in accessing land and enjoying land rights.
2. Despite the existence of legal and institutional mechanisms, there is a need for alternatives aimed at specifically affording protection of women and children in accessing their land.
3. There is need to critically analyse the current legal, institutional, and traditional mechanisms on their efficacy in protecting women's and children's rights to access land.

### **1.4. Objectives of the study**

The main objective of the study is to investigate the efficacy of the existing legal, institutional and traditional mechanisms in place to guarantee the rights and access of women and children to land. This study further aims at fulfilling the following objectives:

1. To investigate whether the existing legal and traditional regimes are effective in ensuring access to land and enjoyment of land rights for women and children in post conflict northern Uganda.
2. To show that women and children in the post conflict setting are more marginalised in the enjoyment of land rights. Other than the destabilising effect of conflict, other factors such as customary land practices further hinder their enjoyment of land rights.
3. To emphasise that there is need to afford more attention on women and children in the post conflict setting to ensure the enjoyment of their rights.
4. To propose mechanisms that could be adopted to offer better protection of the rights of women and children in accessing land in the post conflict setting.

### **1.5. Literature survey**

Leckie focuses on the rights of forcibly displaced persons including refugees.<sup>5</sup> Emphasis is placed on the right of forced migrants to return in safety and dignity to their countries and homes of origin and the right to restitution of property. It focuses on the legal instruments that govern land and property rights. This study is relevant in that it looks at the right of forced migrants to return to their homes.

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<sup>5</sup> S Leckie *Housing, land and property restitution rights of refugees and displaced persons: laws, cases and materials*, (2007).

However, in light of the post conflict setting in northern Uganda, there are other mechanisms other than legal instruments that influence land and property rights. These are the traditional institutions and the customary land tenure. This study aims to explore the effect of these two regimes on the rights of women and children to land.

A limited number of Masters Students at the University of Pretoria have written on Internally Displaced Persons. In 2001, Chinamasa wrote on the right to land in Zimbabwe and he looked at the legal and extra legal resettlement processes. In 2003 Limann looked at widowhood rights in Uganda and its human rights implications and focusing on some communities in Uganda including the Bakiga and Lugbara. In 2004, Mugisha wrote on the rights of women and children as internally displaced persons in Uganda and Democratic Republic of Congo. Mugisha focuses on the pre- and during conflict setting in which he considers the rights of women and children.

Unlike the studies reviewed above, this research looks at the access to land and land rights of women and children in a post conflict situation. It will not only consider mechanisms at national and international level governing access to land and land rights of women and children, but also consider the existing local structures that are meant to address such issues.

Human Rights Focus, an NGO, has also written on the challenges of return in Acholi-land.<sup>6</sup> The report generally looks at the problems affecting return of internally displaced persons to their villages; one of the problems mentioned is the land issue. The report concentrates on the issues affecting access to land at the communal level. It leaves out or also neglects the unique challenges that women and children face in accessing land in their villages.

## **1.6. Relevance of the study**

A number of women and children are in the process of trying to return to their villages after living for almost 15 years in internally displaced people's camps. Some of the issues hindering their access to the land include land grabbing by elites and corrupt government officials, as well as greedy relatives and biased traditional leaders. Much as there are legal, institutional and traditional mechanisms in place to protect land rights, these mechanisms appear not to be effective or efficient in protecting these women and children whose vulnerability to having their land rights abused is increased during and after conflict. As already noted, most of the women and children are heading households in a patrilineal society and also one where land is customarily held.

The study focuses on women and children as being vulnerable during and more so after conflict and seeks to come up with strategies of protecting their right to access land better.

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<sup>6</sup> Human Rights Focus, *Elucidation of the challenges of return in Acholiland* (2008).

### **1.7. Methodology**

The research is a socio-legal one as focus is placed on the existing laws and governmental and/traditional institutions with a critical assessment of their effectiveness in ensuring access to land and land rights of internally displaced women and children. The research involved intensive desk research especially for the laws and policies governing the treatment of internally displaced persons and their access to land and land rights in the post conflict era. The author's experience from northern Uganda was also relied on for primary data.

### **1.8. Limitations of study**

Challenges were undoubtedly met in the course of the study, one of them being that it was not possible to conduct field visits to interview the subjects of the study. As such, information relied on was mostly secondary information as obtained by researchers. The researchers themselves may have exaggerated the plight of the women and children depending on how it protects or furthers the cause of their organisation. Further, there is limited existing literature specifically focusing on access to land and land rights of women and children in the post conflict setting. As such, reliance was placed on the different aspects contained in the topic and the author's experience of working in northern Uganda.

This study specifically covered northern Uganda as it is the region most affected by conflict and the effect of long-term displacement. The study considered the impact of conflict from the time when phasing out of internally displaced people's camps begun. That is, from about 2006 when the cessation of hostilities agreement was signed between government of Uganda and the Lord's Resistance Army.

### **1.9 Chapterisation**

Chapter one deals with the research question and highlights the methodology used in carrying out the study. It also gives an overview of the study, literature survey and limitations in the carrying out of the study.

Chapter two focuses on the concept and meaning of land rights, the land tenure system in Uganda and the obstacles to enjoyment of land rights for women and children in Uganda.

Chapter three discusses the plight of women and children in the post conflict setting. It also briefly highlights land rights of women and children in northern Uganda in the pre-conflict period. The chapter further discusses the factors affecting return of women and children to their villages, as well as other challenges affecting return.

Chapter four analyses the existing legal and institutional mechanisms in place that are meant to guarantee access to land and land rights in Uganda with the aim of identifying the gaps that hinder realisation of women's and children's rights to land in the post conflict northern Uganda.

Chapter five is an analysis of the findings of the study and also gives recommendations that are aimed

at improving the access to land and land rights of women and children in post conflict situation.

## CHAPTER TWO

### Concept and meaning of land rights for women and children in Uganda

#### 2.1. Introduction

The Uganda Constitution requires that all citizens should be treated equally in all spheres of political, economic, social and cultural life.<sup>7</sup> It further calls for non-discrimination irrespective of, among others, a person's sex and social or economic standing.<sup>8</sup> It can, therefore, be deduced from the Uganda Constitution that there should be no discrimination of women and children in accessing land and enjoying land rights. This position is, however, governed by the land tenure system in Uganda which regulates access to land.

This chapter discusses the land tenure system in Uganda and the impact it has on the realisation of the right to access land of women and children. The chapter also analyses the prevailing factors that either ensure or prohibit enjoyment of the right. The chapter aims at showing that women's and children's land rights are challenged not only by law but also by other prevailing circumstances and factors such as influence of prevailing customs and practices.

#### 2.2. Land tenure system in Uganda

Land in Uganda is an economic and livelihood asset and it is estimated that only 7 percent of landowners in Uganda are women.<sup>9</sup> Land acquisition and enjoyment of rights that accrue from ownership are governed by Ugandan law, with the main laws being the Constitution of the Republic of Uganda (2006) and the Land Act Cap 227. According to the law, land in Uganda is owned in accordance with the land tenure system and these are: customary, freehold, *mailo* and leasehold.<sup>10</sup> These tenure systems are discussed below.

##### a. Customary tenure

It is a type of land tenure mostly practiced in northern Uganda. Under the Land Act, it is defined as a system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which are described in section 3.<sup>11</sup> According to section

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<sup>7</sup> Constitution of the Republic of Uganda (2006) art 21(1).

<sup>8</sup> Uganda Constitution art 21(2).

<sup>9</sup> S Forti, Challenges in the implementation of Women's Human Rights: Field Perspectives Conference Paper: The Winners and Losers from Rights Based Approaches to Development, (February 2005) 8 accessed from <http://www.sed.manchester.ac.uk/research/events/conferences/documents/Winners%20and%20Losers%20Papers/Forti.pdf> (accessed on 13 September 2010).

<sup>10</sup> Uganda Constitution art 237 (3); Land Act Cap 227 sec 2.

<sup>11</sup> Land Act sec 1(1) (n 10 above).

3(1), those to whom customary tenure is applicable are governed by rules generally accepted as binding and authoritative by the class of persons to which it applies.

In Uganda, the customary rules guiding land ownership are not the same in all parts of the country. The Land Act recognises this view as it provides for application of local customary regulations and management of individual and household ownership, use and occupation of, and transactions in land.<sup>12</sup> The clan system is relatively stronger in the northern parts of Uganda where land is allocated to those who want it for occupation or cultivation.<sup>13</sup> Makinwa-Adebusoye and Olawoye point out that in this system, land is owned by lineage groups whose patriarchs allocated plots to family heads as necessary.<sup>14</sup> They further point out that women are regarded as legal minors and had only indirect access to land through male kin (husbands or adult sons).

It is estimated that 93 percent of land in northern Uganda is held under customary land tenure.<sup>15</sup> Ugandans owning land under customary tenure have the option of acquiring certificates of ownership,<sup>16</sup> though generally this is not the case. Land is owned under the concept of stewardship whereby a landowner managed a land holding not only for himself, but also on behalf of his wider family.<sup>17</sup> The land is generally not titled or registered and it is within this context that women and children are often discriminated against as when the landowner dies, the ownership reverts back to the clan. Further, the successor to the land owner is usually a male adult thereby leaving out any wife or children left behind by the deceased. As such, their right to property is abused by the very clan that is meant to protect them.

## **b. Freehold tenure**

Freehold tenure is defined under the Land Act as a tenure that derives its legality from the Constitution and its incidents from written law.<sup>18</sup> These incidents as contained in the Land Act provision are perpetual existence and full ownership. This grant of land may therefore be in perpetuity or for a lesser period which may be subject to a stipulated condition.<sup>19</sup> This was a system of owning land that was set

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<sup>12</sup> Land Act sec 3(1)(e).

<sup>13</sup> W Okumu *Dispossession and Management of Common Property: Women and Inheritance in East Africa*. International Association for the Study of Common Property (1996) in T C Iruonagbe *Women's land rights and the challenge of patriarchy: Lessons from Ozalla community, Edo state, Nigeria* Gender and behaviour Vol. 8 No. 1 (2010) 2608.

<sup>14</sup> P Makinwa-Adebusoye, and J Olawoye -Gender Issues in the Nexus between Population Growth, Agricultural Stagnation and Environmental Degradation in Nigeria Paper presented for the World Bank (1992) in Iruonagbe (n 13 above) 2609.

<sup>15</sup> OHCHR Gulu Office -Land & Rights: Laws, institutions & conflicts (Focus on northern Uganda & displacement) (2009)

<sup>16</sup> Uganda Constitution art 237(4)(a).

<sup>17</sup> Land and Equity Movement in Uganda Landlessness Policy discussion paper 3A

<sup>18</sup> Land Act sec 3(2).

