Amplifying the Voices of Women Across the Customary Land System of Acholi Sub-region, Northern Uganda

Commissioned by Trócaire Uganda
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This report was authored by Ms. Shelley J. Martin, ANNET (consultant) for Trócaire Uganda as part of the overall research project on customary land practices in Acholi.
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KEY TERMS

Acronyms
ADR – Alternative Dispute Resolution
CCO – Certificate of Customary Ownership
DGF – The Democratic Governance Facility
FGD – Focus Group Discussion
EXECUTIVE SUMMARY

A growing body of research and practice exists around African land reform and sustainable development with a particular focus on safeguarding the rights and livelihoods of extremely vulnerable individuals. In post-conflict contexts such as northern Uganda, forced displacement, disruption of traditional protection mechanisms, and plural legal systems have served to exacerbate existing inequalities along such social fault lines as clan, gender and ability. In ongoing
debates and planning in the land sector, it is often the voices of women, persons with disabilities (PWDs), and other marginalized groups that are notably absent, yet essential for inclusive development of the nation as a whole.

This report seeks to amplify the perspectives of special interest groups as primary stakeholders in the effective harmonization of customary and statutory land law. With the lens of analyzing gender roles and impacts, this piece of research is a core component of a larger study focused on customary and communal land conflict and resolution in Acholiland, commissioned by Trócaire Uganda and funded by the Democratic Governance Facility.

Key findings are based on a brief literature review and the results of 81 focus group discussions (FGDs) with women from 14 chiefdoms across the Acholi sub-region. These findings include:

- The interpretation of rules for use and management of customary and communal land varies greatly across Acholiland.
- Customary land is mostly conceptualized as a collective enterprise. Notions of ownership are more closely related to access, which differs from owning in the freehold sense as customary land is not individual property and should not be sold or alienated.
- Men are the primary custodians of land who have full rights, while women are seen to have partial or ‘secondary rights.’
- Natural rights to land are understood to change over the lifecycle. For women and girls, these claims are generally held semi-permanently, whether on maiden or matrimonial property. A woman’s customary land rights are typically vicarious through male family members, and may be acquired from a father or brother for a time, or through her husband or father-in-law on behalf of children born in their clan.
- Women are excluded from many activities and realms of influence.
- Women’s subordination to men renders their land tenure insecure. If a single factor changes on maiden or matrimonial land, presumed claims may dissolve, leaving women and female-headed households with ‘nowhere else to go.’
- Gender-based violence also occurs in times of external land conflict.
- Women perceive their rights in relation to their user responsibilities, including reproductive duties as well as significant productive and community managing work.
- The most secure form of customary land access is enjoyed by women whose bride price is paid and gender roles are fulfilled on matrimonial land.
- Some women who exercise greater agency over land take up additional leadership capacities.
- According to the Acholi tradition and popular understanding, clan-level land management should be decided collaboratively. However gender mainstreaming lags and some voices are excluded, as trustees and custodians are almost all male heads of household.
- Levels of integration and involvement in clan matters vary depending on
the ‘category’ of woman. Unmarried girls, returned daughters of ‘failed’ marriages, single mothers and ‘nieces’ born out of wedlock, sons’ junior co-wives and cohabiting ‘friends’ whose bride price is not paid may still be allowed to settle, but are among the least respected in the homestead.

- It is not only women who are vulnerable to land grabbing and denial of customary rights. Anyone with ‘less than first rank land claims’ may be rendered extremely vulnerable by insecure tenure.
- Widowed women report a range of treatment, from being highly respected to completely under attack.
- Acholi customary law has in-built mechanisms such as accommodation practices to ensure women and vulnerable people continue to access land.
- Though overall declining, land disputes are still common. To adjudicate and resolve matters amicably, traditional justice is preferred over formal courts.
- Through recent initiatives to increase public awareness on the rights of women and girls, some Acholi communities report progress towards improved gender relations.
- Although a majority express frustration with hardships related to gender discrimination, some women voice internalized patriarchal norms in ways that may contradict their own long-term self-interest or the interests of their female children.
- The de facto land situation remains: Most women have ‘right of use, with the consent of male relatives.’

