African Grandmothers Tribunal—Seeking Justice at the Frontlines of the AIDS crisis

Uganda: Property Grabbing

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What is Property Grabbing?

“Property grabbing” refers to a practice where a woman is divested of any matrimonial property on the death of her husband.¹ This includes any property that the wife owned in her own right, property of her husband, or property they acquired during the course of their marriage. ² As a matter of custom, on the death of a husband his widow and children are not longer considered part of his family, justifying this practice.³

Uganda has a pluralist legal system with separate customary, religious, and statutory legal codes.⁴ Despite statutory laws to the contrary, property grabbing, along other discriminatory practices such as wife inheritance, widow cleansing, and polygamy, is permitted under Ugandan customary law.⁵ It is also practiced by Muslim communities in Uganda under religious law.⁶ In addition to allowing property grabbing, customary law dictates that if the property is not taken by the deceased husband’s in-laws, it is given to the eldest male child.⁷ Daughters can rarely inherit, and the wife is not considered an heir because customary law also provides that the male who inherits the property should care for her.⁸ Therefore, if the property is taken by another male relative of the deceased, the widow herself may be inherited through the cultural practice of widow inheritance.⁹

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² Ibid.
⁶ Bennett et al, supra note 3 at 461
⁷ Loftspring, supra note 4 at 248.
⁸ Ibid.
⁹ Widow inheritance is a practice where women are inherited as a wife by her deceased husband’s next of kin. Widows may also be “cleansed”, a ritual where a widow is forced to have
Principle State Attorney of Uganda has described how quickly a widow may be ejected. In the days following a husband’s death, his family will arrive at the marital home and state to his widow that “Tonight you will not sleep here. You will sleep out there.”10

There are various justifications for this practice. The most commonly stated justification comes from an old Ugandan saying that “property cannot own property.”11 Under Ugandan customary law a husband must pay a “bride price” for a wife.12 The woman then becomes his property and can be inherited when he dies.13 Also families believe that they are exclusively entitled to the real property of a family member on their death.14 In grabbing the property and ejecting the widow, relatives may fabricate different reasons why she should leave the marital home, including asserting that she was unkind to them, that she bragged about what her husband had given her, she practices witchcraft, infected her husband with AIDS, that she was adulterous or that she is young enough to marry again.15 Another common justification is that since the marital home was built on the land of the husband’s clan it must be protected from the possibility of the widow remarrying and bringing a new man, and therefore a new clan, onto the land.16

Property grabbing is not something that only affects the most destitute Ugandan widows – it occurs in both wealthy and poor families.17 In Uganda’s agricultural society most Ugandans rely on their land for survival – 77% of the population relies on

sex with a male relative of her husband, often her new husband, to “cleanse” her of her deceased. See Bennett et al, supra note 3 at 460.

10 Interview with Francis Atoke, Principle State Attorney, Administrator General’s Office, in Kampala Uganda (March 9th 2004).


13 Ibid.

14 Loftspring, supra note 4 at 250.

15 Ibid at 257.

16 Ibid at 251.

17 Ibid at 257.
sustenance farming. Women constitute 50.9% and provide 70-80% of the agricultural labor, but only 17% of women own land. Due to extreme poverty, families who practice property grabbing may do so that they themselves can survive. Women, children and orphans are therefore severely disadvantaged due to the difficulties they face acquiring and inheriting land. The denial of a women’s right to control and own land through the practice of property grabbing has a direct impact on the everyday survival, economic security, and physical safety for women, children, and orphans.

HIV/AIDS

Many women who are evicted are left economically vulnerable and are forced into the sex trade or to comply with widow inheritance. In both situations the widow is exposed to a substantially higher risk of HIV/AIDS infection. If she is already HIV positive further disease transmission is likely. If the widow is discovered as HIV positive before her husband dies, this may be yet another incentive for his family to evict her – an HIV positive woman is often stigmatized by her husband’s family, and may be falsely accused of infecting him with the disease. This relationship with HIV is not limited to widow inheritance – Delegates at the 2001 General Assembly Special Session on HIV/AIDS recognized the link between the violation of women’s human rights and the

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18 Ibid at 249.
20 Ibid at 262.
21 Ibid at 249.
22 Conroy, supra note 5 at 816.
23 Ibid at 706.
24 Ibid at 715.
25 Ibid at 715.
26 Seelinger, supra note 11 at 3.
female vulnerability to HIV. Further, the UN High Commissioner for Human Rights has argued that “women’s subordination in the family is one of the root causes of the rapidly increasing rate of infection among women.” Although Uganda has been hailed for its remarkable fight against AIDS, the absence of inheritance rights for widows under customary law creates a “vicious cycle.” The UN Special Envoy for HIV/AIDS stated in 2009 that woman’s inheritance and property rights must be improved to reduce their vulnerability to HIV and improve their ability to cope with the consequences of the epidemic.

**Ugandan Law and Constitution**

Although property grabbing is permitted under customary and religious law, it is prohibited by the Ugandan Constitution. The 1995 Constitution is recognized as one of the most progressive in human rights in the world, incorporating principles of international conventions that Uganda is party to, including *The Convention to Eliminate All Forms of Discrimination against Women* (“CEDAW”). Section 2(1) dictates that the Uganda Constitution is supreme law and other conflicting customs are void to the extent that they conflict with constitutional provisions. Article 33(6) also specific prohibits

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28 Seelinger, supra note 101 at 3.
29 Conroy, supra note 5 at 705.
33 Constitution of the Republic of Uganda, See Appendix A.
customs which discriminate against women. Finally, Article 32(1) mandates that the state take affirmative action on behalf of any groups that are marginalized by gender. However, according to Human Rights Watch, Uganda does not abide by its gender progressive constitution and will not adopt or enforce legislation that would outlaw harmful traditional practices and improve women’s property rights.