<sup>19</sup> Land Act sec 3(2) (a).



up by agreement between the Kingdoms and the British Government.<sup>20</sup> This form of tenure mostly existed in the western part of the Country. Freehold land was initially granted by the Crown and later by the Uganda Land Commission.<sup>21</sup>

### **c. *Mailo* tenure**

*Mailo* land tenure involves holding registered land in perpetuity. This system has its roots in the 1900 Buganda Agreement between Buganda and the British. Under this agreement, land was divided between the Kabaka (King) of Buganda, other notables and the Protectorate Government.<sup>22</sup> In the central Ugandan region of Buganda, the clan system was undermined with introduction of the *mailo* system though *mailo* land is still subject to clan and lineage head approval. A 1908 land legislation gave freehold titles for large tracts of land to the king, his family, and clan chiefs. About 4,000 individuals received land in this way. As a result, very few women came to own *mailo* land. Others could gain access to this land by purchasing it from the original recipients and their descendants.<sup>23</sup>

### **d. Leasehold tenure**

Leasehold tenure is a form of tenure that is created either by contract or by operation of law.<sup>24</sup> It involves land being leased for a specific period under certain conditions. A lease can be granted for any duration except where it is being granted to a non-Uganda citizen; in which case the period should not exceed ninety nine years.<sup>25</sup> Leases are, however, costly and not easy to maintain. As observed by the Beijing Platform for Action, women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources.<sup>26</sup> As such, most women in Uganda would be unable to access land through leases due to their inability to access resources that would enable them pay for and maintain the leases.

Based on the foregoing land tenure systems practiced in Uganda, it is evident that the systems through which women and possibly children could directly access and enjoy land rights are *mailo* and customary tenures. However, it is within these two land tenure systems that women and children are mostly discriminated against and deprived of opportunity to access and enjoy rights accruing from the land that they ought to own. This situation can be attributed to the obstacles discussed below.

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<sup>20</sup> H Busingye 'Customary land tenure reform in Uganda; lessons for South Africa' presented at the international symposium on communal tenure reform Johannesburg, 12<sup>th</sup>- 13<sup>th</sup> august 2002 (accessed from <http://www.oxfam.org.uk/resources/learning/landrights/downloads/ulacldr.rtf> on 13 September 2010).

<sup>21</sup> Busingye (n 20 above).

<sup>22</sup> <http://e-iwm.wikispaces.com/file/view/Land+Tenure+Systems+in+Uganda.pdf> accessed on 6 September 2010.

<sup>23</sup> A.M Tripp Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda *African Studies Quarterly* 5 accessed from <http://www.africa.ufl.edu/asq/v7/v7i4a1.htm> (accessed on 7 September 2010).

<sup>24</sup> Land Act sec 3(5).

<sup>25</sup> Land Act sec 40(3).

<sup>26</sup> Beijing Platform for Action (BPFA) (1995) para 47 accessed from [http://www.pdhre.org/rights/women\\_and\\_poverty.html](http://www.pdhre.org/rights/women_and_poverty.html) (accessed on 14 September 2010).

## **2.3. Obstacles to enjoyment of land rights**

According to the Beijing Platform for Action, land is one of the important things for women's livelihood and has an important link between women's poverty and homelessness, inadequate housing, and lack of access to economic resources such as credit, land ownership and inheritance.<sup>27</sup> Further, efforts have been made by the UN Commission on Human Rights to, among other things; urge States, including Uganda, to design and revise laws to ensure that women are accorded full and equal right to own land and other property, and the right to adequate housing; which includes the right to inheritance.<sup>28</sup> Despite these efforts, however, there has not been much change in the status of women let alone children in accessing land rights and enjoying the same. This lack of improvement can be attributed to the obstacles discussed in the next sections below.

### **2.3.1. Ignorance of rights**

Women's and children's ignorance of their land rights has a role to play in their continued discrimination in the accessing and enjoyment of land rights. The Uganda Constitution categorically states that all persons are equal before the law in all spheres including social and cultural life. However, historically, women's access to land has been based on their status within the family; and it involves their right to use the land rather than actual ownership.<sup>29</sup> Children, on the other hand have been subject to their mothers or guardians as the law generally does not acknowledge their ability to hold property on their own.<sup>30</sup> According to case studies conducted, relatives of orphans grab their land and property in rural areas; while in urban locations, orphans are more likely to suffer from losing private tenure plots.<sup>31</sup>

In light of the foregoing women and children do not know their rights, let alone which fora to turn to for redress. For instance, women and children are ignorant of which courts have jurisdiction over land matters and the possible available remedies. Access to such information would protect women and children from ignorance and abuse of their land rights, as well as empower them to claim for and fully realise their rights.

### **2.3.2. Weak institutions**

Several institutions have been created to ensure protection of women's and children's rights. For

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<sup>27</sup> Beijing Platform for Action (n 26 above) paras 47, 51 and 156.

<sup>28</sup> Commission on Human Rights Resolution 2000/13. Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (2000) sec 5.

<sup>29</sup> Iruonagbe (n 13 above) 2607.

<sup>30</sup> According to sec 27 of the Administrator General's Act cap 157, court may appoint a father, mother or other suitable person to receive the share of a minor under a will or distribution of an estate.

<sup>31</sup> LL Rose -Children's property and inheritance rights and their livelihoods: The context of HIV and AIDS in Southern and East Africa-LSP Working Paper 39 (2006) 5.

instance, the judicial system was created in a bid to give life to laws that aim at guaranteeing women and children's right to access and enjoy land rights, for instance the judicial system. However, despite efforts to have an effective and efficient system, the judiciary is plagued by its own problems and is, therefore, unable to extend its services closer to those it was intended to benefit. Issues such as distance of the courts as well as case backlog cripple its ability to perform. It is estimated that the judiciary has a case backlog of about 40000.<sup>32</sup> As observed by the current Parliamentary Public Accounts Committee (PAC) Chairman, Nandala Mafabi, the backlog of cases pending in court are due to lack of human resource and the cases will continue to upsurge if the current judicial system is not restructured.<sup>33</sup> This shows that the courts which are the main institution created to breathe life into laws and offer protection to women and children, whose land rights are being threatened and abused, are in fact impotent. As such, the realisation of land rights under these circumstances is farfetched.

### **2.3.3. Prevailing customs and practices**

Custom is a very powerful force that has a deep bearing on women and children's access to land. According to Tuyizere, cultural practices in most parts of Uganda hold women not as equal partners to their counterparts, but as subordinates.<sup>34</sup> As such, traditionally, they are expected to fulfil the roles of mothers, housewives, family workers and agricultural labourers.<sup>35</sup> Given that custom is deeply entrenched in most of Ugandan society today, irrespective of what the legal provisions are, it is customary practices that determine whether a woman or child will actually have access to land. In light of this, even if the law provides for women's or children's ownership of land, customary practices may prevent the claim over any such right. Much as ownership of land is statutorily allowed, she may be discouraged from asserting this right.<sup>36</sup> An unmarried woman may use her family's land (usually held in her father's name) but may claim no permanent use or ownership rights to the land.<sup>37</sup> The same applies to children as in the African setting, they do not have a voice. Upon divorce or death of their husbands, women can be denied property rights in their land and homes.<sup>38</sup> Children, on the other hand, remain at the mercy of guardians appointed by the clan to take over property left by their deceased parents.

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<sup>32</sup> AN Wandera 'Case backlog blamed on lazy judicial officers' <http://www.monitor.co.ug/News/National/-/688334/915282/-/wykvu6/-/index.html> (accessed on 8 September 2010).

<sup>33</sup> Y Mugerwa 'Legislators approve Judiciary overhaul' <http://www.monitor.co.ug/News/National/-/688334/998216/-/x4kas4/-/index.html> (accessed on 8 September).

<sup>34</sup> AP Tuyizere *Gender and Development: The Role of religion and Culture* in Iruonagbe (n 13 above) 2610.

<sup>35</sup> Tuyizere in Iruonagbe (n 13 above) 2610.

<sup>36</sup> R Rebouche 'Labor, Land, and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women' Vol. 19 *Harvard Human Rights Journal* (2006) 244.

<sup>37</sup> Rebouche (n 36 above) 244.

<sup>38</sup> Rebouche (n 36 above) 244.

Further, the concept of co-ownership of land is not recognised under customary law. This means that on the loss of a spouse or dissolution of marriage, land held under customary tenure reverts back to the clan while those under other tenures will be claimed by relatives. Such customary practices are, however, void, as they are contrary to article 2(2) of the Uganda Constitution which upholds the Constitution as the supreme law of the land. As such, any custom that is inconsistent with the Constitution is void to the extent of the inconsistency.

#### **2.3.4. Corruption**

Corruption is a challenge that plagues almost every institution in Uganda including the Ministry of Lands, Housing and Urban Development under whose ambit land matters fall. According to Transparency International, Uganda is ranked among the countries most affected by bribes and scores the third-highest among 69 countries in Asia, America, the Middle East, Europe and Africa that were sampled.<sup>39</sup> It is as a result of corruption that women and children are further rendered helpless when it comes to claiming titled land. As observed by the President of the Republic of Uganda, the Land Registry officials in the Lands Ministry are accused of fleecing people to process their land titles and in other instances have been known to issue false titles after getting bribes.<sup>40</sup> By the time the fraud is realised, it is often too late for the women who are the rightful owners to reclaim their land as it involves a long and tedious court process, let alone an expensive process.

#### **2.3.5. Low literacy levels**

Low literacy levels are another factor that hamper the ability of women to fully realise their rights to land. With no empowerment, it is impossible for women to effectively follow up on land disputes as well as change of ownership in case of inheritance. Illiteracy and low levels of education limit the ability of women to push for access to and actual enjoyment of their land rights as well their children's. Literacy is necessary for one to be able to understand land rights as well as how the judicial system can be used to protect the same. Unfortunately, most women live in rural areas and have not advanced in education. It is estimated that about half of the women in sub-Saharan Africa are illiterate. This alone, undermines any attempts of pushing for realisation of women's rights to land in rural areas. To make matters worse, culture is deeply engrained in women's minds that they would find it difficult to try and change the *status quo*.

#### **2.4. Conclusion**

In Uganda, women's access to land largely depends on marriage and this access can be retained provided that the women remain in their husband's household and he also remains alive. Children are

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<sup>39</sup> Vision reporter 'Uganda 3rd most corrupt' report accessed from <http://www.newvision.co.ug/D/8/13/683669> (accessed 1 September 2010).

<sup>40</sup> AN Wanda Museveni tells cultural leaders to keep off land disputes accessed from <http://www.monitor.co.ug/News/National/-/688334/925836/-/x07kbw/-/index.html> (accessed on 8 September).

also not well placed to use either customary law or statutory law to claim their rights to land because of the barriers they could encounter, including the cost of suits to enforce property rights, ignorance of their inheritance rights, as well as their being prohibited by law to pursue their own property claims.<sup>41</sup> This discussion has shown that there is still a discrepancy between the *de jure* and the *de facto* protection of rights of women and children to access land in Uganda. This, therefore, begs the question, if such is the situation for generally most women and children, what about those in a post conflict setting. What has been shown so far is that women and children are vulnerable to having their rights to access land as well as enjoy land rights abused. What is yet to be looked at is whether conflict does aggravate this vulnerability.

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<sup>41</sup> Rose (n 31 above) 3; Administrator General's Act sec 27.