In light of these findings, recommendations were derived from the convergence of a rights-based approach to land reform, and the current agenda to build on strengths of customary systems vis-à-vis the supremacy of the Constitution of Uganda. Any new policy should:

- Support customary land tenure systems to evolve, while retaining a pro-customary option that recognizes the real and historical rights of land users rather than exclusively formal landowners.
- Secure women’s continuous right of land use, as men are entitled to. Ensure that all women enjoy access to and control over customary land, either on matrimonial or maiden property—her choice, if widowed—and therefore experience no interrupted tenure, even if orphaned, widowed, or divorced with or without bride price paid.
- Support opportunities for all women to participate in land management equally with other clan members. This means equal weight in decisions at the household level and involvement in all clan deliberations related to communal land use, allocation, sale, etc.
- Build political will to amend statutory laws and bridge implementation gaps, in order to more effectively cater for the rights of vulnerable groups.
INTRODUCTION

Despite manifold challenges from the protracted period of war and displacement that plagued much of northern Uganda from 1986-2006, Acholi culture remains rich in traditions, valuing of communal welfare, and known for being pro-development. Trócaire’s previous study on *Piloting the Protection of Rights to Customary Land Ownership in Acholiland* (2015) found that less than ten years after encampment, most Acholi have successfully returned, resettled and are currently utilizing clan-based land on which they have recognized customary rights to some degree. Within this relatively short period, Acholi customary land has been largely reconstituted, organized, and managed along principles and practices that are
both long-established and broadly accepted.¹ Acholi culture has proven resilient, although far from static.

Societies’ ability to both endure and evolve is a key strength upon which this project aims to build. The current study fills a gap in exploring the evolution of traditional law in “actual practice—sometimes discernible through what is contested—rather than historical norms and rehashed stereotypes” regarding women and the most marginalized.² It seeks to understand how indigenous knowledge, practices and value systems may be leveraged in creation of a legal model to sustain rights to land management and ownership for the whole Acholi community—inclusive of women, youth, and PWDs. The present reality for many such vulnerable individuals and groups is recurring experiences of discriminatory withdrawal of land access over the lifecycle. However this is not inevitable, and may change through deliberate inclusion and the balancing of power and rights.

This research was designed to capture the typical power relations that exist between different social and economic groups of men and women, with the intention to explore how these dynamics affect decisions that are made regarding access to and control over land. By investigating the norms, attitudes, and experiences of special interest groups in isolation, such as rural women from particular chiefdoms, the study amplifies critical voices that might otherwise go unnoticed. It is these perspectives that must be privileged when formulating program and policy recommendations for equitable development in Acholiland.

**CONTEXT**

Compared to their male counterparts, Ugandan women have less access to land, may have fewer rights to the land they can access, and their land rights may be less secure,³ stereotypically “enjoyed only at the mercy of their in-laws or their own brothers”.⁴ Identifying and safeguarding rural women’s land rights is a highly contested topic that must take into account many factors, including their context and relationship to the land. The social and economic marginalization of Acholi women in particular is related to migratory and settlement patterns, historical

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¹Trócaire Uganda, 2015.
²Hopwood & Atkinson, p. 63
conflict and subsequent weakening of traditional protection practices, cultural reinforcement of unequal gender roles, and ambiguity around various rights-bearers’ status within the present-day legal environment.

**Historical Background**

For several hundred years of permanent settlement (during which time there was no documentation), farming villages comprised of clans—from one or two, to fifty or more—were increasingly joined together in chiefdoms, each with a royal clan (*kal*) and under the authority of a hereditary ruler or chief (*rwot moo*). Even within distinct chiefdoms, however, these fenced village-clans provided the social, economic, and ideological foundations of an emerging Acholi identity. Of significance, communal land rights—for settlement, agriculture, grazing, hunting and other purposes—were vested in the *core clan* of each village. Hunting, herding, and agriculture typically involved cooperative, communal village-clan labor, with farming of staple crops rotating among household plots. Still today **at least 90% of land in Acholi is held communally under customary tenure**, with this collective identity and patrilineal clan hierarchy serving as origins of the prevailing organizational structure for land.

