INHERITANCE RIGHTS IN UGANDA: HOW EQUAL INHERITANCE RIGHTS WOULD REDUCE POVERTY AND DECREASE THE SPREAD OF HIV/AIDS IN UGANDA

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1. INTRODUCTION

Her husband has died, leaving her economically vulnerable in a society where women seldom own land and, due to devastatingly unequal inheritance laws and customs, have little means to support themselves or their children when widowed.[1] In order to survive, she is left with no choice but to submit to "wife inheritance," a customary practice in Uganda in which a widow is inherited, just as property would be inherited, by a relative of her deceased husband.[2] There is a chance her in-laws will take advantage of her vulnerable situation, forcing her to have intercourse with multiple male in-laws before being inherited by a single relative, probably the brother of her deceased husband.[3] In a country where 6.7% of the population, or 1,000,000 people, between the ages of fifteen and forty-nine are infected with HIV/AIDS, the results of this custom can be catastrophic.[4]

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[1] *See* Valerie Bennett et al., *Report: Inheritance Law in Uganda: The Plight of Widows and Children*, 7 GEO. J. GENDER & L. 451, 453 (2006) (describing how "[t]o be a widow in Uganda is to be an outcast."); HUMAN RIGHTS WATCH, JUST DIE QUIETLY: DOMESTIC VIOLENCE AND WOMEN'S VULNERABILITY TO HIV IN UGANDA 35 (2003), *available at* http://www.hrw.org/reports/2003/uganda0803/uganda0803.pdf [hereinafter JUST DIE QUIETLY] (discussing paternal control over families in Uganda).

[2] *See* JUST DIE QUIETLY, *supra* note 1, at 35 (describing the difficulties Ugandan women encounter when their husbands die).

[3] *Id.*

[4] UNAIDS JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, UGANDA COUNTRY SITUATION ANALYSIS (2004–2005), *available at* http://www. unaids.org/en/Regions_Countries/Countries/Uganda.asp [hereinafter UGANDA COUNTRY SITUATION ANALYSIS]. The percentage of people living with HIV/AIDS in Uganda is not nearly as high as in Botswana, which has an estimated 24.1% rate of

The situation in Uganda is not unique. Throughout the world, particularly in developing countries, women suffer due to extreme gender inequality.[5] Not only is this unacceptable from a human rights standpoint, but studies indicate that such inequality hinders economic growth and exacerbates poverty.[6] Resolving this inequality is a challenge of epic proportions. One way to lessen the burden is by focusing on narrow issues within a specific country. This Comment offers an analysis of one country—Uganda—and one particular right—inheritance—as a small piece within a much larger discussion.

This Comment argues that if women in Uganda had inheritance rights, there would be less poverty and a reduction of the spread of HIV/AIDS in the country. Had the widow in the all-too-common scenario hypothesized above owned land or been able to inherit from her deceased husband, she would not have been forced to have sex for survival. This Comment explores the current situation faced by women in Uganda and offers suggestions for improvement. Section 2 explores theories of inheritance rights generally, illustrating the importance of such rights in society. Section 3 describes the Ugandan situation, taking into account the statutory law in Uganda, the spread of HIV/AIDS, and women's lack of inheritance rights under traditional Ugandan law. Section 4 examines the selective enforcement of property rights for women and considers the positive effects equal inheritance rights would have in Uganda. Finally, Section 5 suggests the potential advantages of Uganda adopting a law modeled after the United States' Uniform Probate Code ("UPC").

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infection, or South Africa, where an estimated 18.8% of the population is infected. Uganda has a higher rate of infection, however, than neighboring Rwanda, which has an estimated 3.1% rate of infection, and Senegal, which has an estimated 0.9% rate of infection. Rates of infection in other parts of the world are much lower. North Africa and the Middle East have a 0.2% infection rate, Asia has a 0.4% infection rate, and North America, Western Europe, and Central Europe each have a 0.5% infection rate. Globally, about 1.0% of the population is infected with HIV/AIDS. UNAIDS JOINT UNITED NATIONS PROGRAMME ON HIV/AIDS, 2006 REPORT ON THE GLOBAL AIDS EPIDEMIC 11, 13 (2006), *available at* http://www.unaids.org/en/HIV_data/2006GlobalReport/default.asp [hereinafter REPORT OF THE GLOBAL AIDS EPIDEMIC].

[5] THE WORLD BANK GENDER AND DEVELOPMENT GROUP, IMPROVING WOMEN'S LIVES: WORLD BANK ACTIONS SINCE BEIJING 7 (2005), *available at* http://siteresources.worldbank.org/INTGENDER/Resources/Beijing10Report.pdf [hereinafter IMPROVING WOMEN'S LIVES].

[6] *Id.* at 9.

2. INHERITANCE RIGHTS THEORIES

To aid the discussion of inheritance rights in Uganda, a brief overview of general inheritance theory is helpful. The basic institution of inheritance dates back to pre-Roman times.[7] As individual ownership replaced family ownership, severing the family's rights and obligations to property, "rules of succession became necessary."[8] Centuries later, during the Middle Ages, primogeniture mandated that all of a parent's land automatically pass to the oldest son.[9] Today, inheritance is present in some form in all legal systems.[10] In the United States, the right of inheritance is deeply ingrained in the national conscience. Still, the U.S. Constitution does not guarantee the right of inheritance, and estate taxes limit inheritance to varying extents.[11]

The right of inheritance directly relates to the duty to support one's surviving spouse and children upon one's death.[12] While some countries place an emphasis on children, in the United States, spouses receive the greatest protection against disinheritance.[13] The notion behind this protection for spouses is two-fold. First, the surviving spouse, rather than a minor child, is usually more competent to manage the inheritance and usually will do so in a way that also benefits any surviving children.[14] Second, the surviving spouse most likely contributed to the accumulation of property during the marriage and is therefore entitled to it.[15]

The contemporary view of marriage in U.S. probate law is that of an economic partnership[16] in which each partner enjoys half the

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[7] THOMAS E. ATKINSON, HANDBOOK OF THE LAW OF WILLS AND OTHER PRINCIPLES OF SUCCESSION INCLUDING INTESTACY AND ADMINISTRATION OF DECEDENTS' ESTATES 6 (West Publishing Co. 1953) (1937).

[8] *Id.*

[9] WILLIAM M. MCGOVERN, JR. & SHELDON F. KURTZ, WILLS, TRUSTS, AND ESTATES 128 (Thomas West 2004).

[10] *Id.*

[11] ATKINSON, *supra* note 7, at 30.

[12] MCGOVERN & KURTZ, *supra* note 9, at 121.

[13] *Id.* Blackstone said that a parent's duty to support his child was "a principle of natural law." *Id.*

[14] *Id.* at 122.

[15] *Id.*

[16] Lawrence W. Waggoner, *The Multiple-Marriage Society and Spousal Rights Under the Revised Uniform Probate Code*, 76 IOWA L. REV. 223, 236 (1991). The economic partnership theory is also referred to as the marital sharing theory. *Id.*

fruits of the marriage.[17] The policies behind the partnership theory aim to encourage spousal cooperation, allow for the spread of risks and benefits within gender roles, promote equality, and provide for greater support of children and the elderly.[18] To disinherit a spouse is to renege on the partnership bargain, and this is not permitted.[19] To ensure a spouse is provided for, some jurisdictions offer a restitutionary solution, granting the surviving spouse an entitlement of compensation for non-monetary contributions made to the marriage.[20] In other jurisdictions there is a forced share.[21] In forced share jurisdictions, the surviving spouse has an automatic right to elect to take part of the decedent spouse's probate estate.[22] This actually limits testamentary freedom by recognizing the surviving spouse's claim to some of the estate, regardless of the deceased's final wishes.[23]

Eighteen states follow the UPC.[24] The UPC grants the entire intestate estate to the decedent's surviving spouse if no descendant or parent of the decedent survives the decedent, or if all of the surviving descendants of the decedent are also the descendants of the surviving spouse.[25] Where a parent of the decedent is still alive, the surviving spouse has children who are not also children of the decedent, or the decedent has children who are not also children of the surviving spouse, the surviving spouse will inherit a portion "off the top" of the estate and then a fixed percentage of the remainder.[26]

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[17] *Id.*

[18] *Id.* at 237.

[19] *Id.*

[20] *Id.* Nine jurisdictions provide this restitutionary solution: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Angela M. Vallario, *Spousal Election: Suggested Equitable Reform for the Division of Property at Death*, 52 CATH. U. L. REV. 519, 525 n.27 (2003).

[21] Waggoner, *supra* note 16, at 237. These jurisdictions follow the common law. *See, e.g.*, N.Y. DOM. REL. LAW § 236 (McKinney 1999 & Supp. 2003) (describing forced share division of assets in New York).

[22] Terry L. Turnipseed, *Why Shouldn't I Be Allowed to Leave My Property to Whomever I Choose at My Death? (Or How I Learned to Stop Worrying and Start Loving the French)*, 44 BRANDEIS L.J. 737, 748 (2006). The share is usually one-third to one-half of the probate estate. *Id.*

[23] Waggoner, *supra* note 16, at 238.

[24] Vallario, *supra* note 20, at 548.

[25] UNIF. PROBATE CODE § 2-102 (1969) (amended 1990).

[26] *Id.* Under Uniform Probate Code § 2-102, if a parent of the decedent is still alive, the surviving spouse will inherit the first $200,000 plus three-fourths of any balance of the intestate estate. If the decedent is survived by descendants who are

There are two major reasons for the UPC's intestacy rules. First, studies in the United States have shown a general preference among married couples that property go to a surviving spouse.[27] Second, the UPC assumes that shared children will eventually inherit the estate through the surviving spouse, so children of the decedent and the descendants of deceased children are not included in the UPC.[28] Those children not shared by the decedent and the surviving spouse are statutorily provided for in the UPC.[29] Additionally, only the decedent's parents and the decedent's descendants are considered, excluding collateral relatives and ancestors who are more remote than parents.[30] Thus, the effect of the UPC is that the law "comes 'at the expense of the decedent's blood relatives,'"[31] meaning that, under the UPC, the spouse always takes precedence over children and other blood relatives.