## CHAPTER THREE

### **Situational analysis of internally displaced women and children in the post conflict setting**

#### **3.1. Introduction**

The return and subsequent resettlement of internally displaced persons (IDPs) in northern Uganda officially began with the signing of the Cessation of Hostilities Agreement (CHA) between the government of Uganda and the Lord's Resistance Army (LRA).<sup>42</sup> This chapter explains the concept of return and resettlement of IDPs in the northern Ugandan context. The chapter places emphasis on the Acholi sub-region as it was most affected by the rebellion compared to Lango sub region where people were mostly displaced around 2002 and 2004; and were able to resettle back in their villages by 2009. The chapter also looks at the factors and challenges affecting the return of women and children to their villages in light of their right to access and enjoy land rights. Lastly, the Chapter highlights the challenges facing women and children in their attempts to regain access to their land

#### **3.2. Concept of return and resettlement of internally displaced persons**

The war by the LRA against the government of Uganda started in 1988 and involved a brutal campaign of atrocities against the local Acholi and Langi population, often in the form of punishment for failing to support the rebel movement's cause.<sup>43</sup> This punishment mostly included killing, abduction of children and able-bodied men and women, maiming of civilians as well as destruction of property. In a bid to protect the people from the LRA's atrocities, the government of Uganda created protected villages policy in 1996 for those affected by the conflict to reside in. However, it was only as a result of use of force by government troops and persistent rebel attacks that people fled into the protected villages.

The 20 year old war did not only bring about massive displacement of people but it also led to massive loss of life and disappearances. Thousands lost their lives in the course of rebel attacks and ambushes on civilians. For instance, there was the Barlonyo massacre in 2004 where over 200 people in Barlonyo village in Lira district were killed by LRA in one night<sup>44</sup>; while others were killed in the crossfire between the Uganda People's Defence Forces (UPDF) and the LRA, or were abducted by the rebels to be conscripted into their army. Many women were left widows while others did not know whether they were widows as the death of their husbands was unconfirmed. Children, on the other hand, were either left behind as orphans in instances where both parents were killed or died during the

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<sup>42</sup> Uganda report (n 3 above).

<sup>43</sup> Uganda African Peer Review Mechanism Report (2009) 292 para 1203.

<sup>44</sup> H Apunyo "Barlonyo still awaits government pledges six years after massacre" accessed from <http://www.monitor.co.ug/News/National/-/688334/867586/-/wimbkt/-/index.html> (accessed on 19 September 2010).

conflict either at the hands of the LRA, government soldiers, or even the children themselves as the LRA were known to force children to kill their own parents and family members.<sup>45</sup> Such children, if older than their siblings, had to assume the position of head of the family, hence child-headed families emerged in northern Uganda. Other families were separated in the course of running into the bushes to flee from the advancing LRA never to be reunited. The CHA was, therefore, a symbol of hope even though in the end, the LRA never signed the final peace agreement. Nevertheless, the relative peace that has been enjoyed in northern Uganda since the CHA, gave the people an opportunity to return home and rebuild their lives from scratch.

The return and resettlement of IDPs has been both voluntary and involuntary. This is quite contrary to United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro's principles) which emphasises that displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity and that they should not be forced or coerced.<sup>46</sup> Return has been voluntary in that some IDPs were eager to return home and rebuild their lives; and involuntary in that other IDPs were forced out of camps due to, among other things, mysterious camp fires that razed their huts to the ground. Government on its part has tried to ensure return by closing camps and knocking down huts that had once housed IDPs. It is estimated that a total of 1.4 million people or about 80 percent of the original camp population in the region at the end of 2009 had moved either to their original villages or transit sites which are closer to home.<sup>47</sup>

Return has, however, not been easy as the areas of return lack the basic social services like health centres, schools and potable water, to mention a few. In other words, the return sites are largely inhabitable. As such, a number of IDPs prefer to continue residing at the original camps or transit sites as they can still access these services. In other instances, parents have returned while leaving behind their children to enable them access education in the IDP camps. This has, however, posed its own challenges as some children drop out of school due to lack of parental supervision while the girls are sexually exploited by men in the camps leading to early pregnancies, early marriages, sexually transmitted infections, especially HIV/AIDS and a high school dropout rate.. For instance, it is estimated that only 26% of those who enrol for primary education graduate to secondary.<sup>48</sup> With the estimation by representatives from The AIDS Support Organisation (TASO) that 50 percent of people in the camps are infected with HIV/AIDS, the future of these girls and others in the camps is not as bright.<sup>49</sup>

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<sup>45</sup> -In-Depth: Life in northern Uganda accessed from <http://www.irinnews.org/InDepthMain.aspx?InDepthId=23&ReportId=65773> (accessed on 20 September 2010).

<sup>46</sup> Principle 10.1 & 10.3.

<sup>47</sup> NRC's -Country Programme in Uganda: Humanitarian and Political Context accessed from <http://www.nrc.no/?aid=9167601> (accessed on 15 September 2010).

<sup>48</sup> Peace Recovery Development (Plan 2007 to 2010).

<sup>49</sup> PE Hetz, Dr. G Myers, R Giovarelli -Land Matters in Northern Uganda: Anything Grows; Anything Goes Post-conflict

The return and resettlement process assumes that all IDPs have land in their village or alternative places to relocate to. This is not the case since some IDPs are unable to return for a number of reasons, which will be discussed in the next section. Also, with the onset of the return process, landowners of areas where IDP camps were created have evicted some IDPs in a bid to re-claim their land. Tactics such as mysterious fires that razed many huts to the ground, as well as the charging of ground rent have been used. For instance, in Unyama a former IDP camp, landowners charged between 3000 to 5000 Uganda shillings (US dollars 1.5 to 2.5) per month as ground rent<sup>50</sup>; a fee most IDPs can ill afford. As observed in General Comment 7 of the Committee on Economic, Social and Cultural Rights, forced evictions are *prima facie* incompatible with the requirements of the International Covenant on Economic Social and Cultural Rights; which requires States to refrain from forced evictions and to enforce the law against agents or third parties who carry out forced evictions.<sup>51</sup> Not that these forced evictions are unjustifiable, government has been unable to come up with any alternatives for those affected despite having the peace recovery and development plan (PRDP). Under PRDP, more efforts are being put into rehabilitating social services at return sites like school construction and opening of police posts.

Return is indeed an opportunity for IDPs to go back to their villages and re-establish their homes. This process is, however, slow as some IDPs are still living in transit sites as they try to rebuild their homes in the villages before making a final move.

### **3.3. Factors affecting return of internally displaced women and children**

As highlighted in the preceding texts, a number of women and children in northern Uganda would want to return to their villages but are not in a position to do so. This can be attributed to the following factors:

#### **3.3.1. Land grabbing**

Land grabbing is one of the main issues that has led to an influx of land cases in northern Uganda. This influx is linked to the return of IDPs who have discovered that their land is being occupied by others. The elite, investors and influential people in government have been accused of being behind the land grabbing. These categories of people are well versed with the law and also have adequate resources to manipulate it to their advantage, thereby enabling them to get ownership and proof thereof through registration of the land.

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öconflictsö lie in Landø (2006-2007) 11 accessed from [http://www.ardinc.com/upload/photos/6264\\_Hetz\\_Brief\\_FINAL.pdf](http://www.ardinc.com/upload/photos/6264_Hetz_Brief_FINAL.pdf) (accessed on 20 September 2010).

<sup>50</sup> P Amoru and C Makumbi -Stuck in the camps with nowhere to goø <http://www.monitor.co.ug/News/National/-/688334/861562/-/wii5lw/-/index.html> accessed on 18 September 2010.

<sup>51</sup> UN Committee on Economic Social and Cultural Rights (CESCR), General Comment No. 7, *The right to adequate housing (Art. 11(1)): forced evictions*, 1 (20 May 21997).



According to Pinheiro's principles, any housing, land and/or property transaction carried out contrary to international human rights standards should not be recognised as valid by the State.<sup>52</sup> This begs the question, what happens if such an act is perpetrated by influential members of the state machinery? This has been the case in northern Uganda where government officials including officials in the Uganda Army have fenced off thousands of acres of land belonging to IDPs and nothing has been done to protect the IDPs interests. According to the Acholi elders, the land, in Amuru district to be specific, is meant for resettlement of IDPs and yet a Major General in the Uganda army and other investors like Madhvani Group that have interests in setting up a sugar factory in the region are still trying to acquire the land without entering direct talks with the landowners.<sup>53</sup> If such talks proceed, the likelihood of women's or children's interests being catered for is slim given the patriarchal system that is deeply entrenched in the northern Uganda way of life, and leaves no room for female or children's participation in decision making. In light of this, it is also hard for women or even children to claim back their land since, in most cases, customary land in northern Uganda is not registered.

### **3.3.2. Land disputes**

Land disputes have become synonymous with the return process and in the case of northern Uganda; it is also linked with violence some of which have led to loss of life. There are various types of land disputes in northern Uganda, though most of the disputes are over land boundaries or over the land itself; for instance, in the case of land owners finding squatters on their land. There are also inter-tribal land disputes which have arisen due to the inter-tribal tensions between the Acholis and the Langis. Both groups were affected by the LRA conflict though the Acholis suffered longer and bore the brunt of it. According to a report made to Parliament by the woman member of parliament for Dokolo district, indigenous Acholis are blocking Langis born and bred in Pader district from returning to reclaim their land of ancestry following the dismantling of IDP camps which were created at the height of the LRA insurgency.<sup>54</sup> Pader is a district of predominantly Acholi where land is customarily owned.<sup>55</sup> Much closer to home are the inter or intra family land disputes where women and children are denied access to land and land rights by their in-laws or even adult sons who prefer to individualise land ownership, thereby abandoning their mother and siblings due to greed. As a result of these land disputes, women and children are deprived of access to land either by the in-laws or male relatives who do not recognise that females can own property. And in the instance of the inter-tribal land dispute, they will be denied access by members of the tribe that is predominant in the area as they will

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<sup>52</sup> Principle 15.8.

<sup>53</sup> M Nalugo "Elders petition Museveni over Amuru land takeover" <http://www.monitor.co.ug/News/Education/-/688336/749946/-/10fbq5/-/index.html> (accessed on 18 September 2010).

<sup>54</sup> E Gyezaho "MP says ethnic tension boiling in Acholiland" <http://www.monitor.co.ug/News/National/-/688334/950048/-/x1xj6a/-/index.html> accessed on 16 September 2010.

<sup>55</sup> Gyezaho (n 54 above).

be considered to be encroachers.

As noted, these land disputes often turn violent thereby rendering women and children likely victims rather than participants in trying to claim land given that the people involved are usually ruthless men. For instance in Otungpili Village in Pader district, a family of four people that had just returned to their original land after two decades in IDP camps was burnt to death over a land wrangle.<sup>56</sup> While in Amuru district, 20 huts were also burnt over a land dispute.<sup>57</sup> Women and children would, therefore, not be able to withhold such pressure as they try to reclaim access to their land.