Beginning in 1986, Acholi sub-region was “at the epicenter of one of the most vicious and protracted civil conflicts in Africa” known as the LRA Insurgency or **Northern Uganda War**. At its peak in 2004-2005 some 90% of the population, over one million people, had been forcibly displaced by Government (GOU) policy into internally displaced persons’ (IDP) camps. Approximately one in three male youth and one in five female youth in northern Uganda also reported an abduction experience during the conflict, resulting in pervasive physical and psychological trauma, missed education and opportunities, and separation from families that dramatically affected youth’s ability to reintegrate into society.

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8Annan, Jeannie Annan, Christopher Blattman, Kristopher Carlson and Dyan Mazurana, “The State of Female Youth in Northern Uganda: Findings from Survey of War-Affected Youth (SWAY), Phase II,” UNICEF Uganda, April 2008. (Cited in a Field Note XVII, November 2012 by
Widespread violence and upheaval from peaceful patterns of coexistence led to erosion of traditional systems, including the distortion of practices that once protected clans’ weakest members. As individuals and groups began to return from IDP camps to their homelands in 2008, land boundaries were heavily disputed, giving rise to inter-clan conflict and unequal economic development. Among those most disadvantaged were women and children with ‘weak claims’ to land, especially those made vulnerable by the ravages of war such as youth returnees, child-mothers and children born of sexual violence perpetrated by the LRA and GOU. Ramifications of land denial for such categories have proven far-reaching in the decade following the war; however it is important to note that overall land disputes have been declining since 2012 in Acholiland.9

**Plural Legal Systems**

Two parallel legal and judicial systems exist in Uganda that are interdependent, yet at times contradictory, as they are not fully integrated. The Constitution and statutory law recognize Ugandan traditional **Principles, Practices, Rules and Responsibilities** (PPRR) as legitimate systems with the full force of State law, by which clans may conduct their own procedures. Members may adhere to customary rules so long as PPRRs do not deny any citizen their Constitutional rights, which supersede any other tradition—for example, sexual equality. Hence customary rules only have legal force if they do not discriminate against women.

The 1995 Constitution (Section 237) specifically recognized four systems of land tenure: **customary, freehold, leasehold,** and **mailo.** There are obvious challenges to living under concurrent systems, through which multiple overlapping rights may be claimed or exerted on a single geographical area. The 1998 Land Act reinforced the legitimacy of customary law over land matters; however it has been criticized for formalizing unjust distribution and impeding the progressive evolution of customary law, which continues to be “regarded as inferior” and “disparaged and sabotaged in preference for other forms of registered tenures.”10

Guidelines for settling disputes and managing appeals are yet unclear within the structures of Village Courts and Magistrates Courts.11 Administrative and procedural confusion leads parties to **forum shopping** for the most favorable option.12 Though intended to be a bridge between the traditional and the institutional, Local Council (LC) Chairpersons have also failed to remedy the issues inherent to plural systems. This is largely due to resistance of GOU to conduct fresh LC elections in the past 15 years, or to disambiguate between the roles of LCI and LCII as **first courts of instance** for local land conflicts. LC Courts are

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effectively stripped of their legitimacy in law, and as such their rulings are not
enforced or treated with deference by superior courts.\textsuperscript{13} Also absent are structures
needed to operationalize the registration and administration of customary land,\textsuperscript{14}
though this process itself risks disenfranchising certain natural rights-bearers if
applied too swiftly.\textsuperscript{15}

The \textbf{content of statutory law} over all four land systems is itself insufficient at
protecting some categories of rights. While the Land Act (Cap 227) caters for a
spouse to some extent, it does not broach the rights of widows, divorcees,
cohabitees, and children. With symbolic progress towards this objective, the 2013
National Land Policy (NLP) articulated additional GOU responsibilities in
enshrining equal rights for men and women in marriage and divorce, and in
providing for women’s and children’s full right to own and inherit.\textsuperscript{16} However a
majority of NLP strategies to give substance to the Land Act have not yet been
effected. In northern Uganda, Magistrates and High Courts are involved in less
than 3\% of reported land conflicts.\textsuperscript{17} For those few seeking to adjudicate through
the statutory system, justice remains elusive due to inadequately staffed District
Land Offices, defunct Area Land Committees, unclear chains of command, limited
oversight, and low capacity to manage significant Judiciary backlog.