As evident with the UPC, inheritance laws clearly benefit some at the expense of others. Nevertheless, providing for the deceased's close relatives—particularly surviving spouses and, more specifically, widows (as will be seen in the Uganda situation)—is crucial for the well-being of both individuals and society as a whole.[32]

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also descendants of the surviving spouse, and the surviving spouse has surviving descendants not also descendants of the decedent, then the surviving spouse will inherit the first $150,000 plus one-half of any balance of the intestate estate. If the decedent has surviving descendants that are not descendants of the surviving spouse, then the surviving spouse will inherit the first $100,000 plus one-half of any balance of the intestate estate. *Id.*

27 Waggoner, *supra* note 16, at 230. "The studies have shown that testators in smaller estates (which intestate estates overwhelmingly tend to be) tend to devise their *entire* estates to their surviving spouses, even when the couple has children." UNIF. PROBATE CODE § 2-102 cmt. references (1990) (amended 2003). The Uniform Probate Code also corresponds with other intestate laws in the United States and in Europe. Waggoner, *supra* note 16, at 230–31.

28 Waggoner, *supra* note 16, at 232.

29 *Id.* at 233.

30 *Id.* at 232.

31 *Id.* (quoting Professor Glendon).

32 Even Communists in the former USSR, who believed that inheritance violated the very basis of Communism by perpetuating the accumulation and distribution of private wealth, conceded the importance of inheritance rights in society. Despite abolishing almost all inheritance rights four months after coming to power, by 1922 the USSR legal code recognized inheritance, and by 1960 inheritance was institutionalized into the legal system. *See* Frances Foster-Simons, *The Development of Inheritance Law in the Soviet Union and the People's Republic of China*, 33 AM. J. COMP. L. 33, 33, 36–37, 43 (1985) (discussing the history of inheritance rights in the former USSR).

3. THE SITUATION IN UGANDA

3.1. The Spread of HIV/AIDS

AIDS causes the majority of deaths in Africa.[33] In Uganda alone, 1,000,000 people are infected with HIV/AIDS.[34] In addition, the disease affects more women than men: in sub-Saharan Africa, 57% of adults with HIV/AIDS are women.[35] HIV/AIDS in Uganda is often spread as a result of the traditional and derogative practices of wife inheritance, in which a male in-law takes his relative's widow as his wife; widow cleansing, in which the sperm of an in-law or special village cleanser is deposited in the widow to rid her of her husband's ghost; and property grabbing, in which in-laws take the marital home from the widow, leaving her with nothing and potentially forcing her into sex work to support herself and her children. Furthermore, AIDS-related deaths in Uganda have left at least 10% of the female population aged fifteen and older widowed.[36] It is a vicious cycle, and the only solution is to "break the chains of poverty and gender inequality that help the disease to spread."[37]

3.2. The Law in Uganda

There are three legal systems in Uganda: customary law, religious law (particularly Islamic law), and statutory law.[38] All laws must conform to the 1995 Constitution, which is the "supreme

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[33] Florence Shu-Acquaye, *The Legal Implications of Living with HIV/AIDS in a Developing Country: The African Story*, 32 SYRACUSE J. INT'L L. & COM. 51, 51 (2004). The number of people who have died from AIDS in sub-Saharan Africa is ten times the number of people who have died in armed conflicts and war in the same region from 2002 to 2003. AIDS killed 2.4 million people in sub-Saharan Africa in 2002 and 2.3 million people in 2003. *Id.* at 51-52.

[34] UGANDA COUNTRY SITUATION ANALYSIS, *supra* note 4.

[35] UNAIDS, UNFPA & UNIFEM, WOMEN AND HIV/AIDS: CONFRONTING THE CRISIS, at iv (2004) [hereinafter CONFRONTING THE CRISIS].

[36] James P.M. Ntozi, *Widowhood, Remarriage and Migration During the HIV/AIDS Epidemic in Uganda*, 7 HEALTH TRANSITION REV. 125, 128 (1997). The percentage of women who are widows today is probably higher, since the percentage above is based on the 1991 Uganda Population Census.

[37] CONFRONTING THE CRISIS, *supra* note 35, at 1.

[38] TECHNICAL CENTRE FOR AGRICULTURAL AND RURAL COOPERATION ACP-EU, THE ECONOMIC ROLE OF WOMEN IN AGRICULTURAL AND RURAL DEVELOPMENT: REVISITING THE LEGAL ENVIRONMENT 42 (2001), *available at* http://www.cta.int/pubs/women/ [hereinafter THE ECONOMIC ROLE OF WOMEN].

law" of the land.[39] In situations where both statutory and customary/religious law are applicable, statutory law is supposed to trump customary/religious law.[40] In addition, the Ugandan government has ratified an array of international treaties that require the country to rid itself of all discrimination against women, take action to prevent discrimination, investigate cases of discrimination, and punish discrimination.[41]

3.3. *Women's Lack of Inheritance Rights in Customary/Religious Ugandan Law*

There is significant discrepancy between statutory and customary/religious law in Uganda. Often, where statutory law mandates something, customary/religious law illegally undermines the statutory law.[42] This happens despite the fact that when both statutory and customary/religious law apply, statutory law must take precedence.[43] Thus, notwithstanding statutory rules and a constitution to the contrary,[44] wife inheritance, widow cleansing, property grabbing, and polygamy continue in Uganda through the use of customary/religious law.

3.3.1. *Women and Property*

Many Ugandans rely on their land as their main means of economic survival.[45] In a recent survey of Ugandans, 53% of respondents ranked land as the most important household asset, a reflection of the fact that 76.5% of Ugandans depend on agriculture and 77.1% of the rural population depends on subsistence farming

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[39] UGANDA CONST. ch.2, § 2(1) (1995) ("This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.").

[40] *See id.* § 2(2) ("If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void."); *see also* JUST DIE QUIETLY, *supra* note 1, at 11 ("Statutory law takes precedence, and customary law is only applicable in the absence of relevant statutory or case law.").

[41] JUST DIE QUIETLY, *supra* note 1, at 3.

[42] *Id.* at 19 (explaining that despite constitutionally mandated affirmative action programs, "many customary and statutory laws discriminate against women in areas of marriage, divorce, and inheritance.").

[43] *Id.* at 11.

[44] *See, e.g.*, UGANDA CONST. ch. 2, § 33(6) (1995) ("Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.").

[45] JUST DIE QUIETLY, *supra* note 1, at 37.

for survival.[46] This puts women at a severe economic disadvantage because in many regions of Uganda it is difficult, if not impossible, for women to own or inherit property.[47]

Adding to the problem is the sense of entitlement an extended family often feels toward an individual family member's profits of labor and, particularly upon death, that individual's property.[48] Under customary law, when a husband dies, the majority of his property is inherited by a male heir and the rest is divided among the men of his extended clan.[49] In very limited cases a daughter can also inherit a part of the property.[50] But the inheritance is usually temporary, lasting only as long as the daughter remains single and lives on the land with her birth family. Furthermore, the daughter is prohibited from selling the land.[51] Families will not permit the husband's widow to be his heir,[52] since she is supposed to be looked after by the male heir who inherits her.[53] Additionally, in-laws often justify withholding inheritance rights from the widow with the erroneous argument that since the marital home was built on clan land, it must be protected from the

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[46] ASSOCIATES FOR DEV. & CTR. FOR BASIC RESEARCH, THE REPUBLIC OF UGANDA MINISTRY OF WATER, LANDS AND ENV'T, GENDER MONITORING BASELINE SURVEY FOR THE LAND SECTOR STRATEGIC PLAN IN 20 DISTRICTS ix, 48 (2006) [hereinafter GENDER MONITORING].

[47] JUST DIE QUIETLY, *supra* note 1, at 37. *See also* CONFRONTING THE CRISIS, *supra* note 35, at 7 ("Women in many regions do not own property . . . .").

[48] Kenneth K. Mwenda, Florence N.M. Mumba & Judith Mvula-Mwenda, *Property-Grabbing Under African Customary Law: Repugnant to Natural Justice, Equity, and Good Conscience, Yet a Troubling Reality*, 37 GEO. WASH. INT'L L. REV. 949, 953–54 (2005).

[49] Ntozi, *supra* note 36, at 127. Women have willingly perpetuated this tradition. Roseline Ahimbisibwe, a widow and mother of four, has willed all her property to one of her sons rather than leaving some property for her two daughters. "When asked whether she agrees with the tradition that would leave her two daughters dependent on finding husbands with property, she laughs, and hopes to put off deciding until they are grown." Nicole Leistikow, *Women Gain Inch in Push for Land Rights in Uganda*, WOMEN'S ENEWS, July 20, 2003, http://www.womensenews.org/article.cfm/dyn/aid/1456/context/cover.

[50] Ntozi, *supra* note 36, at 127.

[51] GENDER MONITORING, *supra* note 46, at 37.

[52] *See generally* Dora Byamukama, *Can Widows Exercise Their Right to Remarry?*, NEW VISION (Uganda), July 3, 2006 (explaining that in-laws sometimes evict widows from the marital home).

[53] Ntozi, *supra* note 36, at 127. This is a violation of the Uganda Constitution. *See* UGANDA CONST. ch. 2, § 33(6) (1995) ("Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.").

possibility of the widow remarrying and bringing a new man, and therefore a new clan, onto the land.[54] Compounding the discriminatory laws, under customary law the father has custody of all children over breast-feeding age and, upon death of the father, the paternal relatives are granted custody.[55]

This situation makes women completely dependent on men—be it their husbands, fathers, brothers, sons, or other male relatives of the husband's clan—and places them in a precarious situation.[56] A 2002 land and gender rights survey found that "[w]omen's lack of access to and control over productive resources such as land is directly related to women's poverty."[57] Although the women work the land, the men own it, so the men control the sale of crops and the money received for such sale.[58] As a result, women are often so impoverished and dependent on men that they simply can never leave a relationship.[59] "Women in Africa toil all their lives on land that they do not own, to produce what they do not control, and at the end of the marriage, through divorce or death, they can be sent away empty-handed."[60]

Women also live in constant fear of HIV/AIDS, not only because it is a horrific disease, but also because they fear eviction from their homes if their husbands discover they are sick—even if

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[54] Byamukama, *supra* note 52. This notion is hard to sustain, since today many homes are built on neutral, non-clan land. Nonetheless, a widow is still not considered her husband's heir. *Id.* *See also* Bennett et al., *supra* note 1, at 453 ("[C]ustomary law views a wife as an outsider to her husband's clan . . . .").

[55] *See* JUST DIE QUIETLY, *supra* note 1, at 19, 35 (discussing customary Ugandan custody practices); *see also* Bennett et al., *supra* note 1, at 457 ("A newborn child, whether male or female, belongs to his or her father's clan.").

[56] *See* CONFRONTING THE CRISIS, *supra* note 35, at 7 (explaining that the lack of financial resources for women makes them dependent on men and susceptible to abuses of power).