### **3.3.3. Landless IDPs**

Owing to the new found peace in northern Uganda, over 60 percent of the population in the region is now attempting to resettle.<sup>58</sup> There are, however, a number of IDPs who have no land and are still stuck in the camps with no place to return to.<sup>59</sup> This is especially true for children who were born in IDP camps or those who were very young at the time people were forced out of the villages. Most of these do not know the way back to the villages and, therefore, even if taken there, would be unable to map out the land boundaries. Such children, some of whom have now turned into young adults, are also not in a position to trace their relatives as people were scattered all over the region in the course of fleeing from the LRA. For instance, it is reported that one young girl started living in the IDP camp at the age of seven with her parents, both of whom are now deceased leaving her with no one to turn to.<sup>60</sup> Moreover, since a number of IDP camps have been closed, such children are left at the mercy of landlords who now demand a ground rent of at least 3000 Uganda shillings (US dollar 1.50) from those who continue to reside on their land.<sup>61</sup> This makes a bad situation worse since most IDPs, let alone children, are now destitute because of camp life and therefore find the ground rent too high to pay.

### **3.3.4. Non restitution by government**

Some women and children are unable to return home as they are awaiting and hoping for restitution from government. These women and children hope for restitution for their property that was damaged by government troops while they were being herded into the IDP camps; for others, the wait is for compensation for land that government took over to establish army detachments. Another category of IDPs are hoping for government assistance to enable them to return home. The Pinheiro principles

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<sup>56</sup> J Eriku 'Family burnt to death over land conflict' <http://www.monitor.co.ug/News/National/-/688334/942988/-/x1dl2y/-/index.html> (accessed on 18 September 2010).

<sup>57</sup> Eriku (n 56 above).

<sup>58</sup> Amuru & Makumbi (n 50 above).

<sup>59</sup> Amuru & Makumbi (n 50 above).

<sup>60</sup> Amuru & Makumbi (n 50 above).

<sup>61</sup> Amuru & Makumbi (n 50 above).

prescribe that all displaced persons have the right to full and effective compensation as an integral component of the restitution process.<sup>62</sup>

Government has tried a scheme where iron sheets are given to 12 households per sub county though there are pre-conditions attached, for example, the house should be built by the IDP using burnt bricks, and the house should be constructed up to ring-beam level for one to be given iron sheets for roofing. Even after construction, there is still no guarantee that the IDP will get the iron sheets as a lottery system is applied to select the 12 'lucky' IDPs from the sub county. This has, however, been marred with accusations that only those who support the national ruling party seem to benefit and there is no plan to ensure that women or children benefit too as it is totally left to chance. The distribution of 30 iron sheets per family in Acholi Sub- region, however, hit a snag after only about 300 families benefited.<sup>63</sup>

### **3.3.5. Extremely Vulnerable Individuals (EVIs)**

Some women and children, in particular children-headed families, are unable to return home as they are in the category of EVIs. According to UNHCR, there are 1,898 EVIs remaining in camps in Gulu and 3,407 in Amuru district requiring special assistance.<sup>64</sup> Those categorised as EVIs include the elderly, the disabled, persons living with HIV/AIDS, and children. Most EVIs would want to return home but have had to remain in the camps as there is no one to help them return or even assist them at the return sites. Most of them need constant care and attention which they are unable to access at return sites. For instance, women and children living with HIV/AIDs would be unable to access basic care and treatment for HIV-related ailments if they returned. As such, for those who have disability or chronic illness or are very old and have no one to look after them at the return sites, return is not an option. However, for those EVIs who have where to return to and people to assist them, UNHCR has constructed about 515 huts and 510 pit latrines.<sup>65</sup>

## **3.4. Challenges in realising access to land in post conflict northern Uganda**

Despite facing the aforementioned factors that hinder their return to their villages, women and children still have the following challenges that further hamper their attempts to claim their land rights.

### **3.4.1. Lack of a policy governing return.**

The government of Uganda has not come up with a policy on the return and resettlement of IDPs but

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<sup>62</sup> Principle 21.1.

<sup>63</sup> C Makumbi and J Eriku 'IDPs stuck in camps over resettlement packages' <http://www.monitor.co.ug/News/National/-/688334/886082/-/wjt14v/-/index.html> accessed on 18 September 2010.

<sup>64</sup> NRC country programme (n 47 above).

<sup>65</sup> Amuru and Makumbi (n 53 above).

only has the IDP policy of 2005 which strictly governs the stay of IDPs in camps in the course of the northern Uganda conflict. The 2005 IDP policy overlooked the period of return, hence, there is no cohesion on how the return of IDPs, including women and children should be handled. Protection working groups like the District Human Rights Protection and Promotion sub committees (DHRPP), a coalition of governmental and non-governmental human rights organisations, which were relevant during the existence of camps now seem to be at a loss on how to assist at the period of return especially on land matters which in most cases turn violent. For instance, a post conflict land policy on land distribution would have been instrumental in giving guidance to both governmental and non-governmental organisations in solving the current land problems.

### **3.4.2. Cultural practices**

The Acholi are both patrilineal and patrilocal and as such land is usually passed down to males only.<sup>66</sup> Thus, neither widows nor daughters have ownership rights to land, but only user rights under customary law. As such, since a number of women lost their husbands during the conflict without being officially married, they are not considered to have any rights to customary land because they left their clan but have not been taken in by the clan of the father of their children.<sup>67</sup> As well, children who cannot trace their father have no customary right to land.<sup>68</sup> Male children can, however, inherit their father's property upon attaining adulthood in the eyes of the society. Further, even if a woman actually married the man, her right to remain on the land is still not secure. This is so since customary rules have the effect of excluding females from the clan or communal entity; such rules also serve to exclude females from ownership.<sup>69</sup>

In this instance, it would appear that customary rules supersede statutory law and therefore impose discriminatory tendencies on the direct inheritance of property by women and children. Such customary rules are contrary to the Uganda Constitution which specifically provides that any custom that is inconsistent with the Constitution shall be void to the extent of its inconsistency.<sup>70</sup> This practice, therefore, further entrenches the treatment of women as unequal to men since it continues unabated.

### **3.4.3. Weak institutions**

The government of Uganda created a number of institutions to assist in the handling of land disputes and they include Local Council Courts (LC Courts).<sup>71</sup> LC Courts are at the village level and have an

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<sup>66</sup> Hetz et al (n 49 above) 9-10.

<sup>67</sup> Hetz et al (n 49 above) 9-10.

<sup>68</sup> Hetz et al (n 49 above) 9-10.

<sup>69</sup> Iruonagbe (n 13 above) 2607.

<sup>70</sup> Uganda Constitution art 2(2).

<sup>71</sup> Local Council Courts Act 2006 sec 10(1)(e).

appellate system that sends cases on appeal to the Chief Magistrate's Court<sup>72</sup>; there is also the High Court which has unlimited jurisdiction in all matters<sup>73</sup>. These two forums are, however, not easily accessible to women and children who have land disputes. LC courts, though based at the grassroots have been marred with allegations of corruption coupled with the fact that the court members are laymen who do not have a proper appreciation of the relevant land laws. Failure of these LC courts to resolve land disputes locally has led to loss of confidence from the court users, some of whom opt to remain in IDP camps rather than refer a matter to the court for dispute settlement. For instance, communities in Amuru district have attributed their fear of returning to their homes to the lack of formal dispute resolution in land issues.<sup>74</sup>

Besides, the courts in northern Uganda are equally heavily constrained and weak. For example, there are two high courts in northern with one judge each. The situation is particularly worse for women and children who reside in Amuru district as there is no formal court structure there. These women and children do not have any option but to trek up to Gulu district to try and access justice. The distance between Pabbo, the nearest sub-county in Amuru district to Gulu district is 39 kilometres while the distance between Atiak, the furthest sub-county in Amuru and Gulu district is 100 kilometres.<sup>75</sup> The cost implications of trying to follow up the case, let alone the long period of waiting for the determination of the case are additional challenges for these women and children. Currently, the Judiciary is estimated to be battling to reduce a case backlog of about 40000 cases.<sup>76</sup> The Gulu district court system alone is estimated to be overwhelmed with over 6000 land cases.<sup>77</sup> This shows how dire the situation is. Further, other fora like the land tribunals which were meant to bring services closer to the people are no longer functioning and all the cases that the tribunals were handling were handed over to the Judiciary for determination.<sup>78</sup> This transfer of cases to the Judiciary further adds to the case backlog, hence slowing down the dispensation of justice.

As a result of too many hurdles to jump over in a bid to access justice, women and children are often excluded from enjoying their land rights by the very system that is supposed to shield them from having their land rights abused.

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<sup>72</sup> Local Council Courts Act sec 32(2)(c) provides for appeals from the judgment and orders of a town, division or sub county local council court to a court presided over by a Chief magistrate.

<sup>73</sup> Sec 14(1) of the Judicature Act Cap 13 gives the High Court unlimited jurisdiction in all matters.

<sup>74</sup> International Alert -Harnessing oil for peace and development in Uganda: understanding national, local and cross-border conflict risks associated with oil discoveries in the Albertine Rift (2009) 51 accessed from [http://www.international-alert.org/pdf/Harnessing\\_Oil\\_for\\_Peace\\_and\\_Development\\_Uganda.pdf](http://www.international-alert.org/pdf/Harnessing_Oil_for_Peace_and_Development_Uganda.pdf) (accessed on 20 September 2010).

<sup>75</sup> Accessed from [http://en.wikipedia.org/wiki/Gulu-Nimule\\_Road](http://en.wikipedia.org/wiki/Gulu-Nimule_Road).

<sup>76</sup> Wandera (n 32 above).

<sup>77</sup> Hetz et al (n 49 above) 9.

<sup>78</sup> Practice direction No. 1 of 2006 issued by the Registrar of the Land Division on 6<sup>th</sup> December 2010 to address the vacuum in land justice until new members of the land tribunal are appointed or otherwise.

#### **3.4.4. Vague laws**

As noted by the UN Committee on Economic, Social and Cultural Rights, women are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights.<sup>79</sup> In Uganda, laws that are ordinarily meant to protect the rights of a land owner in this instance turn out to be laws that actually jeopardise land rights of women and children. For instance, there is a clash between provisions in statutory law and practices under customary land tenure. As noted earlier, 93 percent of Land in northern Uganda is under the customary tenure system<sup>80</sup> and yet the practices under it are contrary to statutory law. An example is the amendment to section 39 of the 1998 Land Act Cap 227 which forbids the sale of, or any dealings on family land without the consent of the spouse.<sup>81</sup> This is totally different from the customary law position which though uncodified is dominated by patrilineal ideas, thereby totally disregarding the Land Act idea of seeking consent from a spouse. In the case of death of a husband as is commonly the case in northern Uganda, not only will the widows have no say on the sale or dealings on their property but ownership will also be passed on to the most suitable male as chosen by the elders. This position does not only contradict the provision in the Land Act but it is also inconsistent with article 2(2) of the Constitution which declares such custom to be void.

#### **3.4.5. Power struggles**

Power struggles between politicians, court system, district officials and traditional structures further worsen the plight of woman and children in relation to access to land. These officials may assert their power but not necessarily to assist women or children who may have sought their assistance in a bid to reclaim their land. This can be evidenced by situations where courts may make an order which may not be respected by the political heads in the district. For instance, in the course of meddling in land disputes, local politicians have been known to urge people to ignore court evictions.<sup>82</sup> Such politicians are often opportunists who know the importance of land to the locals and therefore use the volatile land situation to gain popularity. In other instances, these local politicians help elites acquire land in at whatever cost. The situation is further not helped in instances where there is backing from the State. An example of State involvement is the issuance of instructions by a presidential assistant for political affairs to Resident District Commissioners (RDCs) to handle land conflicts that clan courts in the villages have failed to resolve.<sup>83</sup>

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<sup>79</sup> General Comment 7 para 10 (n 51 above).