The vast majority of Ugandans do not write a will and therefore the Succession Act 1906 dictates the rules of inheritance. This statue, originally from 1906, was amended in 1972 to make inheritance law more equal and prohibit property grabbing. While the Succession Act does not conform to the gender equality requirements set out in the Construction, it does acknowledge women’s rights to inherit from their husbands and fathers, and allows them to occupy the marital home until death or remarriage.

Despite these statutory requirements and constitutional supremacy, customary law prevails in most cases. Enforcement of the Succession Act is difficult for several reasons. Local leaders, who may not understand statutory law or may simply choose to rule in favor of customary law, are usually responsible for the administration of justice. Further, those who are meant to enforce the statutory law may themselves also be destitute and profit from the property grabbing. Women who are vulnerable to property grabbing can also enforce the provisions of the Succession Act. Under the Succession Act the Administrator General’s Office (“AGO”) is responsible for implementing the

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34 Ibid, see Appendix A.
35 Ibid, see Appendix A.
36 Loftspring, supra note 4 at 261.
37 Conroy, supra note 5 at 711. See also The Succession Act, 1906, C 162 s 1 <http://www.ulii.org/ug/legislation/consolidated-act/162>
38 Loftspring, supra note 4 at 261.
39 Ibid.
40 Ibid.
42 Loftspring, supra note 4 at 262.
43 Policy Brief: Women’s gains from the Implementation of Succession Law in Uganda, supra note 19.
Succession Act under the Administration Act\textsuperscript{44}, and is mandated to manage and distribute property accordingly.\textsuperscript{45} However most women are not aware of this statutory protection of their property rights and accordingly do not appeal to the AGO.\textsuperscript{46} Even if women know their statutory rights there are other barriers preventing their access to the AGO, as the offices are all located in urban areas and are costly and difficult to get to.\textsuperscript{47} Most women also lack the funds and ability to access advocacy.\textsuperscript{48} Therefore, due to the “weakly defined and enforced” laws governing succession, combined with a lack of education of the statutory protections of property available, women’s property rights continue to be governed by customary law.\textsuperscript{49}

Finally, when a woman avails herself of the provisions of the Succession Act, the statue does not provide her equal rights.\textsuperscript{50} Aside from the 1972 Amendment, the Act has not been changed since 1906 and has not been reviewed following the implementation of the 1995 Constitution.\textsuperscript{51} Upon death of the man, the eldest son becomes the legal owner of the home and the executor of the estate.\textsuperscript{52} In determining an heir who will receive 70\% of the estate (the widow is given 15\%), the Act specifically states that “a male shall be preferred to a female.”\textsuperscript{53} However in 2006 these discriminatory provisions and others were ruled unconstitutional in the decision of Law and Advocacy for Women in Uganda v Attorney General of Uganda (2006).\textsuperscript{54} Although S. 31(2) of the Constitution requires Parliament to make “appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy paternal

\begin{footnotes}
\footnotetext[44]{cite}
\footnotetext[45]{Ibid.}
\footnotetext[46]{Ibid.}
\footnotetext[47]{Ibid.}
\footnotetext[48]{Doss et al, supra note 41 at 600.}
\footnotetext[49]{Doss et al, supra note 41 at 601.}
\footnotetext[50]{Loftspring, supra note 4 at 262.}
\footnotetext[51]{Byamukama, supra note 32 at 4.}
\footnotetext[52]{Doss et al, supra note 38 at 601.}
\footnotetext[53]{Succession Act, supra note 36 at s 2.}
\footnotetext[54]{For more information please see Byamuama, supra note 32.}
\end{footnotes}
rights over their children” the Ugandan government has yet to fill this legislative gap, leaving things to be determined on a case by case basis by the AGO and local authorities.  

**Recommendations**

The Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) calls on the Ugandan administration to eliminate all forms of discrimination with respect to the ownership, co-sharing and inheritance of land. It also demands that measures are taken to eliminate negative customs and traditional practices, especially in rural areas, which affect women’s property rights. Practically, it is commonly suggested that this can be achieved through the education of women about their rights under the current *Succession Act*. Accessibility to the AGO must be augmented, through the establishment of offices at the district level, so the office is more accessible to women in remote rural areas. Communication and feedback mechanisms between the AGO and local governance structures must also be improved. Generally, greater public education will not only inform women of their rights but will hopefully sensitize their communities and educate the local leaders who often decide succession disputes. These public education campaigns should also address the underlying traditional structures that are detrimental to women’s social status and their constitutionally protected property rights.

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55Byamuama, *supra* note 31 at 5, also see Appendix A.
57 *Ibid*.
59 *Ibid*.
60 *Ibid*.
61 *Ibid*.
Appendix

Available online: http://www.ec.or.ug/docs/Constitution.pdf

2. Supremacy of the Constitution.

This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.

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.


(1) Women shall be accorded full and equal dignity of the person with men.
(2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.
(3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.
(4) Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.
(5) Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.
(6) 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.

31. Rights of the family.

(1) Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.
(2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and enjoy parental rights over their children.
(3) Marriage shall be entered into with the free consent of the man and woman intending to marry.
(4) It is the right and duty of parents to care for and bring up their children.
(5) Children may not be separated from their families or the persons entitled to bring them up against the will of their families or of those persons, except in accordance with the law.

32. Affirmative action in favor of marginalized groups.

(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.
(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.