[57] ELIZABETH EILOR & RENEE GIOVARELLI, LAND SECTOR ANALYSIS: GENDER/FAMILY ISSUES AND LAND RIGHTS COMPONENT 21 (Rural Dev. Inst. 2002).

[58] *See* JUST DIE QUIETLY, *supra* note 1, at 20 (explaining that while men control the cash-crops, women primarily remain "in the non-monetized subsistence sector," allowing men greater access to revenue).

[59] *Id.* at 36. Out of fear, women will not often assert their ownership rights. *See* Leistikow, *supra* note 49 (quoting Jacqueline Asiimwe-Mwesige, a lawyer and coordinator for the Uganda Women's Network, stating, "Sometimes you rise to your own peril. [The husband] might beat you or chase you out of the home, so it's not something women would jump to do.").

[60] JUST DIE QUIETLY, *supra* note 1, at 37 (quoting former Tanzanian president Mwalimu Julius Kambarage Nyerere).

the women contracted the disease from their husbands.[61] Additionally, customary law dictates that if a husband discovers his wife has been unfaithful, he can divorce her, leaving her without support for both herself and her children.[62] In contrast, a wife who discovers her husband has been unfaithful has no similar recourse; as property, a wife has no right to protest, and, furthermore, a husband's extramarital affair can be easily justified as his searching for another wife to add to the polygamous family.[63]

Under customary law, a woman is considered the property of her husband if he paid a "bride price" for her.[64] Historically, the bride price had no commercial implications but rather was a means of bonding two families through a gesture of appreciation for the woman's family.[65] Today, however, the payment of a bride price is akin to purchasing property, giving a man full ownership over his wife.[66] "The payment of bride price demeans a woman's status by encouraging men to conceive of their wives as chattel . . . ."[67] After being purchased, women often feel subservient to their husbands, who can do as they wish with their wives.[68] The husband's power

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[61] *See id.* at 38 (noting that, in many instances, a woman's fear of eviction may prevent her from seeking HIV testing).

[62] Shu-Acquaye, *supra* note 33, at 58. Fortunately, the Ugandan Constitutional Court recently rendered unconstitutional a law which held women and men to different standards under the laws of adultery. Of course, "the real life consequences of adultery for women and men remain gravely different." Anna S. Sussman, *Ugandan Adultery Law Curbs Effects of Polygamy*, WOMEN'S ENEWS, June 24, 2007, http://www.womensenews.org/article.cfm/dyn/aid/3215/context/cover.

[63] Shu-Acquaye, *supra* note 33, at 54, 57.

[64] *Id.* at 54. The bride price can include money, chickens, and cows. *Id.*

[65] *See* JUST DIE QUIETLY, *supra* note 1, at 19 (contrasting historic perceptions of the bride price with modern practice).

[66] *Id.* at 19, 33.

[67] *Id.* at 34.

[68] Shu-Acquaye, *supra* note 33, at 54. Proof of this subservience is evident in the high rate of domestic violence endured by Ugandan women. The United Nations reported in 2000 that an estimated 41% of women in Uganda have been domestically abused, suggesting that women are not empowered to stop the violence. In fact, unless serious injury results from the abuse, wife battery is "tolerated and is considered a normal part of marriage." JUST DIE QUIETLY, *supra* note 1, at 17. As one lawyer in Uganda says, "I believe bride price is one of the major factors that has contributed to domestic violence in the homes. Because [the wife] has been bought. . . . [t]he practice of widow inheritance . . . is justified because [the family] have all contributed to the bride price therefore she's family property. This leads, of course, to sexual violence in the home." *Id.* at 34.

extends to decisions about sex and condom usage.[69] A woman's request to use a condom—be it to prevent pregnancy or the spread of HIV/AIDS—can be perceived as signifying that she is adulterously having sex with other men.[70] As explained above, this can result in the wife's eviction from her home, a consequence with more immediate ramifications than pregnancy or HIV/AIDS. Finally, if a woman wants to leave her husband, she must return the bride price to him.[71] If a woman does not own property, it is impossible for her to return the bride price without the help of her birth family.[72] If her birth family cannot or will not repay the price, the woman is trapped in the relationship.[73]

3.3.2. *Wife inheritance*

Wife inheritance is the customary practice of a man inheriting the widow of his deceased relative.[74] The man who inherits the widow is "normally, the oldest son, brother or a close male relative of the late husband."[75] Historically, wife inheritance was a means by which to provide for the decedent's household and children.[76] The family would carefully select someone to look after the widow.[77] Today, due to poverty, a departure from the communal agrarian society to a more monetized commercial economy, and the resulting disintegration of clan leaders' ability to monitor an inheritor's actions,[78] wife inheritance has decayed into an unrestrained practice.[79]

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[69] Shu-Acquaye, *supra* note 33, at 61.

[70] *See id.* (describing how one woman's husband "accused her of wanting to see other men" after she suggested the use of a condom).

[71] JUST DIE QUIETLY, *supra* note 1, at 34.

[72] *See id.* (detailing the account of one Ugandan woman).

[73] *Id.*

[74] *See* Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 953 (describing how the deceased male's relative can elect to "inherit" the deceased's wife).

[75] Ntozi, *supra* note 36, at 127.

[76] JUST DIE QUIETLY, *supra* note 1, at 34. *See also* Bennett et al., *supra* note 1, at 459 (noting how wife inheritance developed within the context of a communal society in which the men of that society would care for all the women and children. Previously, the man inheriting the widow and the estate would take on both the assets and responsibilities of the deceased's estate).

[77] JUST DIE QUIETLY, *supra* note 1, at 35 (quoting Erasmus Ochwo, a counselor with the AIDS Support Organisation).

[78] Bennett et al., *supra* note 1, at 459.

[79] JUST DIE QUIETLY, *supra* note 1, at 35.

The process of wife inheritance traditionally required that the widow have intercourse with the man who would inherit her as his wife. Today the practice is often abused so that the widow is first forced to have intercourse with multiple men from her husband's clan.[80] Once inherited, a widow is expected to fulfill all wifely duties for her new husband, including sexual intercourse, child-rearing, and agricultural labor.[81]

> That evening [after the funeral], many men come to her and there is no control. She would have the ability to say no but for economic factors. If this man is giving you soap, this man is giving you meat, you cannot say no. It is only those women that are economically empowered that can say no to sex. This man comes with inducements, with inducements she needs.[82]

Since women are considered property, and the husband's extended family claims his property, a widow is not entitled to any of the contributions that she made to the marital home.[83] She could refuse to be inherited, but her in-laws would then likely evict her, leaving her destitute and unable to support herself or her children.[84] As Human Rights Watch reports, "[w]omen succumb to widow inheritance primarily as a result of economic vulnerability and the fact that they are often without property or any viable means of supporting their children."[85] Additionally, since children are generally considered part of the paternal family, if the husband's family claims the children and the mother wants to stay with them, she will have no choice but to submit to wife inheritance.[86]

The physically and emotionally scarring experience of wife inheritance[87] also creates a high risk of spreading HIV/AIDS.[88]

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80 *Id.*

81 Bennett et al., *supra* note 1, at 458.

82 JUST DIE QUIETLY, *supra* note 1, at 35.

83 *See* Byamukama, *supra* note 52 (discussing the variable effects of statutes, culture, and religion on widows whose husbands died intestate).

84 *See* JUST DIE QUIETLY, *supra* note 1, at 35. According to the Ugandan Constitution, it is the right of the parents, not the grandparents or in-laws, to care for the children. CONSTITUTION OF THE REPUBLIC OF UGANDA art. 31(4) ("It is the right and duty of parents to care for and bring up their children.").

85 JUST DIE QUIETLY, *supra* note 1, at 35.

86 Ntozi, *supra* note 36, at 127.

87 *See* JUST DIE QUIETLY, supra note 1, at 34–35.

Wife inheritance exposes both non-infected widows and non-infected inheritors.[89] A widow who knows that she may have HIV/AIDS, often because her husband died from it, may willingly agree to inheritance because she cannot survive while sick without the support of a man.[90] Similarly, even if the family knows that the husband died of AIDS, they sometimes insist that the widow be inherited by another male clan member simply because it is tradition.[91] Adding to the problem, if the inheritor has multiple wives, as is customary in the rural areas where wife inheritance is followed to its greatest degree,[92] his other wives may also become infected. Extramarital affairs further exacerbate these problems.[93]

If a woman refuses to be inherited, whether because she does not want to marry another man in the clan, dreads the notion of having intercourse with one or more of her male in-laws, or fears that an in-law has HIV/AIDS, she, and also sometimes her children, will be cast off.[94] If the widow has HIV/AIDS, even if her husband gave it to her, under customary practice the family may also choose to evict her, possibly also with her children.[95] Often, the only way a widow can avoid wife inheritance is if she is young (and therefore still of marriageable age) and her birth family can repay the original bride price to her husband's clan.[96] Only in this rare situation will a widow be permitted to return to her birth home.[97]

3.3.3. *Widow Cleansing*

In addition to widow inheritance, widows in Uganda may be subjected to widow cleansing. Widow cleansing can occur in one of two ways: the widow is required to have sex with a specified village cleanser as a means of "cleansing" herself of the past and moving on,[98] or the widow is required to have sexual intercourse

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88 Ntozi, *supra* note 36, at 128.

89 *Id.*

90 *Id.* at 133.

91 *Id.* at 128.

92 *Id.* at 141.

93 Shu-Acquaye, *supra* note 33, at 55.

94 Ntozi, *supra* note 36, at 128.

95 *Id.*

96 *Id.* at 127.

97 *See id.* (discussing the practice in several Ugandan groups).

98 CONFRONTING THE CRISIS, *supra* note 35, at 52.

with one of her male in-laws, usually a brother or cousin of her deceased husband, in order to "rid" herself of her husband's "ghost."[99] In neither case is a condom used; it is believed that the cleanser's sperm must be deposited inside the widow for the cleansing to be successful.[100]

This practice, like wife inheritance, facilitates the spread of HIV/AIDS. In the case of the village cleanser, the very nature of his job makes it likely that he will contract the virus and transmit it to others. When the cleanser is a male in-law, the risk of transmission remains high because of the high levels of infection in Uganda.