Among capacitization, amendments, and other essential processes of structural
reorganization, a more robust implementation of the NLP would require close
consultation with leaders of traditional institutions to identify discriminatory
cultural practices that continue to override statutory law by failing to recognize
and enforce \textit{minimum standards} for the land rights of women and girls. Examples
include the “consent clause” that stipulates women must be party to the sale of
jointly-held customary land, and criminalization of a host of related offenses
known collectively as “property grabbing” that occur frequently to women upon
the death of a husband.\textsuperscript{18} Failure to uphold such standards would render aspects
of a customary system in violation of its constituents’ legal rights, and thus null.

\textbf{Traditional Protection Mechanisms}

Although manifestations of land rights violations are common in Acholi land
today, protections such as land allocation for widows and orphans are decreed
both orally by Acholi tradition and officially per the PPRR of \textit{Ker Kwaro Acholi}. In
fact, customary law in Uganda is “probably as good as can be found anywhere in

\begin{itemize}
  \item \textsuperscript{13}Adoko, Judy. \textit{Certificates of Customary Ownership are Not What They Seem on the Surface}. Policy
  \item \textsuperscript{14}Piloting the Protection of Rights to Customary Land Ownership in Acholiland. Trócaire Uganda: 2015.
  See also: The Uganda National Land Policy.
  \item \textsuperscript{15}Adoko, Judy. \textit{Certificates of Customary Ownership are Not What They Seem on the Surface}. Policy
  \item \textsuperscript{16}Policy Statement 65
  \item \textsuperscript{17}Burke, Christopher and Doreen Nancy Kobusingye. \textit{Women’s Land Rights in Northern Uganda:}
  \item \textsuperscript{18}Property Grabbing from Ugandan Widows and the Justice System Response. International Justice
\end{itemize}
“the world” according to LEMU, which summarizes the overarching tenets as:

1. Everyone is entitled to land. No one can ever be denied land rights.

2. All inherited land is family land, never individual property. Customary land never belongs to men, it always belongs to the family; the man’s role in ‘managing’ the land comes from his status as head of the family, and not because the land is his personal property.

3. The clan maintains powers of oversight, to ensure that everyone is granted land rights and that the interests of children (and even the unborn generations) are considered. Thus, in order to sell land one needs clan approval, because the seller has to show that their children can still be provided for after land is sold, and the clan must ascertain that the whole family agrees to the sale.\(^{19}\)

Therefore customary law theoretically caters for **full land rights for everyone** in the clan, as well as a system of protection through clan oversight. As a result of these principles, **all women should be guaranteed land rights** thusly:

1. A single women claims land from her parents, and married woman through her husband from her parents-in-law.

2. A widow becomes the *head of her family* upon her husband’s death, and assumes the same role of ‘manager’ of family land that her husband held. The clan must consult with the widow if she wishes them to appoint a ‘protector’ to defend her land, although he personally has no claim on it.\(^ {20}\)

While there is limited accountability for traditional leaders to uphold the above principles in practice, they are endogenously derived which should lend broad authority to their application. Thus actualizing women’s rights may be more a matter of supporting Acholi clans and chiefdoms to **return to their core values**,\(^ {19}\)

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\(^{19}\) *Why is customary protection failing to prevent land grabbing?* Land and Equity Movement in Uganda (LEMU) Policy Brief: August 2009.

\(^{20}\) Only if a widowed woman initiates the installment of a protector should the clan then bring someone to fill the role; even then he personally has no claim to the land. She is not obligated to be in any sort of relationship with the protector and should have the option to eliminate the role if she changes her mind. This is best-case scenario of what *should* happen under customary PPRR, but the role of protector can easily be exploited.
while also re-conceptualizing gender roles and relations in the translation of these values into substantive rights.

**Gender and Land**

Globally women and girls have different—typically less—access to and control over both land resources and decision-making processes, than male counterparts. De facto gender inequality leaves women in positions of subordination to men and by extension renders some categories of people extremely vulnerable to land rights abuses.

Achieving gender equality is necessary for sustainable development, poverty reduction, peaceful homes, and the realization of human rights. This requires more than symbolic representation of women in leadership or gender parity on Area Land Committees. It demands *just gender relations* through a balancing of power between the sexes, wrought through:

- The absence of sexual discrimination in opportunities, *i.e.* laws, customs and social norms that support equal access, control & use of resources; *and*
- The existence of fair conditions for women and men, girls and boys, to realize their full potential and equally contribute to and benefit from economic, social, cultural and political development.