<sup>80</sup> OHCHR report (n16 above).

<sup>81</sup> Land (amendment) act 2004 sec 20.

<sup>82</sup> Reuters -Displaced Ugandans gripped by violence over landø accessed from <http://www.monitor.co.ug/News/National/-/688334/722514/-/vvyxhp/-/index.html> (accessed on 20 September 2010).

<sup>83</sup> R Otim -RDCs told to resolve land conflicts in Teso sub-regionø <http://www.monitor.co.ug/News/National/-/688334/909720/-/wy290g/-/index.html> accessed on 18 September 2010.

In light of the foregoing, land access and land rights of women and children can be overwhelmed further by unscrupulous officials and post-conflict power-brokers who manipulate land to personal and sometimes ethnic gains.<sup>84</sup> Unless something is done, this situation renders women's and children's efforts to possibly gain access to their land hopeless.

#### **3.4.6. Implications of oil discovery in Amuru district**

In 2009, oil explorer Heritage Oil and Gas discovered one of the largest oilfield reserves in the northern Ugandan district of Amuru.<sup>85</sup> With the discovery of oil in Amuru district, boundary conflicts have been precipitated within families and between clans; and also between sub counties like Amuru and Pabbo, as well between districts like the dispute between Gulu and Amuru over Oroko.<sup>86</sup> Further, oil discoveries in Uganda has been accompanied by a number of wealthy individuals scrambling for land in the oil-affected districts in the hope that the value of land is increasing, and that there will be future compensation from oil companies prospecting in those areas or from government.<sup>87</sup> In the face of this scramble for land, women and children stand no chance to equally access land as they do not have the financial power to buy the available land, even if it is just to settle on. Going by reports that IDPs find it hard to pay an equivalent of US dollars 1.5 to 3.5 as ground rent for their huts in the camp, one can only imagine how much harder it is to raise money to acquire a small piece of land to settle on.

#### **3.5. Conclusion**

From the foregoing discussion, it can be deduced that the over 20 year old conflict in northern Uganda did not only tear apart the social family structures through separation either by death or abduction of family members; but it also de-stabilised the land tenure system. This is so because before the war, people in northern Uganda had a fully-fledged customary land tenure system that was not marred by politics, corruption and self-interests. The post conflict era has left women and children in northern Uganda particularly more vulnerable since there is no one looking out for their interests. Women and children are therefore discriminated against more than ever in the post conflict era and there is no real equality between men and women in the decision making processes pertaining their land. This can mainly be attributed to the retaining of gender-insensitive Acholi culture that still does not recognise or encourage female contribution to development. As such women and children remain unempowered to reclaim their land and respect for the home as they will always remain in the shadows of the elders. This calls for an assessment of the existing mechanisms, both institutional and legal, that are

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<sup>84</sup> Hetz et al (n 49 above) 2.

<sup>85</sup> E Biryabarema "Biggest oil well found in Amuru" <http://www.monitor.co.ug/News/Education/-/688336/693726/-/yy12x9/-/index.html> (accessed on 20 September 2010).

<sup>86</sup> International Alert report (n 74 above) 55.

<sup>87</sup> International Alert report (n 74 above) 56.

in place to establish their effectiveness in the protection of land rights for women and children pre, during and post conflict.



## CHAPTER FOUR

### Protection mechanisms for guaranteeing land rights for women and children and their efficacy

#### 4.1. Introduction

Before marriage, girls could cultivate their fathers' land. But when they got married they were expected to cultivate the piece of land from the husband's clan. Women in our culture are not supposed to inherit land. Even when they got married they could not inherit the husband's land, it was her children especially sons who had the rights of inheritance...<sup>88</sup>

The foregoing perception reflects the society's view on women and children's access to land. As a result of these perceptions, Uganda has created institutions as well as enacted laws to protect women's and children's rights to access and enjoy land rights. Not only has the government enacted these laws but it has also ratified international human rights conventions in an attempt to offer better protection to its citizens, with women and children being the vulnerable ones. As has been shown in the foregoing chapter, women and children in northern Uganda have been and are still excluded from having access to land and enjoying land rights; with the exclusion being worse in the post conflict setting in northern Uganda. The question remains, given the existence of legal and institutional mechanisms in Uganda, are these mechanisms really adequate in the protection of women's and children's right to land in the post conflict situation?

This chapter examines the legal and institutional mechanisms that are meant to protect land rights of women and children in post conflict northern Uganda. It looks at the adequacy of these laws in affording the necessary protection in light of the increased vulnerability of women and children to abuse of their rights to access and enjoy land rights. The chapter also identifies the gaps in the current system that hamper women's and children's right to access land in the post conflict situation. The legal instruments considered are those that were specifically enacted to provide human rights protection for women and children. It should be observed that Uganda has not ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa,<sup>89</sup> as such; it will not be included in the analysis.

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<sup>88</sup>LC Chairperson, Koro-abili IDP camp as quoted in FI Kindi -Challenges and opportunities for women's land rights in post-conflict northern Uganda (2010) 15 accessed from <http://www.microconflict.eu> (accessed on 17 September 2010).

<sup>89</sup> list of countries which have signed, ratified/acceded to the protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa accessed from [http://www.achpr.org/english/ratifications/ratification\\_women%20protocol.pdf](http://www.achpr.org/english/ratifications/ratification_women%20protocol.pdf) (accessed on 27 September 2010).

## **4.2. The Legal regime**

### **4.2.1. The International legal regime**

The following are some of the international legal instruments that have been ratified by Uganda as a way of guaranteeing better protection of women and children's rights. In this instance, focus is on the provisions that protect the right to access and enjoy land rights.

#### **4.2.1.1. Convention on Elimination of all forms of Discrimination Against Women (CEDAW)**

CEDAW was adopted as a way of increasing focus on the continuing violations of women's human rights and the need to adopt specific provisions that explicitly recognise and enforce women's human rights as equal with those of men.<sup>90</sup> Women's equal rights to security of tenure (the relevant aspects being through co-ownership, occupancy right or inheritance) regarding land, housing and property in this instance includes women's right to control such land or other property on equal terms with men.<sup>91</sup> As such, CEDAW aims at combating discrimination by requiring States to, among others, modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.<sup>92</sup> Article 5(a) further calls upon States to take all appropriate measures to modify the social and cultural patterns of men and women in a bid to eliminate prejudices and practices based on the idea of inferiority or superiority of either sexes or on stereotyped roles for men and women. CEDAW also requires State parties to ensure that women in rural areas enjoy the right to adequate living conditions, particularly housing, on an equal basis with men.<sup>93</sup> In its General Recommendation No. 21, CEDAW Committee recognised that the right to own, manage, enjoy and dispose of property is critical to a woman's ability to earn a livelihood and to provide adequate housing and nutrition for herself and her family.<sup>94</sup>

Despite ratifying CEDAW, Uganda is yet to aggressively combat discrimination against not only women, but the girl-child as well. As observed in the preceding chapter, under customary land tenure system, land is predominantly held by the men and is only passed down through the male lineage. Further, the Uganda Constitution merely proclaims the supremacy of the Constitution over other laws or custom and further declares such law or custom to be void to the extent of the inconsistency.<sup>95</sup> However, no further action has been taken to ensure that such customs are stamped out. Besides, elimination of such customs would not be easy as they are widely practiced in not only the northern region but Uganda as a whole. These practices are deeply rooted in the society that no

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<sup>90</sup> M Benschop 'Rights and reality: Are women's equal rights to land, housing and property implemented in East Africa?' (2002) accessed from <http://www.landtenure@unhabitat.org> (accessed on 20 September 2010).

<sup>91</sup> Benschop (n 90 above).

<sup>92</sup> CEDAW art 2(f).

<sup>93</sup> CEDAW art 14(2)(h).

<sup>94</sup> UN General Recommendation No. 21 on Equality in marriage and family relations (13th session, 1994) para 26.

<sup>95</sup> Uganda Constitution art 2(2).

written law could easily abolish it unless there is a policing mechanism to ensure punishment of those still practicing it.

An Optional Protocol to CEDAW was adopted in 2000, ratification of which would enable the Committee on the Elimination of Discrimination Against Women to receive and consider complaints from individuals or groups within its jurisdiction.<sup>96</sup> Uganda is, however, not a signatory to the Optional Protocol<sup>97</sup> and yet this would have afforded women in northern Uganda an opportunity to lodge complaints with the Human Rights Committee on Uganda's failure to fulfil its obligations to respect, protect, promote and fulfil their right to land.

#### **4.2.1.2. UN Convention on the Rights of the Child (CRC)**

Most of the provisions of the CRC have basically been incorporated into the Uganda Children Act. Just like the Uganda Children Act, the CRC requires that in all actions concerning children, the primary consideration should be in the best interests of the child.<sup>98</sup> Further, the State is supposed to ensure protection and care of children as is necessary for their well-being.<sup>99</sup> The CRC also prohibits arbitrary or unlawful interference with a child's privacy, family or home,<sup>100</sup> and encourages the participation of children who are capable of forming their own views the right to express those views freely in matters affecting them and that due consideration be given to those views in accordance with age and maturity of the child.<sup>101</sup>

As observed earlier, the conflict in northern Uganda ushered in the phenomenon of child-headed families as many children lost their parents. With the return process, such children ought to be given an opportunity to inherit their family land and make a future for themselves with the necessary State assistance. However, African culture as widely practiced in northern Uganda does not acknowledge inheritance of land by children, more so if it is a girl-child. Further, with customary land tenure system in practice, if such children could trace their family land, the only way they could get access is if there was a male heir and the clan elders considered such heir to be mature enough to look after the family. These child-headed households are in dire need of State assistance and protection which is lacking. The government department that should have been in a position to assist is the Probation and Social Welfare office, which seems to prefer to concentrate on children in conflict with the law. This, as earlier observed in the discussion on the Children Act, is due to lack of manpower

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<sup>96</sup> Optional Protocol to CEDAW, available at <http://www.un.org/womenwatch/daw/cedaw/protocol/index.html>. The Protocol entered into force on 22 December 2000 and has at present 19 State Parties.

<sup>97</sup> Signatories to the Optional Protocol to CEDAW accessed from [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en) (accessed on 27 September 2010).

<sup>98</sup> CRC art 3(1).

<sup>99</sup> CRC art 3(2).

<sup>100</sup> CRC art 16(1).

<sup>101</sup> CRC art 12.

and resource constraint. As such, the department concentrates its meagre resources on areas that it deems need the most attention, like juvenile justice. Consequently, children are still left very vulnerable despite their State's obligation to ensure their protection and care. Most times, children's issues are left to NGOs like FIDA, which also have problems of few staff and limited budgets.