3.3.4. *Property Grabbing*

Property grabbing is a customary practice that occurs when, upon the death of a clansman, collateral relatives literally grab his property, taking it as their own.[101] This includes both the property that the husband had before marriage and the property that was acquired by the husband and wife together.[102] There is a well-known phrase in Swahili—"mutumai cha ndugu hufa masikini"—which means, "[h]e who relies on relatives dies poor."[103] The notion behind the phrase is that every individual must be self-sufficient.[104] Property grabbing, which evinces the view that relatives are entitled to a family member's property, ensures that collateral relatives will not die poor.

Collateral relatives contrive countless justifications for property

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[99] Ntozi, *supra* note 36, at 126.

[100] Shu-Acquaye, *supra* note 33, at 55. Also of interest is the strange link between not being able to inherit the marital property and widow cleansing, which both concern leaving the past behind. CONFRONTING THE CRISIS, *supra* note 35, at 52.

[101] Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 950. Property grabbing is not a problem exclusive to Uganda. In Namibia, for example, despite laws to the contrary, widows are often forced off their land, a result of women's limited rights to inheritance, property, and education. THE NAMIBIAN WOMEN'S MANIFESTO: WORDS INTO ACTION 18 (2004).

[102] Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 950. Property grabbing has also included taking the property that the widow obtained on her own. In one interview conducted for *Report: Inheritance Law in Uganda*, a widow described how, despite purchasing several homes and properties on her own and running her own business, "[t]he in-laws decided that my property belong[ed] to my husband." Bennett et al., *supra* note 1, at 465.

[103] Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 962.

[104] *See id.* (describing the usage of the adage).

grabbing. The most commonly used justification is customary law, under which property and profits of labor belong to the entire family, and women, as property, cannot own property.[105] Similarly, often collateral relatives argue that the property should be returned to the extended family.[106] As one Ugandan lawyer explains, "[The husband's relatives] just come and say to the widow, 'Today you will not sleep here. You will sleep out there.'"[107]

Another frequent way collateral relatives evict widows is by making up reasons why the widow must leave.[108] Common grounds include the claim that the wife used to brag about how much her husband gave her or that she was unkind to her in-laws.[109] Since the in-laws believe that "it is equitable to punish" the widow for all the alleged wrongs she committed against them,[110] such assertions are considered sufficient for a widow to lose the property. Collateral relatives have also justified property grabbing by alleging that it was the widow who infected her now deceased husband with AIDS, that the widow engaged in witchcraft, or that the widow had been adulterous.[111] Finally, sometimes a widow is evicted from her marital property simply because the husband's family claims she is young enough to marry again.[112] This goes back to the view that a non-clan man should not be brought onto the clan's land.

Property grabbing is not limited to poor families.[113] Wealthy families may also engage in the practice, "not because they cannot afford to buy the property, but rather out of unrestrained greediness and selfishness."[114] Property grabbing occurs during mourning, when family members gather at the deceased's house and argue about the division of the estate.[115] Sometimes it is so

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105 *See id.* at 950 (discussing customary property-grabbing in Africa).

106 *Id.* at 962.

107 Bennett et al., *supra* note 1, at 460.

108 Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 962.

109 *Id.*

110 *Id.*

111 JUST DIE QUIETLY, *supra* note 1, at 38.

112 Byamukama, *supra* note 52.

113 Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 952.

114 *Id.*

115 *Id.* at 962. Sometimes families gather to argue about a person's estate before that person has actually died. "[E]ven before the deceased has been put to rest, squabbles ensue as to how the estate of the deceased will be divided among

sordid that relatives will wear the deceased's clothing or lean strategically against the property that they desire, crying inconsolably in an effort to prove their great grief over the loss.[116] Relatives have been known to do this with "refrigerators, electric cookers, televisions, telephones, cars, and washing machines," even if the relatives do not have the electricity or telecommunication capabilities to use the items.[117]

Property grabbing causes immeasurable harm to the widow. During the mourning period, "[t]he widows are anxious and grief-stricken because they do not know what is to befall them at the end of the mourning period."[118] By taking the property, collateral relatives leave the widow with no way to provide for herself, and, if the husband's family did not claim the children, with no way to provide for her children.[119] Even if the widow has a supportive and sufficiently wealthy birth family to return to, property grabbing often remains unreported because of the birth family's sense of pride or the belief that complaining would simply fall on deaf ears.[120]

3.3.5. Polygamy

In much of Africa, "polygamy is the rule, and monogamy is the exception."[121] Polygamy is legal both in customary law and Islamic law, which many Africans follow.[122] Because of the customary belief that the more wives a man has, the more status he holds,[123] many men are openly polygamous.[124] But there are

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members of the extended family." *Id.*

116 Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 963.

117 *Id. See* Bennett et al., *supra* note 1, at 460 ("[T]hese relatives frequently steal the widow's property, all the way down to the bed sheets.").

118 CONFRONTING THE CRISIS, *supra* note 35, at 53.

119 *See, e.g.*, Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 951 (describing an African widow whose in-laws took all her belongings, including a sewing machine, her only source of income).

120 *See* JUST DIE QUIETLY, *supra* note 1, at 39 ("Even the most supportive families discouraged women from complaining or reporting the theft of their property . . . ."). Widowers are also now becoming the victims of property grabbing. This has occurred when the wife's family believes that she was the main breadwinner of the family and that therefore they, as the extended family, should take the property. Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 964.

121 Shu-Acquaye, *supra* note 33, at 56.

122 JUST DIE QUIETLY, *supra* note 1, at 19.

123 *See* Shu-Acquaye, *supra* note 33, at 57 ("It is generally believed that, the

numerous problems with polygamy. First, it exploits women for cheap agricultural labor.[125] The more wives a man has, the more can be accomplished on the field, so additional wives increase the man's wealth.[126] Second, since statutory law does not recognize polygamy, if statutory law trumps customary law, as is mandated by Ugandan law, only a man's first wife is recognized and has any inheritance rights.[127] Sometimes a husband will try to provide for his other wives by using a secret trust, but there is little to guarantee that his intent will be carried out.[128] Third, polygamy greatly facilitates the transmission of HIV/AIDS. It permits the husband to have extramarital affairs under the guise of looking for another wife, thereby increasing the possibility that he will become infected and pass the virus along to his current wives.[129] Additionally, since "the wife's entitlement to love, consortium, and maintenance [is] apportioned,"[130] the wives of polygamists, particularly young wives, may be more apt to have extramarital affairs themselves, entering into sexual relationships with other men in search of the financial or emotional support lacking within their marriages.[131] This further increases the risk that the other wives, and also the husband, will become infected.

Widows of a polygamous husband are likely to have friction not only with the husband's relatives, as discussed above, but also

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more wives a man has, especially the traditional African man, the higher his status in society is elevated.").

124 *See* Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 956.

125 *See id.* at 955 (discussing the exploitation of wives in agricultural African societies).

126 *See id.* (explaining that under African customary law, men with more wives were considered to be wealthier).

127 *See id.* at 956 (excluding Uganda from a list of the African countries that recognize polygamous marriages).

128 *See id.* at 956–57 (comparing polygamy in Africa to the custom of keeping mistresses and concubines in other societies). Similarly, in the United States, there are rules against carrying out secret trusts. *See, e.g.*, Hanscome-James-Winship v. Ainger, 236 P. 325 (Cal. Dist. Ct. App. 1925) (disallowing as a fraudulent conveyance an unreported transfer of property from a deceased debtor to his widow in exchange for the consideration of "love and affection"); Linder v. Lewis, 333 P.2d 286 (Ariz. 1958) (holding an unreported distribution of assets to be a fraudulent conveyance).

129 Shu-Acquaye, *supra* note 33, at 57.

130 Bennett et al., *supra* note 1, at 458.

131 *See* Shu-Acquaye, *supra* note 33, at 57 (discussing African women's responses to polygamy).

with one another over the marital property.[132] Polygamy "exacerbates inequality in the inheritance process by forcing several widows to share what little they receive from one man."[133] Another effect of polygamy is that while women often face wife inheritance following the death of their husbands, men rarely suffer such drastic life changes; they have other wives and can simply continue living a married life with their surviving wives if one wife dies.[134] Consequently, there are significantly fewer widowers than widows in Uganda.[135] Sometimes a man who loses his only wife is not even considered a widower due to the ease of obtaining a new wife.[136]

4. THE CLAIM: IF WOMEN IN UGANDA HAD SUFFICIENT AND ENFORCED INHERITANCE RIGHTS, THERE WOULD BE LESS POVERTY AND A REDUCTION IN THE SPREAD OF HIV/AIDS

With sufficient and enforced inheritance rights, the devastating plight of women in Uganda would be significantly ameliorated. Instead of being human property completely dependent on males, women would be empowered equals, which would lead the way to an invaluable reduction in poverty and in the spread of HIV/AIDS in Uganda. Not only would lives be saved but, due to an improved economy, the quality of life would be improved.

4.1. The Rights Provided by Law

The laws that Uganda claims to follow—human rights, the Ugandan Constitution, international treaties that prohibit discrimination—are a far cry from the reality in Uganda.[137]

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132 Bennett et al., *supra* note 1, at 458–59.

133 *Id.* at 458.

134 *See, e.g.*, Ntozi, *supra* note 36, at 127 ("Because of the high prevalence of polygamy, many widowers have other wives to continue marital life when one wife dies.").

135 *See id.* at 128 (according to the Uganda Population Census, there are over five times as many widows as widowers).

136 *See, e.g., id.* at 127 (discussing the Ugandan custom where the parents of the deceased wife give the deceased's sister to the widower).

137 "Despite Uganda's progressive 1995 Constitution, which values gender equity and reserves a significant number of seats in Parliament for women, despite numerous studies linking women's property rights to economic development, despite extensive coverage of the movement for women's land rights in Uganda, both in academia and in the press, and despite five years of activism, advocates for women's land rights have achieved few legislative

According to Human Rights Watch, Uganda does not sufficiently abide by its gender-progressive constitution and will not adopt legislation that would outlaw harmful traditional practices and improve women's property rights.[138] For example, Article 32(b) of the Ugandan Constitution, which prohibits "laws, cultures, customs, or traditions which are against the dignity, welfare, or interest of women or which undermines their status," has never been activated.[139] Women are still only granted user rights to land, so they work on the land but never own it, and the government refuses to impose a requirement for spousal co-ownership of land, which would guarantee women at least some property rights.[140] Furthermore, Ugandan law makes it difficult for a woman to divorce her husband and does not criminalize marital rape.[141]

In addition to the problem of insufficient laws, there is a problem enforcing those statutory laws that do exist. As a Ministry of Land official explained, "The law is very clear. [Ugandans] just don't follow it."[142] When a statutory law does mandate equal rights to land, traditional law illegally undermines it.[143] For example, the 1972 Succession (Amendment) Decree was created to make inheritance law in Uganda more equal by restricting the customary practice of property grabbing, by acknowledging women's rights to inherit from husbands and fathers, and by allowing women to remain in their marital homes until remarriage or death.[144] Yet despite the statute, which "does not [even]

successes." Leistikow, *supra* note 50. *See generally* JUST DIE QUIETLY, *supra* note 1, at 2-3 (discussing many of the problems currently facing Ugandan women).