*Contextual analysis* is of utmost importance in gender planning. Traditional beliefs that perpetuate gender double standards, and practices like unchallenged discrimination in inheritance rights, reinforce the social permission structure for mistreatment of, and often violence against, women and girls. In some instances, practices such as bride price and wife inheritance may impart benefits to communities in terms of social cohesion. However in Uganda, negative impacts have been shown to far outweigh the positive; for example through fettering the right to consent, reinforcing the notion of women as commodities that are part of the community wealth, exacerbating domestic violence and HIV transmission, diminishing women’s contributions to the marriage, and aggravating landlessness and poverty, especially in the event that a ‘refund’ is demanded at separation.21

Mindsets underpinning such practices as bride price and mandatory wife inheritance may not be ill-intentioned, as they are formed over a lifetime of interacting with subtle and overt discrimination. *Even many women interviewed fail to identify the link between their own frustrating experiences of land access denial in adulthood, and the view that their daughters do not have permanent rights because responsibility for their welfare will be transferred to another clan in marriage. It is apparent that unchallenged gender-unequal practices may inadvertently contradict the best values of a culture, like protection and lifelong welfare for all. In turn they produce negative downstream effects on men, families and the broader community, in addition to women and girls. Conversely, equitable*

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practices benefit entire societies. In fact, gender equality is the number one predictor of peace—more so than a state’s wealth, level of democracy, or religious identity.22

In some contexts, gender equality in land rights is measured by the proportion of titled land that is held by women—around 7% of all titles in Uganda. A strategy to improve gender equality is then to increase the number of women holding titles; however titling women’s freehold land is an intervention distinct from achieving fair application of customary land law. Under statutory law “a woman with freehold title is fully equal to a man with freehold title” and (assuming equitable adjudication) the Court can protect her if someone tries to assume control or ownership of her property.23Women’s land documentation as a key gender objective is justifiable in contexts where property is individuated and women are subjected to insecurity due to unfair practices in divorce or estate administration, which is particularly pervasive in Central region.24

Yet the proportion of formal land rights indicates “absolutely nothing about the situation for the vast majority of women” (and indeed men) in Uganda who do not participate in the freehold land system.25Seven percent is misrepresentative in a country where over 80% of land is held without title26 and therefore the figure for women’s real land rights may be much lower. It is especially unhelpful when considering women’s tenure security in northern Uganda, where titled land accounts for only 1.2% of plots.27

A better contextual indicator in rural northern communities, though more challenging to quantify, may be actual regard for women’s rights more generally. Since clan-based rights are not fixed and change with life situation, this could be measured by the larger community’s level of protection for girls from birth to adolescence, and its respect for women’s consent, access, and agency during transition periods like marriage, separation and succession.

Rights under the Acholi system are also usufructuary or related to use of the land, and as such are understood to vary greatly according to socially normative roles. As traditional heads of household, Acholi men were not intended to be sole proprietors but rather primary custodians with the most “obvious” rights to use—not individually own—customary land.28As Hopwood and Atkinson elaborate, “widespread misapprehension that only men can own land” overlooks the

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26Ibid.
fundamental customary notion that ownership is applicable to neither women nor men. Instead it is “complex systems of evolving principles and often negotiable practices” around resource usage by different classes of community members that “grant different, but not inevitably lesser rights” to women than men.29

The ‘classes’ that determine how strong or weak one’s claims are to land are determined not only by gender, but by age and tenure in terms of years contributing to the land, perceived loyalty to the clan, performance of certain roles and duties, and maintenance of attitudes. A user’s claims are negotiable based on these factors. While men from the core clan predominate decision making on land usage, inheritance, and sale, older Acholi women also maintain influence over domains stemming from their traditional roles and relationships, elaborated further in Findings. A gender assessment of any customary land tenure system must consider the extent to which such roles, practices, and understandings of rights meet the practical and strategic gender needs of all community members.