#### **4.2.2. African regional legal regime**

The following conventions have been ratified by Uganda in the African regional human rights system:

##### **4.2.2.1. African Charter on Human and Peoples' Rights (ACHPR)**

The ACHPR to which Uganda is a signatory<sup>102</sup> is the main African human rights instrument. The ACHPR guarantees equality of all persons before the law and equal protection and the right to free association provided that a person abides by the law and that no one may be compelled to join an association<sup>103</sup>. It can be argued that communal land ownership is a form of association since the members are obliged to follow the customary norms. Women and children are born into this male dominated association and do not have an opportunity to question decisions pertaining to land distribution, ownership and user rights. By virtue of their birth, they are compelled to be a part of and observe cultural land practices even if it is to their detriment. The ACHPR further protects the right to property and provides that it can only be encroached upon in public interest or in the general interest of the community and in accordance with the provisions of appropriate laws.<sup>104</sup> The ACHPR also recognises the family as the natural unit and basis of society and the "custodian of morals and traditional values" that need to be protected<sup>105</sup> and makes it an obligation for individuals to preserve the harmonious development of the family and to work for the cohesion and respect of the family.<sup>106</sup> The ACHPR further requires States Parties to ensure that "every" discrimination against women is eliminated and that the rights of women and children are protected.<sup>107</sup>

Family in the African sense means the extended family, and in this regard preserving harmonious development and working towards cohesion would include adhering to customary land practices even though discriminatory in nature. In the African context, therefore, individual rights are always balanced against the requirement of the group.<sup>108</sup> The African society, therefore, emphasises

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<sup>102</sup> list of countries which have signed, ratified/acceded the treaty accessed from [http://www.achpr.org/english/ratifications/ratification\\_african%20charter.pdf](http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf) (accessed on 27 september 2010).

<sup>103</sup> ACHPR arts 3 & 10(1) & (2).

<sup>104</sup> ACHPR art 14.

<sup>105</sup> ACHPR art 18(1).

<sup>106</sup> ACHPR art 29(1).

<sup>107</sup> ACHPR art 18(2) and (3).

<sup>108</sup> J Cobbah "African Values and the human rights debate: An African perspective" (1987) 9 *Human Rights Quarterly* 321.

groupness, sameness and commonality, as well as a sense of cooperation, interdependence and collective responsibility.<sup>109</sup> As such, land is held in trust by a male head for the enjoyment of all; which in a patriarchal society is not male domination *per se* but rather protection of women and children. In this instance, a displaced woman or child would not be in a position to seek protection under the ACHPR as perpetrators of their land rights abuse would use this provision to defend themselves.

Further, any attempt by a widow to file a complaint would be interpreted as putting individual needs ahead of the community's. In such instances, a woman or child who could have been allowed to stay within the homestead of one of the in-laws could instead be sent back to their parents' village. Besides, the ACHPR is yet to be domesticated in Uganda, as such, women and children are unable to claim protection under it. Despite this, many people do not know of the existence of the African Commission on Human and Peoples' Rights as an institution to which complaints against the state's failure to protect human rights can be made.

#### **4.2.2.2. African Charter on the Rights and Welfare of the Child (ACRWC)**

Uganda ratified the ACRWC on 17 August 1994.<sup>110</sup> The ACRWC aims at improving the situation of the African child, bearing in mind that they need special safeguards and care from factors such as socio-economic, cultural, traditional and armed conflicts<sup>111</sup>. To this end, the ACRWC offers protection for children against harmful social and cultural practices, in particular those customs and practices that are discriminatory to the child on grounds of sex or other status<sup>112</sup>. It further entitles for the protection of children who are deprived of their family environment to special protection and assistance.<sup>113</sup>

This protection, however, remains on paper as the ACRWC has not been domesticated. Besides, Uganda does not have the necessary institutions or resources to offer any special protection let alone assistance. For instance, the state should be assisting children in claiming their land rights from unscrupulous relatives or land grabbers, but it is NGOs that are left to try and assist children. State institutions like Probation and Social Welfare Officers are ill equipped to help the children as they do not have the resources to follow-up on cases. Further, despite the protection afforded under the ACRWC, girls are still excluded when it comes to inheritance rights as male heirs tend to be culturally favoured.

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<sup>109</sup> B Ibhawoh 'Cultural relativism and human rights: Reconsidering the Africanist discourse' (2001) 1 *Netherlands Quarterly of Human Rights*, 43, 53.

<sup>110</sup> List of countries which have signed, ratified/acceded to the African Union Convention on African Charter on the Rights and Welfare of the Child accessed from [http://www.achpr.org/english/ratifications/ratification\\_child%20rights.pdf](http://www.achpr.org/english/ratifications/ratification_child%20rights.pdf) (accessed on 27 September 2010).

<sup>111</sup> Preamble to the ACRWC para 4.

<sup>112</sup> ACRWC art 21(1)(b).

<sup>113</sup> ACRWC art 25(1).

These problems call for better protection of land rights of children in the post conflict situation especially given that a number of them do not have the choice of waiting to attain age of majority before assuming the responsibility of being the head of the household. The war rendered them adults at an early age and they should be assisted to perform their role.

#### **4.2.2.3. Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)**

The Kampala Convention is an attempt by the African Union to have a regionally binding instrument aimed at strengthening protection for internally displaced persons in Africa. Other than addressing the different causes of internal displacement, the Convention also addresses the different phases of displacement, and places obligations on States to protect people from arbitrary displacement, to provide protection and assistance to IDPs during displacement, and to seek durable solutions for IDPs.<sup>114</sup> The Convention has, however, not come into force as the required 15 ratifications from AU member States have not been obtained. So far, there has only been one ratification by Uganda<sup>115</sup> which still has no effect on the protection of IDPs.

With the exception of the CRC, Uganda has ratified all these instruments, though, they are not domesticated. Despite Uganda being a dualist country, it can be argued that rights guaranteed under these international conventions can still be claimed under article 45 of the Uganda Constitution. The article acknowledges that the rights, duties, declarations and guarantees enshrined in the Constitution are not an exhaustive list. As such, women and children's rights defenders could rely on these provisions in a bid to strengthen the protection of the vulnerable.

#### **4.2.3. Domestic legal regime**

Under the domestic legal regime in Uganda, a number of legislations have been enacted to offer protection to women and children. Just like in the international legal regime, focus is on provisions that guarantee women's and children's right to access and enjoy land rights. These legislations are discussed below:

##### **4.2.3.1. The Constitution**

With regard to land ownership, the Constitution guarantees the right of every person to own property either individually or in association with others.<sup>116</sup> The Constitution further guarantees equal rights to women and men and prohibits discrimination on the ground of sex, and forbids the application of

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<sup>114</sup> Accessed from <http://www.africa-union.org/root/au/Documents/Treaties/list/Convention%20on%20IDPs%20-%20displaced.pdf> (accessed on 28 September 2010).

<sup>115</sup> List of signatories to Kampala Convention accessed from [www.africa-union.org](http://www.africa-union.org) (accessed on 2 February 2010).

<sup>116</sup> Uganda Constitution art 26(1).

customary law to the extent that it discriminates against women.<sup>117</sup> The Constitution therefore embraces the principles of equality, gender balance; recognition of the supremacy of the Constitution over laws and customs; as well as rights of women.<sup>118</sup>

These provisions have, however, not been able to protect the land rights of women and children especially since in practice, customary practices in northern Uganda appear to supersede the Constitution. For instance, inheritance and customary land practices which do not recognise and tend to bar women's ownership and control over land are only declared void by the Constitution.<sup>119</sup> Such practices are unhindered and therefore continue to promote discrimination on grounds of sex contrary to article 21 of the Constitution.

With regard to children, other than the Constitution providing for equality of all persons under the law in all spheres of life, it emphasises that children have a right to be cared for by their parents or those entitled to bring them up<sup>120</sup>. These provisions can be interpreted to mean that children should be in a position to have their land protected by at least their mothers if widowed or guardians if both parents are deceased. The situation in northern Uganda, however, is that a number of children are orphaned and left at the mercy of guardians. It is hard for the children to claim this equality and demand for their land rights to be recognised especially since culturally, children have no voice and it is only the male heir who can make requests for land on attainment of adulthood.

Despite the Constitution being the highest law of the land, there is no real protection of land rights being afforded to the very vulnerable women and children in northern Uganda.

#### **4.2.3.2. The Land Act Cap227**

In light of article 237 of the Constitution of Uganda, section 2(a) of the Land Act recognises customary land tenure as one of the land tenure systems in Uganda. Section 3(b) further provides that customary land tenure is governed by rules generally accepted as binding and authoritative by the class of persons to which it applies. This provision is subject to section 27 which allows for customary tenure to be governed by customs, traditions and practices of the community concerned. There is, however, an exception that a decision which denies women or children access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the

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<sup>117</sup> Uganda Constitution art 21(1) & (2).

<sup>118</sup> G Bantebya-Kyomuhendo The role of national mechanisms in promoting gender equality and the empowerment of women: Uganda experience accessed from <http://www.un.org/womenwatch/daw/egm/nationalm2004/docs/EP.5-Kyomuhendo.pdf> (accessed on 16 September 2010).

<sup>119</sup> Uganda Constitution art 2(2).

<sup>120</sup> Uganda Constitution arts 21(1) & 34(1).

Constitution shall be null and void. The Land Act, further prohibits the transfer of land by family members except with consent of a spouse.<sup>121</sup>

These provisions are well intentioned and meant to embrace customary land tenure as one of the land systems in Uganda, while at the same time guaranteeing protection for women and children. However, much as these statutory protections exist, not many women know about the existence of such legal provisions. Even those who implement the rules on customary land ownership in Acholi may not be aware of the prohibitions under the Act.

Further, the Land Act defines family land as land on which is situated the ordinary residence of the family or on which is situated the ordinary residence of the family and from which the family derives sustenance.<sup>122</sup> This definition does not cover the situation in northern Uganda as the ordinary residence of a majority of people for the last 20 years has been IDP camps. Besides, a number of the people have had to shift from one IDP camp to another because of camp decongestion exercises. What these women and children now seek to reclaim is what used to be their ordinary before the conflict drove them out.

Furthermore, the Land Act has a co-ownership clause which seems irrelevant in light of customary practices that provide limited possibilities for women to own land. In patrilineal societies, like in northern Uganda, women generally do not inherit land from either their fathers or their husbands. Fathers often do not bequeath land to their daughters because daughters marry outside the clan, and will therefore take the land with them to another clan; while husbands rarely bequeath land to their wives to ensure that the land remains in the clan.

In light of the foregoing, widows lose control over the land as it reverts back to the clan, unless there is an adult son to inherit the land. Further, most youth have grown up in IDP camps and prefer to stay there as it is more developed compared to their villages which in the last 20 or so years have become bushes. As such, women and other children may not have a say in what happens to the land as it is either under the control of the clan or the heir who, due to the breakdown in social structures, has no appreciation for customary rules on land. Instead of holding the land in trust for the benefit of the family members, such an heir would prefer to sell the land and remain at the trading centres mushrooming near what were formerly IDP camps.

As already observed such practices are discriminatory in nature and do not give women and children, especially girls, an opportunity to access land. Now with the post conflict situation, it would be impossible for a widow to try and advance the co-ownership clause as a reason to be given her

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<sup>121</sup> Land (Amendment) Act sec 39.

<sup>122</sup> Land (Amendment) Act sec 19,



deceased husband's land since culturally, women cannot own land. Once again, culture appears to supersede a statutory provision aimed at affording protection to spouses.