138 JUST DIE QUIETLY, *supra* note 1, at 43.

139 Sarah Kibisi Achen & Wendy Glauser, *Women's Emancipation: The Struggle Continues*, MONITOR (Uganda), Nov. 26, 2005.

140 JUST DIE QUIETLY, *supra* note 1, at 45, 47.

141 *Id.* at 3.

142 Bennett et al., *supra* note 1, at 457.

143 *See* JUST DIE QUIETLY, *supra* note 1, at 45. Uganda is not the only country in which women suffer intolerably because traditional laws are followed instead of official laws. In Pakistan, where there is a gray area between traditional and federal law jurisdictions, a tribal council ordered that a woman be gang raped for a supposed crime committed by her brother. The punishment was enforced. Ashhar Quraishi, *Gang Rape Forces Pakistan Tribal Justice Rethink*, CNN.COM, Aug. 4, 2002, http://archives.cnn.com/2002/WORLD/asiapcf/south/08/04/pakistan.justice/index.html.

144 JUST DIE QUIETLY, *supra* note 1, at 48. It should be noted that even this relatively progressive legislation, which is not enforced, still supports the notion that, once a widow remarries, she should give up property to which she added value during her previous marriage. Furthermore, while on the land, the widow

recognize a woman's right to inherit property on equal terms with a man,"[145] customary law, especially the practice of property grabbing, remains the norm.[146]

Many are so poor that their only chance of survival is to engage in property grabbing, even when doing so is at the expense of another.[147] Enforcement is difficult when those who are supposed to impose the law are themselves destitute and would profit from the property grabbing.[148] Thus, one of the main reasons that laws against property grabbing are not enforced is simply because there is too much poverty all around.[149]

Another reason that the statutory laws are not followed is that often those who determine inheritance issues—the tribal or religious leaders—are not aware of any other legal systems.[150] Instead, "inheritance matters are often decided on an *ad hoc* basis or in accordance with 'customary law,'"[151] under which property remains with the husband's clan.

Those laws that have been developed to provide for surviving spouses and children are problematic.[152] For example, as originally enacted, the Succession Act, which "governs the manner in which

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has no right to sell it. There are no similar restrictions for widowers. *Id.* In addition, the widow must remain chaste while occupying the marital land. Bennett et al., *supra* note 1, at 463.

145 Bennett et al., *supra* note 1, at 463.

146 *See* JUST DIE QUIETLY, *supra* note 1, at 48 (stating that "the succession laws are largely ignored" and that "customary practices are commonly followed"); *see also id.* at 46 (describing a Ugandan government-commissioned gender and land rights study which "established that 'property grabbing' was consistently [listed as] women's primary concern with regard to land ownership.").

147 *See* Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 952 ("These factors, such as the devestating and grinding levels of abject poverty that affect many extended families in Africa, often leave many extended families with no choice but to resort to opportunistic tendencies such as property-grabbing.").

148 *See id.* (describing the poor working conditions and low paying salaries of police officers in many African countries).

149 *See id.* at 966 ("The abject poverty in many African societies is among these primary factors militating against enforcement of civil obligations to respect and adhere to the law.").

150 *See* Bennett et al., *supra* note 1, at 457 ("[M]any cultural and religious leaders who handle inheritance matters are unaware that a law governing succession exists, and most are unfamiliar with its provisions.").

151 *Id.*

152 *See generally* GENDER MONITORING, *supra* note 46, at 36 (explaining that a major shortcoming of the Succession Act is its failure in "providing protections" to those in Uganda who adhere to customary practices in conflict with the Act).

the estate of a deceased person can be managed,"[153] actually infringed on women's rights to inherit property by unconstitutionally containing provisions that differentiated based on sex.[154] While a widow could only remain on the marital land until she remarried, a widower maintained complete ownership of the marital home upon the death of a wife or wives.[155] The Act also ignored the contributions to property ownership made by women during marriage and deprived women of their parental rights by giving husbands' relatives exclusive custody of the children.[156] Miria Matembe, the former Ugandan Minister of Ethics and Integrity, asserts, "I do believe that men in Uganda don't want women to be liberated. It is lip service. There must be instruments to cut the chains that tie women in bondage. . . . These men are drinking our money. Then they come and say 'get out.'"[157]

Similarly, while statutory law in Uganda does provide for wills, there are numerous barriers preventing wills from being written: there is widespread superstitious fear that writing a will brings untimely death; there is low literacy; there is limited experience with legal issues in rural areas; and under customary law, wills were verbal, property was distributed by clan leaders, and women and young children could not own or inherit property.[158] As one counseling aid explains, "'Writing a will is one of the most difficult things a person can do in this culture. It is seen as bad luck, a final sacrament. Therefore a rise in will-writing will take place only gradually.'"[159]

Without wills, intestate succession claims are open to

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153 *Id.*

154 *See id.* ("[T]he Act contains provisions that are facially discriminatory resulting in differential treatment based on sex."); Lominda Afedraru, *Women Activists Petition Court on Property Inheritance Rights*, MONITOR (Uganda), Mar. 17, 2006 (describing the petition of a women's rights organization claiming that provisions of the Succession Act are discriminatory against widows and therefore unconstitutional). Fortunately, provisions of this law have been nullified, although not yet replaced. *See infra* Section 5.

155 Byamukama, *supra* note 52.

156 *See* Afedraru, *supra* note 154. It is interesting to note that the Act was modeled on a 1906 English rule, making its principles over 100 years antiquated. Byamukama, *supra* note 52.

157 JUST DIE QUIETLY, *supra* note 1, at 37.

158 HORIZONS, SUCCESSION PLANNING IN UGANDA: EARLY OUTREACH FOR AIDS-AFFECTED CHILDREN AND THEIR FAMILIES 5 (2003), *available at* http://www.popcouncil.org/pdfs/horizons/orphanssum.pdf.

159 *Id.*

"manipulation and abuse by the deceased's extended family,"[160] as explained in the previous discussion of property grabbing. If a deceased husband did write a will, and that will did not provide for his collateral relatives, those relatives have every incentive to follow traditional over statutory law.[161] The relatives may threaten the lawyer producing the will or to try prevent the widow from making a claim using the will.[162] "A lawyer who tries to intervene in favor of the will risks being harassed or assaulted."[163] Knowing this, many are left with little reason to even bother writing a will.[164]

When it comes to the treaties Uganda has ratified, the government has failed to enact legislation to ensure that they are enforced.[165] As parliament member Dora Byamukama asserts, "Uganda rushes to ratify international conventions to look good but when it comes to domesticating them it drags its feet."[166] Uganda has ratified the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),[167] which recognizes the need for specific women's rights, as opposed to general human rights, and "the need to adopt specific [legislation] that explicitly recognize[s] and enforce[s] women's human rights as equal to those of men."[168] It has also ratified the International Covenant on Civil and Political Rights ("ICCPR"), which states that rights should be recognized without discrimination, including gender discrimination, and expressly obligates states to ensure that

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160 Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 949–50.

161 *Id.* at 951.

162 *See id.* at 964 (describing the difficult situation for the lawyer representing the deceased). This is assuming that the widow or other heirs of the deceased even know what a will is and what their rights under it are, which is often not the case. Bennett et al., *supra* note 1, at 456.

163 Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 964.

164 *See id.* at 952 (explaining that property grabbing very often interferes with a testator's will).

165 *See* JUST DIE QUIETLY, *supra* note 1, at 3 (stating that Uganda's government has failed to enact national legislation "that provides for the effective prosecution and punishment of acts of violence against women").

166 *Id.* at 43.

167 Bennett et al., *supra* note 1, at 469. By ratifying CEDAW, Uganda undertook to guarantee that men and women with the same degree of relatedness to a deceased family member were entitled to equal shares of the estate. This, of course, is not followed. *Id.* at 473.

168 GENDER MONITORING, *supra* note 46, at 20.

the rights of the covenant are applied equally to men and women.[169]

Uganda has also ratified the African Charter on Human and People's Rights ("ACHPR").[170] This treaty "endorses the need to eliminate all discrimination against women and to ensure their protection in every way, as stipulated in international declarations and conventions."[171] In addition, Uganda has ratified the International Covenant on Economic, Social, and Cultural Rights ("ICESCR")[172] and the Convention on the Rights of the Child ("CRC").[173] As a party to these treaties, Uganda is bound by international law to follow them.[174] Nevertheless, in its comprehensive report on Uganda, the International Women's Human Rights Clinic at Georgetown University Law Center found that:

> The government's continued failure to enact and enforce equal succession laws in compliance with international human rights law deprives women of the economic means to sustain themselves and their families and prevents them from reaching their full capacity as contributing members of Ugandan society.[175]

In addition, since 12.1% of Uganda's population is Muslim, Islamic law plays a substantial role in the lives of many women.[176] Like Ugandan customary law, Islamic law, as interpreted in Uganda, does not provide women with sufficient inheritance

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169 *Id.* at 22-23.

170 Bennett et al., *supra* note 1, at 469-70.

171 THE ECONOMIC ROLE OF WOMEN, *supra* note 38, at 36.

172 Bennett et al., *supra* note 1, at 469-70. By ratifying ICESCR, Uganda guaranteed women the "right to live somewhere in security, peace, and dignity." *Id.* at 476. By turning a blind eye to property grabbing and not further amending the Succession Act, Uganda is violating this international law.

173 *Id.* at 469-70.

174 *Id.* at 470. This is the principle of *pacta sunt servanda*, which states that a nation has a duty to change its domestic laws to correspond with its international obligations. *Id.* at 471.

175 *Id.* at 455.

176 *See id.* at 461 (describing the discriminatory effect of Islamic law on women). The religious breakdown for the remainder of the population is 41.9% Roman Catholic, 42% Protestant, 3.1% other, and 0.9% none. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK: UGANDA, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html#people (last visited Oct. 31, 2007).

rights.[177] According to Islamic law, a widow with children can receive only one-eighth of her deceased husband's property.[178] If the marriage was polygamous, this one-eighth is divided according to the number of widows left behind.[179] In addition, while both male and female children can inherit, boys receive twice the share as girls.[180] Thus, Islamic law, like customary Ugandan law, provides women in Uganda with few to no inheritance rights, perpetuating the cycle of poverty and leaving women without the economic independence necessary to protect themselves from the spread of HIV/AIDS.