Practical gender need emerge from socially-accepted gender roles. They do not challenge gender divisions of labor or women’s subordinate position in society, but rather respond to immediate perceived necessity within a specific woman or man’s context. For example, practical gender needs may address a family’s inadequate living conditions, and could include water provision, education, health care, and employment opportunities. Relating to land and livelihoods, women practically need access to gardens, cultivation tools, and granaries to feed their children according to Acholi custom. They may also ‘need’ social and legal validation through payment of bride price, which at this point is necessary to culturally and statutorily legitimize customary marriages. Without it, women are

29Ibid. p.14
at risk of exploitation and landlessness. Meeting such needs allows women to continue living, while remaining within the status quo roles and power relations.\textsuperscript{30}

\textbf{Strategic gender needs} on the other hand emerge from need to change gender roles in order to achieve equality in a specific context. They vary by particular society according to divisions of labor, power and control, but are common to almost all women. Meeting strategic gender needs allows communities to alter existing roles by challenging positions of subordination of women, girls, PWDs, ethnic minorities, and other marginalized groups. Such solutions are longer term and may be less visible than practical gender needs. Legal rights, safety from violence and control over one’s body, fair valuation for labor, and agency over one’s future are all strategically linked to increasing gender equality. Within the land sector, addressing strategic gender needs may start with initially ensuring that women are safe, while simultaneously working to conceptualize the power dynamics that govern cultural systems for tenure and management.

However long-term solutions are more complex. While not a focus of the present research, it would be remiss of the GOU and development community to overlook the gender costs of circumventing in perpetuity the statutory system for titling land. It may yet take generations for individual ownership rights to become a priority area affecting all Ugandan land users. However in the interim planning, the claims of women and girls must remain central so that they are not left behind as titles are increasingly used to preserve individual and collective rights, including for future land development, collateral and wealth creation. Cementing such legal rights and opportunities for female land users (at the rate at which they are achieved among male counterparts) can benefit the country through more inclusive development that capitalizes on women’s enormous productive capacities. Indeed women are responsible for at least of 70% of agricultural labor in Uganda\textsuperscript{31} although the bulk of it is yet “on-contractible.”\textsuperscript{32}

Some rights activists caution that while a woman’s security under customary law is not perfect, it is usually considerable, and greater than what she might experience if clan property rights were formalized. From this view, individuating or titling customary land would empower the (typically male) controller and effectively “extinguish” most rural women’s claims by denying her access or giving the title owner the legal right to evict her at will.\textsuperscript{33} In practice both systems

\begin{footnotesize}
\begin{itemize}
\item For more on practical and strategic gender needs, see: Moser, Caroline O.N. Gender Planning and Development. Routledge: 1993. London, UK.
\item Women’s agricultural labor feeds much of the country but typically remains at the subsistence-level, invisible and unpaid. A majority of cash crop contracts are awarded to male farmers that have land titles, access to finance, farm assets, technical training, and cooperative membership or other useful social capital, perpetuating inequality in between men and women in rural areas.
\end{itemize}
\end{footnotesize}
are prone to violating the rights of vulnerable people, and a singular solution for reconciling them does not exist.

Bearing in mind the apparent gender risks of formalization, pursuit of strategic gender needs in macro-level sector planning must still uphold the ‘big picture’ goal of establishing a *unified legal system* for protecting individual, joint and communal rights. A judicial system empowered to fuse the coequal systems of customary and received law over the long-term is an “essential pre-condition of workable pluralism.” In such a paradigm, the Constitution guides, clear roles exist, and officials act as “advisors and facilitators” of lay people who make decisions through participatory processes. Thus while immediate to mid-term policies may focus more pragmatically on *incremental gains in gender equity* within the existing two systems, strategies must take care not to create ‘work around’ systems that subvert the eventual goal of a *single institution vested with authority and resources to administer land fairly to all women, men and children in Uganda*.

**Relevance of this Study**
Identifying and meeting practical and strategic gender needs in relation to customary land requires a deeper understanding of the current status of Acholi women and gender relations. This is elucidated in part by findings from the present field research.

**Rationale**
A woman’s access to and control over land generally improve if:
1. She gains access to *more* land;
2. She gains access to land of higher *quality* or land in a more prime *location*;
3. She gains additional *rights* over a plot of land to which she already had access; or,
4. Her land rights become more *secure*.