#### **4.2.3.3. The Children Act Cap 59**

The government of Uganda incorporated provisions of the UN Convention on the rights of the Child in the Uganda Children Act. Under section 3 of the Children Act, it is stated that the welfare principle is the guiding principle in making any decision on children. Section 10(1) (a) further makes it the duty of the local government council from the village to the district level to promote and safeguard the welfare of children within its area. The local government is also given the mandate to mediate in any situation where the rights of the child are infringed and especially with the protection of the child and the child's right to succeed to the property of his or her parents.<sup>123</sup>

These provisions cannot guarantee the much needed protection for children. For instance, Local Councillors (L.Cs) do not have resources to follow up on complaints on land matters. On the basis of section 10(4) of the Children Act, the L.C's power to protect the property of the child does not include powers of distribution. This therefore means that in the event that the mediation of a land dispute between children and relatives fails, the relatives could still go ahead and re-distribute the land in question.

Such mediation could also put a child in a dilemma because the same people attempting to divert land could be their guardian at the same time. Pursuing mediation of the matter could result into a child becoming homeless as such 'guardians' would no longer be willing to take care of the children. Further, this section does not foresee cultural practices where there is communal land ownership in which the child cannot claim the land individually. On attainment of age of majority, a male child would be in a position to request to be allocated land on which to build his hut and possibly cultivate while the girl child is still left out.

If both the written and unwritten laws discriminate against women and children with regard to inheritance, this begs the question, where are women and children expected to turn for protection since these are the very laws that institutions like courts use to make their decisions.

### **4.3. Institutional mechanisms**

#### **4.3.1. Judicial and quasi judicial institutions**

These are in two parts, Judiciary which includes the formal courts and on the other hand, local council courts as the quasi judicial mechanism with powers to determine land cases. The role of these institutions is explained below.

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<sup>123</sup> Children Act sec 10(3).

#### 4.3.1.1. Judiciary

According to Pinheiro's principles, States should establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims.<sup>124</sup> The Principles do not only require that institutions be effective in their work to implement restitution policies, but the restitution procedures be accessible to those constituencies which they are meant to benefit.<sup>125</sup> As such, claims procedures must be physically, linguistically and economically accessible, and special measures should be taken to ensure that marginalised groups and vulnerable persons are able to benefit from such institutions in an equitable and just manner.<sup>126</sup>

Northern Uganda does have courts in place that can handle land claims filed by IDPs. However, there are only 8 Chief Magistrates against a required number of 33 and only 21 Grade I magistrates as opposed to the 33 that are required in northern Uganda.<sup>127</sup> This therefore curtails their ability to dispose of land claims efficiently especially against the backload of other claims; and effectively as in the case of Chief Magistrates, the workload is three-fold.

Pinheiro's principles suggest that in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, administrative and judicial authorities may independently establish the facts related to undocumented restitution claims.<sup>128</sup> However, Courts are unable to verify ownership of land as customary land in northern Uganda is mostly unregistered. There is also a problem of verifying boundaries of land as most of these have been destroyed in the course of the 20 year war. In addition, witnesses who would normally testify on the original boundaries and demarcations of customary tenure are no longer alive.

Not only are the courts overloaded with cases but they are in certain instances inaccessible. According to Pinheiro's principles all aspects of the restitution claims process should be just, timely, accessible, free of charge, and are age and gender sensitive.<sup>129</sup> This is, however, not the case. Lodging civil cases requires money which women and children will most likely not be able to afford. Going to court requires not only paying filing fees but also paying a lawyer to draft the required documents to be presented to court. The legal system in Uganda does allow for filing of suits by paupers<sup>130</sup> but not many know about this provision. Besides, most of those involved in land disputes include elite land grabbers who can afford the best lawyers. In such instances, a poor widow or orphan have no option

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<sup>124</sup> Principle 12.1.

<sup>125</sup> Principle 13.2.

<sup>126</sup> Special Rapporteur's report on Housing and property restitution in the context of the return of refugees and internally displaced persons 11 July 2005 12 para 56.

<sup>127</sup> PRDP Report (n 48 above) 45.

<sup>128</sup> Principle 15.7.

<sup>129</sup> Principle 13.2.

<sup>130</sup> Civil Procedure Rules Order XXIII Civil Procedure Rules Suits by paupers, SI 71-1.

but to either defend themselves in court or where possible rely on the under-equipped and over-worked lawyers provided by NGOs; these in turn are no match for the hotshot lawyers that are often in the employ of the land grabbers. Consequently, the land will be lost.

It should be observed that the determination of cases generally takes years and this has been attributed to the backlog of cases that the region has. This backlog can partly be blamed on the insecurity that prevailed in the region for the duration of the conflict. The insecurity prevented both the people from following up on their cases and judicial officers from travelling to northern Uganda to hear cases. Currently, it is estimated that the Gulu district court system alone is overwhelmed with over 6000 land cases.<sup>131</sup> This paints a dim picture for land justice, which, in the case of northern Uganda should be urgently addressed given the violent nature of land disputes in the region.

There are some NGOs that have tried to assist women and children, for instance FIDA, Norwegian Refugee Council (NRC) and Legal Aid Project (LAP) but these too are heavily constrained and do not have sufficient staff capacity to follow up on all the cases filed. As such, their interventions, though well intentioned, are not sufficient thereby leaving only few women and children protected from abuse of their land rights.

#### **4.3.1.2. Local Council Courts**

The Local Council Courts Act (2006) officially established the Local Council Courts (LC Courts) though their structures and functions begun during the National Resistance Movement (NRM) bush war of 1981- 86 which put in place the current government. The LC courts are intended to be more accessible, cost effective and an alternative to the formal court system. L.C Courts are, therefore, deemed to be much closer to the local people and more relevant to the majority of the rural poor as they are tied to the decentralised structures under the local governance. LC Courts exist from village, Parish and Sub county level<sup>132</sup> and have jurisdiction to handle land matters.<sup>133</sup> The L.C courts have powers to order, among others, restitution and compensation.<sup>134</sup> Appeals against decisions of the L.C Courts are heard by the Chief Magistrate's Court,<sup>135</sup> which also has a supervisory role over the Local Council Courts.<sup>136</sup>

Despite the decentralised nature of these L.C courts, they have their own challenges in trying to adjudicate cases taken before them, let alone land matters. For instance, not all areas of return may have Local Councillors in place who could take on the role of the court. This is a position to which

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<sup>131</sup> Hertz et al (n 49 above) 9.

<sup>132</sup> PRDP (n 48 above) 47; Local Council Courts Act sec 3.

<sup>133</sup> Local Council Courts Act sec 10(e).

<sup>134</sup> Local Council Courts Act sec 13(c) & (d).

<sup>135</sup> Local Council Courts Act sec 32(2) (c).

<sup>136</sup> Local Council Courts Act sec 40.

one is appointed by virtue of being a member of the village or parish executive committee. Local Council Courts have also been known to be corrupt and subject to influence peddling. As such, decisions made are not necessarily in the interests of justice but to please a certain influential section of the population, including clan elders, wealthy land grabbers and politicians at the expense of women and children who have been deprived of access and user rights to their land.

#### 4.4. Traditional structures

The Uganda Constitution recognises customary law and the institution of traditional leadership. As such, traditional institutions such as the cultural chiefs are recognised as cultural institutions that can be used by the communities in mediation and settlement of disputes including land disputes.<sup>137</sup> For instance in the district of Apac, the head of the extended family, for a dispute between family members would mediate the dispute; while for a disagreement outside the family, or if the family head failed to resolve the problem, then the *Jan Jagoö* (the village judge on land matters) would adjudicate.<sup>138</sup> Further appeal could be made through the clan structure to the *Jago* (the higher level judge) and the *Rwot* (the head of the clan).<sup>139</sup>

Traditional leadership structures, particularly in Gulu and Amuru districts, have become marginalised and disenfranchised most likely because of the long period people spent in IDP camps and the death of key members during internment.<sup>140</sup> Traditional institutions, which would normally play a key role in shepherding cultural norms and practices, have been damaged by conflict and displacement. Traditional leaders have become impoverished and thus vulnerable to political influence. For instance, in a number of chiefdoms in northern Uganda, there are traditional leadership wrangles being fuelled by politics.<sup>141</sup> Besides, a number of IDPs doubt the ability of traditional and statutory systems to arbitrate land disputes impartially. According to a survey by Hertz *et al*, when forced to resort to a system of land adjudication, all men preferred a traditional systems led by clan elders while women expressed serious reservations and faith in either system, particularly women without husbands and without male children.<sup>142</sup> This attitude of women can be attributed to the gender discrimination they have had to endure while unsuccessfully trying to reclaim their land rights. The President of Uganda has further condemned the use of cultural elders in resolving land disputes as they

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<sup>137</sup> UN OHCHR Gulu Report (n 16 above).

<sup>138</sup> J Adoko and S Levine. *Land rights: Where we are and where we need to go (A review of the situation of land rights in Apac District in Uganda, and of opportunities for land rights protection work*, based on the work of LEMU in 2003-4) (2005) 7.

<sup>139</sup> Adoko & Levine (n138 above).

<sup>140</sup> Hertz et al (n 49 above) 9.

<sup>141</sup> J Huber :Conflict and recovery briefing report No. 6ø 1 October 2009 ó 31 March 2010 22 (submitted to USAID Kampala) <http://www.glaccr.org/Northern%20Uganda%20Conflict%20Assessment%20Report%202010.pdf>.

<sup>142</sup> Hertz et al (n 52 above) 2.

tend to fuel land conflicts due to the interests they have in the matter being resolved<sup>143</sup>

Further, most of the customary practices on inheritance and the customary rules governing land disputes are discriminatory against women and children and do not recognise them as actual land owners. Instead, women are put at almost the same level as children as neither of them can inherit land left behind by the deceased head of the family. As observed earlier, such customary practices are inconsistent with Constitution and should be rendered void as declared by the Constitution since it promotes gender inequality as well as the violation of the right to property.

#### **4.5. Peace Recovery and Development Plan (PRDP) and its efficacy in ensuring access to land**

PRDP is a comprehensive planning framework for implementation of the IDP Policy. It is the outcome of efforts to put in place a government-led post-war recovery plan through four strategic objectives: the consolidation of state authority; rebuilding and empowering communities; revitalisation of the northern economy; and peace-building and reconciliation.<sup>144</sup> Under the three-year framework, the government is to contribute 30% and donors 70% towards a total budget of just over \$600m; three-quarters of which will be allocated to districts through central government and donor funding mechanisms.<sup>145</sup> Official implementation did not start until July 2008, when the government pledged 30% of the \$606m budget.<sup>146</sup> The resettlement programmes are being undertaken within the PRDP Strategic Objective No.2 (Rebuilding and Empowering Communities).<sup>147</sup> In PRDP terms, 'return' refers to voluntary return to place of origin, while 'resettlement' refers to return to locations other than the place of origin.<sup>148</sup> The assistance given to the IDPs is the same irrespective of location where they decide to stay and it is assumed that some 30 percent of IDPs will remain in their current residence and some 70 percent will return to place of origin or a new settlement.<sup>149</sup>

One of the problems with the PRDP is that it assumes that IDPs especially women and children have a choice in where they wish to stay and yet some are landless and are subject to the whims of the landlords at the IDP camps who could easily evict them anytime. Further, a report by a coalition of women organisations shows that women-needs on property rights, economic

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<sup>143</sup>Wandera (n 40 above).