4.2. If Women Had Inheritance Rights

If women in Uganda truly had inheritance rights—both mandated by the Ugandan Constitution and statutory laws *and* enforced in practice—economic prosperity in the country would increase and the spread of HIV/AIDS would decrease.[181] Inheritance rights give women the economic power to be self-sufficient, which studies indicate translates into faster economic growth in countries.[182] Inheritance rights also empower women to make their own decisions about sexual partners, which would decrease their risk of becoming infected with HIV/AIDS. This section considers the effect that meaningful inheritance rights would have on the women of Uganda, first by examining the benefit of economic independence and then by examining how this influences the ability to guard against HIV/AIDS, although the two are inextricably interrelated.

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[177] *See* Bennett et al., *supra* note 1, at 461 ("[M]en dominate the inheritance process, leaving women relatively devoid of property."). It is interesting to note that other countries with large Muslim populations have rejected those traditional customs that discriminate against women by applying official law equally to all citizens. These countries include Somalia, Mauritius, and Ghana. *Id.* at 479–80.

[178] *Id.* at 461. In contrast, a widower with children would receive one-fourth of his deceased wife's estate. *Id.*

[179] *Id.* In contrast, a widower would receive one-fourth of the estate from each wife who died. *Id.*

[180] *Id.*

[181] *See id.* at 455 ("The inheritance regime lies at the heart of women's subordination.").

[182] *See* IMPROVING WOMEN'S LIVES, *supra* note 5, at 9 ("[G]ender equality is important for economic development and poverty reduction . . . .").

4.2.1. *Economic Independence*

If women had sufficient inheritance rights, they would have greater economic independence. Inheritance rights would require both that the current property rights of women in Uganda be enforced and that more equal property rights be developed, since inheritance rights are useless without the ability to own property. Once this happened, women could curtail their dependence on men, avoid falling victim to property grabbing, and guard themselves against wife inheritance and widow cleansing.

Since property in Uganda is central to a person's economic status, the current situation of acutely unequal inheritance and property rights puts women at a severe disadvantage.[183] Women own only 7% of the land in Uganda, despite the fact that their labor comprises about 70% of the agricultural work and 80% of the food production.[184] Additionally, on average women work fifteen to eighteen hours per day while men only work twelve hours per day.[185] But since most of the work that women do occurs in the home rather than the formal workplace, it is unpaid.[186] Those who are in the formal workplace earn significantly less than their male counterparts.[187]

Not only is this rampant discrimination, but it brings to light how brutally unfair it is that women, the breadwinners, must depend on males for their and their children's protection.[188] Women know that their rights are being violated, but they do not have the legal knowledge or financial means to challenge it.[189] "People know that they're being oppressed. They may not say [that the] United Nations Declaration of Human Rights provides

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[183] *See generally id.* at 18 (explaining that women's reduced access to productive resources "hurts women's ability to participate in the economy").

[184] JUST DIE QUIETLY, *supra* note 1, at 19–20.

[185] Achen & Glauser, *supra* note 139, at 2.

[186] *Id.*

[187] *See id.* (discussing the discrepancy in pay between genders).

[188] *See* CONFRONTING THE CRISIS, *supra* note 35, at 52 ("[A] woman without male protection has very few ways to support herself or her children.").

[189] *See id.* at 51 (explaining that in many countries women "do not have access to the education and information that would help them . . ."); *see also* Leistikow, *supra* note 49 ("[F]ighting a legal battle to keep [land] is usually impossible. To pay for her lawyer, [one woman] says, 'I am squeezing. I pay him little by little.'").

for this or what part of the constitution gives us [that], but they know how they're being treated is not right."[190]

With property rights, women would reap the benefits of their labors. They would own the income of their work instead of letting it go to their husbands and other male relatives, and then the women would determine how best to spend their earnings. In a country where men are known to squander wages on alcohol and then return home to physically abuse their wives,[191] this would be of the utmost benefit. For example, women could direct their money to the rearing and education of their children, thus better preparing the next generation of Ugandan citizens. Or women could reinvest their money in their land, thereby increasing the profitability and resources in Uganda.

Children in Uganda would also suffer less. Widowed mothers would no longer be helpless to prevent their husband's relatives from claiming their children,[192] because they would be able to provide for them. This would protect children from having to endure the all-too-common situation in which they are separated from their mothers and forced to begin a new life with a collateral member of the father's family.[193] Additionally, if the children remain with their mothers and in their mother's protection, the father's relatives would not have the opportunity to quickly marry off the daughters for a bride price, as often occurs today.[194] This alone could prove to be one of the greatest weapons for improving the lives of women in Uganda. Without a bride price, women would not be reduced to the status of chattel, forced to submit to their husbands' whims without the ability to own property. Daughters would not have to face the same predicament as their mothers if they, too, were one day widowed. The cruel cycle would finally end.

Perhaps most importantly for the women of Uganda, inheritance and property rights would put an end to their fear of eviction. A recent study showed that one in three widows have

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190 CONFRONTING THE CRISIS, *supra* note 35, at 52.

191 *See* JUST DIE QUIETLY, *supra* note 1, at 46 (offering anecdotal evidence of such behavior).

192 *See* Bennett et al., *supra* note 1, at 453 (describing the process by which a deceased father's relatives take the children away from their mother).

193 *See id.* ("Following the death of their father, children are frequently taken from their mother and must start a new life with their father's relatives.").

194 *Id.*

been forcefully evicted from their homes because they could not inherit the land from their husbands.[195] This leaves women "homeless or living in slums, begging for food and water, unable to afford health care or school fees for their children, and at grave risk of sexual abuse or exploitation."[196] With inheritance rights, however, whatever justifications the collateral relatives create to engage in property grabbing would be moot; the widow would be protected by the law.[197] Nor would women have to succumb to wife inheritance or widow cleansing, since they would no longer have to depend on men in order to survive. This would decrease the spread of HIV/AIDS and enhance the overall well-being of women.[198] Finally, because women would be independent, they would not have to stay in abusive or unhappy relationships; they would have the opportunity to leave.[199] All these changes would decrease the number of impoverished women in Uganda, allowing women to reach "their full capacity as contributing members of Ugandan society."[200]

Inheritance rights would also increase the political power of women. While there are women in the Ugandan government—it is required that at least one-third of the legislative and civic positions are filled by women—their positions have thus far made little

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195 CONFRONTING THE CRISIS, *supra* note 35, at 53. This number increases to 9 in 10 when the widow being evicted has HIV/AIDS, suggesting that having the disease makes it even harder for a woman to remain on her deceased husband's land. *Id.*

196 *See id.* (quoting Human Rights Watch); *see also* Leistikow, *supra* note 49 (quoting Loice Bwambale, a female parliament member, saying, "[Property grabbing] creates street children, creates women sex-workers because they have nowhere to resort to. I wish government could see this.").

197 *See generally* Mwenda, Mumba & Mvula-Mwenda, *supra* note 48, at 962 (noting that relatives often cite the "motivation of addressing familial financial woes" as the reason for property grabbing).

198 *See* JUST DIE QUIETLY, *supra* note 1, at 35 ("Women succumb to widow inheritance primarily as a result of economic vulnerability . . . .").

199 *See id.* at 36 (explaining how women living in poverty currently have no alternative but to remain with husbands who abuse them). This is not to say that a woman with economic independence will always leave her husband. There are many reasons beyond economic dependence for which researchers believe women stay with abusive husbands, such as self-blame for the abuse, low levels of self-esteem, feelings of helplessness, and depression. *See* Tracy Bennett Herbert, Roxane Cohen Silver & John H. Ellard, *Coping with an Abusive Relationship: I. How and Why Do Women Stay?* 53 J. MARRIAGE & FAM. 311, 312 (1991).

200 Bennett et al., *supra* note 1, at 455.

impact.[201] Any positive changes the women politicians have made have yet to reach poor women or women living in rural areas.[202] Another problem is that, despite being elected, women politicians often perceive their positions in government as a "gift" from the administration that imposed the one-third requirement, and they are afraid of jeopardizing their jobs.[203] This often leaves room for women to be "influenced and coerced by men in parliament."[204] "[F]emale politicians are intimidated by the government. They think it's easier to manipulate the female sex."[205] Some women have even been sexually harassed by their male parliament colleagues.[206] Additionally, women remain only a minority voice in the government, making it difficult to pass pro-women legislation.[207] This has caused some women to question the effectiveness of the one-third requirement.[208] As one former female parliament member said, "I don't think we have achieved much in terms of influencing policy direction."[209]

Just as inheritance rights would increase women's independence in their relationships at home, inheritance rights would also increase their independence in government. Women would inherit and own property, which is crucial to a person's status in the country, and with status, women would be more powerful. In addition, knowing that they can own and run their own land would give women the self-confidence to do other

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201 *See* Achen & Glauser, *supra* note 139 (arguing that very little difference has occurred as a result of the presence of female politicians in Uganda, even though the Deputy Speaker of Uganda is a woman).

202 *See id.* (explaining that the women's emancipation movement is not reaching "women at the village level").

203 *Id.*

204 *Id.*

205 *Id.*

206 Anna Koblanck, *Uganda's Pro-Women Program Produces a Dissident*, WOMEN'S E-NEWS, March 13, 2006, http://www.womensenews.org/article.cfm/dyn/aid/2666.

207 *See* Achen & Glauser, *supra* note 139. "Progress has been hampered by consistent failure to move legislation from 'Bills' to 'Acts' or 'Statutes,' given the sensitive nature of the subjects being handled and their inherent ability to re-arrange the power-gender and property relations at households and in communities, which has met stiff resistance from different sections of society in Uganda." GENDER MONITORING, *supra* note 46, at 21.