This study seeks to understand more about women’s experiences of access, user roles and responsibilities, as well as perceptions of their own status with regards to customary land in the Acholi context. Results will be used to leverage good customary practices in the formulation of a legal model that mitigates the social and structural constraints barring women from improved access and control.

**Methodology**
To investigate and give platform to women’s voices firsthand, a qualitative study was commissioned, consisting of 81 focus group discussions (FGDs) held with 1050 women from 14 chiefdoms across the Acholi sub-region. Groups of 8-25 voluntary participants were randomly sampled from a common clan. Field researchers were trained in gender sensitive methods to facilitate semi-structured conversations with these groups using the Acholi language. The FGDs targeted

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women’s perceptions and experiences of various customary law issues, from land usage, ownership, acquisition, and management, to common challenges and recommendations. Italicized text below reflects direct quotes from women participating in these discussions, and has been left anonymous to protect the respondents.

Findings

Women’s Understanding of Customary Land

1. The interpretation of rules for use and management of customary and communal land varies greatly across Acholiland.

   It all depends on the kaka. If that clan values the women and girls, they can also allocate some land for them to use.

   In Toro, we are given land by our father, who will give it to all his children equally irrespective of sex.

   There is no difference among women, whether divorced or a daughter who returned home. All use the land equally with same rights; maybe it is happening elsewhere, but in Paracele, no such thing.
Women are oppressed in Pawel just because they are women.

Wide variation within Acholi culture is consonant with Hopwood and Atkinson’s findings, which recognize the difficulty of codifying customary practices due to “their negotiability and tendency to evolve in response to new circumstances.” These may include a range of diverse “evolutionary pressures” that apply uniquely in different communities such as population density, commoditization of land for business, and on-going security issues. Other findings should therefore be seen as descriptive rather than prescriptive or representative of Acholi culture as a whole.

2. **Customary land is mostly conceptualized as a collective enterprise. It is intended for the common good of current and future Acholi generations, and is ostensibly not for sale.**

   Married women, children and husbands come together to protect customary land.

   It is inherited from our forefathers and belongs to the whole clan, even the unborn people.

   The ancestors told us not to sell land but rather use the land among us clans in Lugwar. No Lugwar child should be denied land but we should use it freely, in that if one feels their piece is exhausted then they can borrow from someone, cultivate, and leave the land.

   God is the owner of all the land; no person owns it.

3. **Notions of ownership are more closely related to access, which differs from owning in the freehold sense as customary land is not individual property and should not be sold or alienated. Property ownership is primarily understood as a way to consolidate communal livelihoods, differentiate from other groups or protect against invasion, rather than to commoditize.**

   We own land equally without segregating that this is for a male or female. Here there is nothing wrong.

   In reality, plots of land are reportedly sold as economic need and opportunity arises. The customary rule for conducting land transactions is involvement of the whole family or clan in the decision, but this provision does not always prevail (See Finding 6).

   **Land is sold without our knowledge as women. We almost have no rights to our own land.**

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4. Men are the primary custodians of land who have full rights, while women are seen to have partial or “secondary rights”\textsuperscript{37}.

Men have the full rights over land and this makes our rights limited. We can’t assume a higher role on land than them. We just follow their lead.

Women have no full right over land in the clan. But by the fact that she gets married in that land, she gains some little right over land use in the clan to feed her children.

Women whose husbands are still alive here in Abwo clan, their voices are not heard concerning land rights. If a woman tries to raise her voice on land related issues, she is despised as a mere woman who was just brought here and cannot have land rights herself.

5. Natural rights to land are understood to change over the lifecycle. For women and girls, these claims are generally held semi-permanently, whether on maiden or matrimonial property. A woman’s customary land rights are typically vicarious through male family members, and may be acquired from a father or brother for a time, or through her husband or father-in-law on behalf of children born in their clan.

As a wife we get land through our husbands, which they are given by their parents for us. I may marry the first born and the father gives him the responsibility to allocate land for his siblings and their wives, and as a woman brought in that family I therefore get my share of where to cultivate.

If I marry and fail in my marriage, or maybe my husband dies but while he was still alive he told me to go back home with my children, then my brothers will give me land.

Unmarried women are often perceived as ‘flight risks’ on either property who will eventually marry out or may leave hastily with clan assets.

Women whose bride price has been paid have a say on customary land unlike those whose bride price hasn’t been paid, because they can leave at any point.