<sup>144</sup> E Martin, C Petty and J Acidri 'Livelihoods in crisis:a longitudinal study in Pader, Uganda' (2009) 9 accessed from [http://www.ugandacusters.ug/dwnlds/0010IM/16-11-09/Livelihoods\\_in\\_Crisis-Longitudinal\\_study\\_of\\_Pader\\_District.pdf](http://www.ugandacusters.ug/dwnlds/0010IM/16-11-09/Livelihoods_in_Crisis-Longitudinal_study_of_Pader_District.pdf) (accessed on 16 September 2010).

<sup>145</sup> Martin et al (n 144 above).

<sup>146</sup> Martin et al (n 144 above).

<sup>147</sup> Office of the Prime Minister, Republic of Uganda IDP return, resettlement and recovery in Uganda implementation of the national policy for internally displaced persons within the framework of PRDP (2009).

<sup>148</sup> PRDP (n 48 above) 63.

<sup>149</sup> PRDP (n 48 above) 63.

empowerment and gender-based violence are not integrated in the Peace Recovery and Development Plan (PRDP) for northern and eastern Uganda.<sup>150</sup> The PRDP is silent on any express provision on housing, land and property restitution for returning IDPs and yet one of its strategies is to facilitate return and provide inputs to establish new households.<sup>151</sup> It can be argued that much as the PRDP was envisaged as the actual implementation of the IDP policy, it does not afford women and children any real protection. This is so since it is especially vague on the kind of facilitation and inputs for return, while at the same time, there is no component of giving assistance especially on land matters, which are a big and sensitive issue for women and children in the return process. As the main and only government policy on return, there is a need for its re-evaluation and inclusion of a component on the adequate protection of the rights of women and children, especially on access to land and land rights.

#### 4.6. Conclusion

As has been demonstrated, Uganda has attempted to ratify several international Covenants as well as enacting domestic legislation and creating institutions in a bid to protect rights of women and children, which includes the right to property, that is, land. The creation of the foregoing legal and institutional mechanisms though well intentioned has not brought the desired outcome, which is, protection of the rights of women and children to access land and enjoy the ensuing rights. This can mostly be attributed to Uganda's aloofness to its obligation to domesticate key regional human rights instruments which could have strengthened the land rights of these women and girl children. Further, given that government turns a blind eye as customary practices are continuously employed to the detriment of women and children, it provides fertile ground for the increased deprivation of women's and children's right to access land. In the circumstances, government of Uganda is a collaborator rather than protector in the violation of women's and children's land right. . Even the institutions that are expected to give life to these protective laws are severely handicapped thereby leaving women and children extremely vulnerable and at the mercy of customary practices that trample on their right to access land; and quite arguably, the right to life since in African culture land is a source of livelihood and without it, one cannot survive.

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<sup>150</sup> R Kasasira "Women war survivors neglected" report <http://www.monitor.co.ug/News/National/-/688334/938042/-/x0v0wu/-/index.html> (accessed on 16 September 2010).

<sup>151</sup> UN OHCHR report (15 above).

## CHAPTER FIVE

### Recommendations and Conclusion

#### 5.1 Summary of findings

The objective of this study was to investigate the efficacy of existing legal, institutional and traditional mechanisms in place to guarantee the rights of women and children to access land in the post conflict era. The study has shown that, generally in Uganda, women's access to land largely depends on marriage while in the case of children, it can only be on attainment of age of majority. The study also observed that most of the women and children reside in rural areas where discriminatory customary practices on land ownership are observed in total disregard of more protective statutory land laws. This discrepancy in the *de jure* and *de facto* protection of women and children's rights to access land renders them vulnerable and subject to abuse of their rights through implementation of these cultural practices.

The vulnerability women and children in northern Uganda to having their right to access land abused is heightened in the course of their attempts to return home. This is because the conflict resulted in more woman-headed and child-headed households who, under acholi customary land practices, do not ordinarily hold land as culturally, heads of households are male. Further, the displacement has left many people unsure of the location of their land, let alone the boundaries. This confusion and the exploitation of the patriarchal system which emphasises male domination and ownership over land are being used to grab land from widows and orphans.

Furthermore, the existing legal and institutional mechanisms that ought to have helped these women and children access and enjoy their land rights are, among other things, weak, corrupt, inaccessible and ineffective. Besides, most of these mechanisms, like laws, were created at a time when there was no conflict. This renders such laws ineffective and almost irrelevant in the situation like in post conflict northern Uganda as they do not afford ample protection, especially given the unique phenomenon of child-headed families.

The study proved that women and children in post conflict northern Uganda are indeed extremely vulnerable especially with regard to respect and protection of their land rights. This is attributed to the influence of cultural practices in the non-observance of children's and women's land rights. The influence of culture shows that despite the existence of various laws regulating land rights, culture still dictates the nature of enjoyment of rights; thereby rendering such laws impotent. This situation necessitates the adoption of policies that are all inclusive of the protection needs of women and children in the post conflict setting, given their increased vulnerability to the abuse of their land rights.

## **5.2. Recommendations**

In a bid to ease and enable women and children in northern Uganda access their land, the following recommendations are offered:

### **5.2.1. Institutional reform**

With regard to institutional reform, the first would be the establishment of formal courts in all districts. As was shown in the discussion, the district of Amuru does not have a court thereby rendering justice inaccessible to women and children with land issues. Establishing a court in such a district as well as increasing the number of judicial official officers in the northern region would help resolve the ever-increasing land disputes, as well as cut down on the case backlog that is plaguing the judiciary. Further, with regard to judicial officers, there is a need for them to be given specialised training on the existing land tenure systems in Uganda. This would give them a better understanding of customary land laws and enable them balance between the customary rules and statutory requirements in making decisions. This way, judicial officers would be in a position to balance the interests of both the victims and perpetrators of the land dispute.

There is also need for more empowerment of Local Council Courts to enable them handle land matters better. The members of the court need training on land law as they are lay-men. An appreciation of customary land practices alone is not sufficient. There is a need for them to be conversant with all land tenure systems as well as property and land rights of women and children. With this knowledge, they will be able to come up with well-thought out decisions leading to fewer appeals to higher courts, hence, no clogging up of the case flow.

### **Creation of a special hybrid tribunal to handle land disputes in northern Uganda**

Due to the high number of land disputes in northern Uganda and the accompanying land-related violence, a special hybrid tribunal could be created to effectively and efficiently handle the pending cases. This would help reduce on the impacts of the unresolved land disputes such as killings and torching of property, the consequence of which is more loss. The tribunal would be given a timeframe within which to operate and would strictly deal with land matters. Members of the tribunal should also be people who are experts on land law, customary land practices and human rights. This way, they would be better equipped in balancing the rights and interests of those involved in the disputes.

There is a real need for these institutions to be revamped and put on track as they are crucial to the settlement of land disputes leading to access to land and actual return for all. If the disputes are handled by these institutions efficiently and effectively, there will be a speedy and steady return of all IDPs.



### **5.2.2. Legal reform**

#### **Domestication of international legal instruments**

Uganda should domesticate international legal instruments that it has ratified and also ratify others like the AU protocol on the rights of women. These international human rights instruments have better provisions that could be incorporated into domestic law as a way of furnishing women and children with better legal protection for their rights. For instance, Protocol to the African Charter on the Rights of Women obliges states to take all appropriate measures to 'promote women's access to and control over productive resources such as land and guarantee their right to property.'<sup>152</sup> With such a provision domesticated, the courts, which have the task of giving life to laws, could interpret the law in an appropriate manner to guarantee women's and children's right to access land. Without such provisions, the only hope is judicial activism which is not widely practiced in Uganda. For instance, article 45 of the Uganda Constitution, which is some form of a blank cheque to lawyers and judicial officers to import human rights provisions from international human rights instruments ratified by Uganda, is not utilised at all to the detriment of women and children. As such, there is a need for judicial activism in the use of international laws to be encouraged.

#### **Harmonisation of statutory and customary laws**

As reflected in chapters three and four, there is often a clash between cultural land practices and statutory law. The cultural practices on the one hand are discriminatory and do not acknowledge women's and children's, especially the girl-child, right to own land, while statutory law on the other tries to push forward the idea of equality of all persons before the law. Given that such customary practices are inconsistent with the Constitution, the solution would be to codify customary practices in a bid to ensure that they are in line with statutory provisions. Codification of customary laws would also have the added advantage of making it easy to monitor implementation of the laws. This would help prevent situations where customary rules are changed as an attempt to suit the interests of the clan at the expenses of the vulnerable.

### **5.2.3. Massive sensitisation on women and children's property rights.**

One of the reasons for the abuse of women's and children's property rights is ignorance of the existence of such rights. This can be attributed to lack of information or awareness of women's and children's land rights; and also that there are legislation that protect these rights. Furthermore, even in situations where women and children have some information on the existence of their land rights, they do not know where to seek redress in the event of violations. This situation can be remedied through massive sensitisation to empower women and children on the available legal processes for claiming and protecting their land rights. Further still, sensitisation should also involve the men, especially clan heads to enable them gain an appreciation of human rights, especially equality of all persons.

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<sup>152</sup> Protocol to the ACRWC art 19(c)

#### **5.2.4. Re-prioritisation of government programmes to aid return and resettlement**

There is a need for government to re-think its Peace Recovery and Development Plan (PRDP). This is because, basing on its current structure, there is little effort being put towards assisting IDPs with the numerous land problems that they are facing. For instance, the assistance that is being given to IDPs returning is to those who know where they are going. This begs the question, what about the women and children who are either landless or do not remember the location of their land, let alone those involved in land disputes. Further, implementation of PRDP is left at the hands of the districts which may not implement the plan using a rights based approach. A rights based approach includes, among other things, people's participation in the decision making process. As such, IDPs priorities end up being brushed aside at the expense of what the district officials deem best. This calls for closer supervision from the central government to ensure that IDPs get the assistance they need.

Focus should also be turned to those left in the camps especially EVIs and alternatives found for them. As observed, many of them would like to return home but have nowhere to go. Those left in camps may not be able to stay there indefinitely as the land owners could evict them anytime, especially given the interest that investors have in northern Uganda, and political pressure for people to sell or lease land to the investors. Government should, therefore, come up with alternative land where they can be resettled or work out an agreement with the landowners at the IDP camps to let them stay.

#### **5.2.5. Prosecution of land grabbers**

Land grabbing in northern Uganda is rampant and many have gone unpunished. This encouraged those involved to continue fencing off land belonging to helpless IDPs, especially women and children. There is an urgent need for investigations to be carried out on complaints that have been lodged. There are instances where such investigations go cold because of the personalities behind the land grabbing. It is time that the law is implemented to protect rights of women and children and their land returned to them. This is because without the land, most of these women and child-headed households have no way of re-starting their lives.

*Ngom gwoko dhano*  
(Land takes care of people)

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