208 Koblanck, *supra* note 206.

209 *Id.*

things, such as run a government. "At the end of the day, to have a voice, you need economic independence."[210]

Finally, inheritance rights would create the correct incentives to bring about economic development in Uganda. If a husband knew that his wife and children could benefit from his estate, and he wanted to provide for them rather than for his collateral relatives, he may have more incentive to write a will and ensure that it is followed.[211] In addition, a wife may have more incentive to work the land if she could own it or knew that her contributions would be acknowledged by the law.[212] Finally, if women owned or could readily inherit land, there would be less incentive for them to have large families.[213] Today, women have many children so that the children can help with household chores and, more importantly, provide for her if their father dies.[214] If women did not fear what would happen to them upon the death of their husbands, the incentive for having many children would be diminished, if not eliminated. With a decrease in population, there would be less of a burden on the country and its resources, which would further benefit economic development.[215]

4.2.2. Protection Against HIV/AIDS

The economic independence that would result from inheritance rights would also protect against the spread of HIV/AIDS. If economically independent, women would no longer be vulnerable to wife inheritance or widow cleansing which, as seen above, are not only painful rituals for the women involved but also greatly increase the risk of spreading HIV/AIDS.[216] By avoiding wife inheritance, widows would not be put at risk by male in-laws who are infected, nor would male in-laws have to worry about widows who may be infected.[217] By avoiding widow cleansing, widows

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210 JUST DIE QUIETLY, *supra* note 1, at 39.

211 Bennett et al., *supra* note 1, at 493.

212 *Id.*

213 *Id.*

214 *Id.*

215 *Id.*

216 Shu-Acquaye, *supra* note 33, at 55.

217 *See id.* ("Where the brother of the husband is infected or the widow for that matter, a marriage between them will likely result in the transmission of the AIDS virus to the uninfected partner . . . ."). There has, however, been some decrease in wife inheritance as a result of the awareness of HIV/AIDS. Ntozi, *supra* note 36, at 133.

would escape unprotected sex with a village cleanser or a male in-law. In addition, economically independent widows who are HIV-positive would not have to remarry to ensure the male support currently necessary to survive.[218]

Economic independence would also decrease the number of impoverished women forced into risky behavior. Presently, many women, with no other means of survival or resources, resort to sex work in order to survive and support their families.[219] Sex trafficking is a problem, as are situations in which older men sponsor young women and girls, trading sexual favors for the cost of school, food, and other goods.[220] However, with economic independence, women would have other means, besides selling their bodies and their daughters' bodies, to survive. They would not have to resort to prostitution and performing sexual favors, and therefore would not put themselves at risk of contracting HIV/AIDS.

5. . EIGHT PROPOSALS TO ENHANCE WOMEN'S WELL-BEING IN UGANDA

The benefits of women having inheritance rights are limitless. There are two main challenges, however, in achieving these rights: (1) those laws already enacted must be enforced, especially in cases where statutory law and customary/religious law conflict, and (2) additional laws must be created that, unlike the current laws, satisfactorily ensure equal inheritance rights. "If the government sincerely intends to make progress . . . it must take immediate steps to place women on equal footing with men, to provide women with a stake in the country's economic development, and to stop economic desperation from fuelling the HIV/AIDS epidemic."[221]

First, there must be an end to property grabbing, so that a widow can continue to make a living both for herself and for her children.[222] This should be the case whether a widow remarries or not, particularly since most property in Uganda today is not even

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[218] Ntozi, *supra* note 36, at 133. Another problem occurs when widows and widowers migrate following the death of their spouses. While a widow's former neighbors may know that her spouse died of AIDS, her new neighbors do not. This ignorance facilitates the spread of HIV/AIDS. *Id.* at 140.

[219] CONFRONTING THE CRISIS, *supra* note 35, at 8.

[220] *Id.*

[221] Bennett et al., *supra* note 1, at 455–56.

[222] Ntozi, *supra* note 36, at 140.

on clan land but rather on neutral territory.[223] If and when the widow remarries, the land should remain hers, so that she can continue profiting from it. If the woman dies, the land should be passed to her children—both her sons *and* her daughters—so that they can also profit from the land they have worked.

Enforcing the ban on property grabbing will be a great challenge. Police do little to prevent property grabbing, often because they themselves profit from it.[224] However, if there were incentives for the police to report property grabbing, or punishment if they did not report it, more justice would be served. These incentives could be in monetary form or in some form of positive recognition within the police ranks. Similarly, the government could devise an economic penalty for those who engage in property grabbing, perhaps charging a steep tax for the property acquired, particularly land and houses, or devising a criminal consequence.

Second, widows must be given sufficient public assistance so that they can live well without the need to remarry.[225] With so many dying of AIDS, there is a great likelihood that any given widow lost her husband to AIDS. If the widow then remarries or is inherited, the disease is simply perpetuated. But if the widow is not forced to remarry, the disease can die with her. Additionally, if she does not have the disease and is not forced to remarry, the widow has a fighting chance of surviving on her own with the monetary assistance to be economically independent.

Even if Uganda committed itself to this assistance, the problem, of course, is cost. The yearly cost for the government to provide these widows with full assistance can be estimated. There are approximately 28,816,000 people living in Uganda;[226] widows comprise about 10% of this population,[227] and the per capita gross national income is US $1,520.[228] By multiplying the number of widows by the average income, the cost would be an estimated US $4.26 billion per year. With a national budget of about US $2

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223 *Id.*

224 *See supra* Section 4.1 (highlighting the lack of protection of women's rights in Uganda).

225 Ntozi, *supra* note 36, at 140.

226 UGANDA COUNTRY SITUATION ANALYSIS, *supra* note 4.

227 Ntozi, *supra* note 36, at 128.

228 UGANDA COUNTRY SITUATION ANALYSIS, *supra* note 4.

billion per year,[229] clearly the assistance requested can only be a portion of the per capita gross income per each widow in Uganda.

Third, similar to the assistance necessary for widows, there should be increased government assistance for the families of widows, especially widows whose husbands died of AIDS. Supporting a family member dying of AIDS is incredibly expensive, and without government assistance, the family may be too financially strained to provide for the widow and her children. While the government of Uganda does not deny the AIDS crisis—the Ministry of Health has increased the number of people receiving treatment and the government has launched a counseling and testing policy—"AIDS mainstreaming across government remains a challenge," causing "ad hoc budget allocation in sectors and weak planning processes."[230] Considering the inefficiency of government assistance, it is not surprising that a recent study of families paying for the care of an HIV/AIDS infected family member showed that 36.9% of families were unable to make investments or save, 26.3% had less time to work, 15% had to scale back farming, and 11.3% had to sell their land in order to finance health expenses.[231]

Fourth, co-ownership of land by spouses must be required.[232] Co-ownership exists when two or more people hold concurrent and equal interests in the same property.[233] Co-ownership ensures that, upon the death of her husband, a woman still has ownership of the marital home and, as owner, cannot be evicted through property grabbing.[234] In addition, co-ownership puts to rest the fear that husbands could evict their wives, since wives would be part owners of the land.[235] Finally, co-ownership gives women a means of controlling the land—and therefore its profits—providing more economic independence for women. Women who

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229 CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK: THE UNITED STATES, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/us.html (last visited Oct. 31, 2007) [hereinafter THE WORLD FACTBOOK: THE UNITED STATES].

230 UGANDA COUNTRY SITUATION ANALYSIS, *supra* note 4.

231 GENDER MONITORING, *supra* note 46, at 61.

232 JUST DIE QUIETLY, *supra* note 1, at 5.

233 GENDER MONITORING, *supra* note 46, at 31.

234 *See generally id.* at 58 (detailing many reasons for a co-ownership property structure).

235 *See id.*

control land cannot be property, and if women are not considered property, perhaps husbands will feel less entitled to abuse them.[236]

Co-ownership of land was first introduced by activists in 1998.[237] The requirement was blocked by opponents in favor of a less strict law requiring a spouse's written consent for the sale of land that provided the family shelter or sustenance.[238] Unfortunately, even this small measure has been ineffective: men either lie and say their wives have agreed to the sale of their land or, if more proof is required, forge documents or hire an impersonator.[239]

Fifth, the tribal and religious leaders who determine inheritance issues in many of the rural societies must be educated about the statutory laws.[240] For example, if they do not know that property grabbing is prohibited, that women can inherit land, or that widow cleansing is illegal, they must be taught. Similarly, when Islamic law differs from statutory law, the religious leaders must guide their followers according to the statutory law. By teaching the laws to the leaders of communities and then enforcing those laws, others in the communities would have little choice but to adhere to the laws.

Sixth, the Succession Act of 2000, discussed above,[241] must be amended to ensure equal inheritance rights for both widows and widowers in intestate distribution.[242] Recently, the Act was amended, nullifying laws that gave widowers full right to their deceased wives' property and widows only a 15% right and laws that granted the husband's family full custody of children.[243] While this is certainly a small victory, no new laws have yet been drafted to replace the repealed laws.[244] It is imperative that new amendments be written that ensure that the law will not ignore

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236 *See* JUST DIE QUIETLY, *supra* note 1, at 34 (explaining the common view that because a husband paid a dowry for his wife, she is his property).

237 Leistikow, *supra* note 49.

238 *Id.*

239 *Id.*

240 *See* GENDER MONITORING, *supra* note 46, at 37 ("Far too many people are ignorant of the law."); Bennett et al., *supra* note 1, at 457 (describing leaders' failure to follow inheritance laws).

241 *See supra* Section 4.1.

242 One of the groups challenging the law is Law and Advocacy for Women in Uganda, a women's rights organization. Afedraru, *supra* note 154.

243 Sussman, *supra* note 62.

244 *Id.*

what a widow contributed to a piece of property during the marriage nor grant the father exclusive authority to decide who will take care of his children upon his death. Instead, the property should go to the widow and the children should remain in her care, assuming she is able to provide for them sufficiently. As the Honorable Justice Kanyeihamba said, "'[i]t seems to me that there is so much in [the Succession Act] that should be struck down.'"[245]

Seventh, Uganda must start adhering to the treaties it has ratified. Not only is Uganda required by international law to adhere to these treaties,[246] but the women's rights recognized and protected in the treaties, if followed, would put an end to the discriminatory customary and religious practices perpetuated against women in Uganda today. There could be no wife inheritance, widow cleansing, property grabbing, or polygamy if women's human rights were enforced as equal to those of men, as required by CEDAW,[247] or if all discrimination against women was eliminated, as required by ACHPR.[248]

Finally, the Domestic Relations Bill must be passed.[249] The bill mandates that women have property rights in marriage, criminalizes wife inheritance, and ends the requirement of a bride price for a formal marriage.[250] The bill also obliges each spouse to maintain the family and determines such maintenance by taking into account both monetary and non-monetary contributions to the family.[251] The bill "is the first major legislative attempt to bring co-ownership for spouse[s] on the statute books."[252]

Unfortunately, however, the progressive reforms of the Domestic Relations Bill make it highly controversial.[253] It faces enormous opposition because of its "inherent ability to re-arrange the power-gender and property relations at households and in

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245 Bennett et al., *supra* note 1, at 474.

246 *Id.* at 470.

247 *See supra* Section 4.1.

248 *Id.*

249 JUST DIE QUIETLY, *supra* note 1, at 48.

250 *Id.* at 48–49.

251 GENDER MONITORING, *supra* note 46, at 38. Non-monetary contribution is defined as "the contribution made by a spouse for the maintenance of the family other than by way of money and includes domestic work and management of the home, childcare, companionship, the duration of the marriage, and any other matter that may be deemed by court [sic] to be relevant." *Id.*

252 *Id.*

253 *Id.* at 39.

communities"[254] and its lack of support from both high-level governmental officials and male civilians.[255] "[I]ndeed the news that the bill was shelved due to insufficient consultations was welcomed by several sections of society."[256]

5.1. Exportation of the Uniform Probate Code

Adopting the U.S. Uniform Probate Code could prove beneficial in Uganda. The UPC has already been fully developed and would only require a few thoughtful changes to adapt to Uganda. Rather than starting with a blank page, Uganda could employ a complete operational system that has already been successfully implemented and has adequately provided for surviving spouses elsewhere.

In addition to being convenient, adopting the UPC would be specifically advantageous for widows. The system is gender neutral, unlike the many customary and religious laws that give preference to widowers. The UPC places the interests of the surviving spouse ahead of all other interests. If Uganda adopted the UPC, collateral relatives would have no access to the property of their deceased family member. The widow would be ensured a significant portion, if not all, of her husband's estate, which would annihilate property grabbing. Any justification that collateral relatives advanced would be moot, because the UPC does not consider relatives more distant than grandparents and their descendants.[257] Wife inheritance and widow cleansing would also fall to the wayside since women would have financial independence. As described above, this would make women less susceptible to HIV/AIDS. Ultimately, putting the UPC into practice in Uganda would do exactly what this Comment claims: decrease poverty and reduce the spread of HIV/AIDS in Uganda by mandating equal and sufficient inheritance rights for women.

Concededly, there are issues that would have to be addressed in order to successfully export the UPC to Uganda. First, the dollar amounts that go to the surviving spouse off the top of the deceased's estate would have to be reduced. The amounts of

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254 *Id.* at 21.

255 *Id.* at 39. *See also* JUST DIE QUIETLY, *supra* note 1, at 48–49 (stating that if women had inheritance rights and were more politically empowered, perhaps this bill would have passed long ago).

256 GENDER MONITORING, *supra* note 46, at 39.

257 UNIF. PROBATE CODE § 2-102.

$200,000, $150,000, and $100,000 as laid out in the UPC[258] are simply more money than the typical person in Uganda has. However, the equivalent in Uganda can be estimated. In the United States, the per capita GDP is $43,800;[259] a spouse would take about one-fourth of the inheritance off the top of the deceased's estate if the deceased's parents were still alive; a spouse would take about one-third of the inheritance off the top of the deceased's estate if the surviving spouse had descendents with the deceased but also descendents not with the deceased; and a spouse would take about one-half of the inheritance off the top of the deceased's estate if the surviving descendents were not also descendents of the surviving spouse.[260] Applying these percentages to the Ugandan per capita income of US $1,520,[261] the portion off the top should be approximately US $6,000, US $4,500, and US $3,000, respectively.

Second, the UPC as adopted in Uganda should be extended to relatives more distant than grandparents. While in the United States the perception of family is very nuclear—mother, father, children—the traditional family in Uganda is much more extensive. The UPC as adopted in Uganda should account for this by including more relatives than the UPC in the United States, perhaps by extending inheritance rights to great-grandparents and even great-great-grandparents, while simultaneously being careful not to extend the inheritance to the very collateral relatives from whom the UPC aims to protect the widow.

Third, there is the issue of polygamy. How can a widow inherit everything when there are multiple wives? Additionally, because of polygamy, there will clearly be many situations where a deceased husband has descendents that do not also belong to a given widow. In applying the UPC in Uganda, it must be decided whether certain stipulations should be modified with the reality of polygamy in mind, or if lawmakers should simply assert that since polygamy is technically illegal, Uganda will not condone its perpetuation by taking it into account at all. Of course, this has the potential to be counterproductive. By not protecting surviving spouses other than the first, legal wife, the UPC in Uganda may be hurting the very people it aims to protect: women.

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258 *Id.*

259 THE WORLD FACTBOOK: THE UNITED STATES, *supra* note 229.

260 UNIF. PROBATE CODE § 2-102.

261 UGANDA COUNTRY SITUATION ANALYSIS, *supra* note 4.

One solution to the polygamy issue may be a temporary hybrid formulation of the UPC that would protect those women currently in polygamous marriages without condoning future polygamous relationships. For those already in polygamous marriages, the UPC as adopted in Uganda should provide for additional wives by including them in the surviving spouse's share of the estate. Instead of the first wife exclusively taking the first US $6,000, US $4,500, or US $3,000, that money would be divided by the number of wives the deceased husband had. That way, each widow will have an equal share of the inheritance and can provide for her children accordingly. Any land must similarly be divided, so that each wife inherits an equal share of the land. If that is not possible (i.e., there is only one house), the land must be sold so that the women can equally share the proceeds.

These provisions, however, must only apply to those currently in polygamous marriages. Since polygamy is illegal, the UPC as adopted in Uganda cannot condone future illegal marriages by providing for additional wives not yet obtained. The goal according to the Ugandan government is to end polygamy, not make it easier to practice; therefore the UPC must eventually take a firm stand. It will protect the women currently in polygamous marriages, but in its efforts to enhance the status of women in Uganda, it will not continuously make easier an institution—polygamy—that clearly reduces the status of women in Uganda.

Perhaps the greatest issue of exporting the UPC to Uganda is whether certain theories underlying the UPC in the United States have parallels in Uganda. In the United States, studies indicate a general preference that property go to the surviving spouse in the case of the other spouse's death.[262] A similar study in Uganda may find different results. With so much emphasis on family entitlement, there may be a preference that the clan take the property. There is also the possibility that many men do not believe women should have primary inheritance rights, as evidenced by the general resistance that pro-women legislation has faced in the Ugandan parliament.[263] Unlike in the United States, where the contemporary view is that marriage is an economic partnership,[264] in Uganda the relationship seems much more akin to master and servant, if not slave. This suggests that application

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262 *See supra* Section 2.

263 *See* JUST DIE QUIETLY, *supra* note 1, at 3.

264 *See supra* Section 2.

of the UPC in Uganda will face an array of significant cultural and traditional barriers to its success.

6. CONCLUSION

"A culture thus can be a force of liberation or oppression. Male-dominated ideologies in Africa have tended to use culture to justify oppressive gender relations . . . . Governments should now repeal all negative stereotyped cultures that still hinder full advancement of women."[265] In Uganda, clearly the culture, through the use of traditional customs, has been a force of oppression for women. Women are considered property, are victims of wife inheritance, widow cleansing, and property grabbing, and are often one of many wives to their polygamist husbands. Those laws that Uganda has promulgated to better the situation of women are either not enforced or not sufficient. As a result, women are left to suffer, often while also battling HIV/AIDS, as victims with little recourse.

But, if women had sufficient inheritance rights, their situation would improve. How to achieve sufficient inheritance rights is the crucial question. The country could commit to enforcing the laws already passed, create new and better laws, or import the UPC as a functional model that ensures that widows (and widowers) receive a fair share of their deceased spouses' estates. With inheritance rights women would become economically independent and the decision-makers in all aspects of their lives. Such independence, as this Comment has shown, would have great ramifications: it would decrease poverty and reduce the spread of HIV/AIDS in Uganda.

There is another development that could positively change the lives of women in Uganda. Just in the last few years, scientists in Uganda have found that circumcised men contracted HIV/AIDS half as often as men who were uncircumcised.[266] Similar studies in other African countries have confirmed the results.[267] Although it is still inconclusive whether women similarly contract the virus at a lesser rate when their male sexual partners are circumcised,

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[265] JUST DIE QUIETLY, *supra* note 1, at 33 (quoting the African Platform for Action adopted by the Fifth Regional Conference on Women, held in Dakar in November 1994).

[266] Tina Rosenberg, *A Real-World AIDS Vaccine?*, N.Y TIMES, Jan. 14, 2007, (Magazine), at 15.

[267] *Id.*

researchers believe "there are strong indications that [male circumcision] . . . also protects their [female] sexual partners."[268] A study currently underway in Uganda is considering the question.[269]

If Uganda implemented inheritance rights for women *and* made sanitary male circumcision routine,[270] the benefits would be significant. Not only would women have greater economic independence and an increased ability to make their own sexual decisions, but once those decisions were made, the possibility of contracting the disease from an infected man would be lessened. If the numbers suggested for circumcised men hold true for women, it would mean women would contract the virus half as often.[271]

While circumcision offers a glimmer of hope for Uganda, its effect will not be nearly as great if women are not also given adequate inheritance rights. Without inheritance rights, circumcision offers only a means by which to slow the spread of HIV/AIDS. The combination of inheritance rights and circumcision, however, would be infinitely advantageous. Not only would economic prosperity increase, but the spread of HIV/AIDS would further decrease, since those who would otherwise have contracted the virus, even with the added benefit of women's inheritance rights, may be spared.

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[268] *Id.* at 16.

[269] *See id.* (investigating whether circumcised men with HIV are less likely to pass the disease on to their wives than uncircumcised men with HIV).

[270] The benefits of male circumcision would quickly diminish if the procedures were not conducted in a sanitary manner. Without sanitary conditions, there would be a high risk of infection or, even worse, a risk that the surgeries would actually facilitate the spread of HIV/AIDS by using contaminated instruments. *Id.*

[271] The difference between the rate of HIV/AIDS in countries where men are circumcised as compared to countries where men are not circumcised is startling. For example, in Swaziland, Botswana, Zimbabwe, Namibia, and Zambia, where less than 20% of the men are circumcised, the rates of HIV/AIDS are 33.4%, 24.1%, 20.1%, 19.6%, and 17.0%, respectively. In Gabon, Kenya, Cameroon, Congo, and Nigeria, where more than 80% of the men are circumcised, the rates of HIV/AIDS are 7.9%, 6.1%, 5.4%, 5.3%, and 3.9%, respectively. *Id.* (examining the 2006 report by UNAIDS and the WHO on the global AIDS epidemic and the 2003 USAID Issue Brief).