If you are not married, you can’t be allocated land because they cannot trust you.

In northern Uganda, “before marriage young women are commonly regarded as temporary members of the family, reflected by the fact that single women report the second lowest incidence of (customary) ownership after cohabiting women.”\textsuperscript{38}Even after marrying into another clan, women are frequently reminded of their status as “imported.”\textsuperscript{39}

\textsuperscript{38}Ibid.
\textsuperscript{39}Ibid.
My husband would go on to ask, “Is this your land? Did you come with it from your father’s house?” No, I thought. But still the land should be left for me and my children, including for a daughter if she returns.

Women have no say over land. Even when blood brothers are fighting over land they can’t get involved because they are taken as outsiders who were just married into the clan and have no rights.

We do not have the rights because they always see us as voiceless and of little importance in the clan. Men can refer to us as dakomamwaa [a useless woman].

6. While customary land is for all, in practice women are excluded from many activities and realms of influence. Married and unmarried women alike typically exercise much less control over land decisions than male land users, despite being native ‘daughters of Acholi’ who feel entitled as heirs.

When a second woman is brought, still she will be given either part of my land or land from the bigger portion that my father and mother-in-law have.

They can give out land for hire without wives’ consent, and when you talk about it leads to domestic violence.

Men cheat women here; when the harvest is packed in sacks, the men sell the items, tell you how much was realized, and do not show the money.

Women don’t get any benefits over whatever they produce on the land apart from the little given back to them, which is not even enough to support the children. The rest is not questionable because women have no mandate over it.

7. Women’s subordination to men renders their land tenure insecure. If a single factor changes on maiden or matrimonial land, presumed claims may dissolve, leaving women and female-headed households with ‘nowhere else to go.’

There is a threat to the widows, and this makes it difficult to live in the land when you have nowhere else to go. This is especially true for the unmarried (cohabiting) women whose husbands died before they were married; no man would even marry you since you will have had many children in the home where you became a widow.

Very real risks of violence, landlessness and destitution are never far away for women who live in subservience to husbands, in-laws, brothers, and even their own sons.

If a widow has produced only female children, she loses her rights to own the customary land of her in-laws.

(Another) clan has grabbed my land where I built my house. Now I don’t have anywhere to farm with my children.
The boys of the home refused to let a daughter of the clan [their sister] farm because she was chased from her marital home for only giving birth to girls. When she came back home this year they went to fight her with pangas [machetes].

Our very own children have land conflicts with us. Those we gave birth to are not cooperating...they even forbid us, their mothers, from accessing our own land. They minimize us and make us regret ever giving birth to them...They are so tough and arrogant, as if they know everything, yet they are ignorant of many important things.

8. **Beyond the household, gender-based violence also occurs in times of external land conflict.** Protracted inter-clan disputes were widely reported, some with many casualties and retaliations lasting over 20 years. Respondents suggested cyclical recurrence is linked to local government elections and politicians illegitimately reallocating land without consulting the Rwodi, inciting violence between communities. In such times, destruction of crops, animals and even women’s bodies are strategies clans may use to intimidate and assert claims over disputed territory.

We are being disturbed seriously by [an external] people to the extent that the crops we planted were cleared down by them. So we are planning to do the same to them when they plant in those gardens. With this trend it looks like death is going to occur in the land...

Sometime back, [a non-native] people came and started beating women from here with okutu [thorny trees]. Especially when they find only our women in the farmland, what they do them is not good.

Usually if [members of an encroaching clan] see that those farming are only two or three, they go and mobilize to come back. They come with about seven ox-ploughs and destroy all the seeds that were planted by those few. They are planning that later somebody must be killed...These people are coming closer and closer in Lapalangwen, with some even approaching our homesteads.
Perceived Roles and Responsibilities

For both men and women, rights confer predetermined expectations for undertaking specific activities, protecting the land, and assuming certain relationships. The customary concept of rights remain usufructuary, embedded in social roles for land usage. A gendered division of labor ensures these domains of responsibility are historically assigned to women and men based on perceived characteristics, rather than individual ability or desire.

9. Acholi women perceive their rights in relation to their user responsibilities. Since women balance triple roles within the clan, they are typically responsible for the ‘lion’s share’ of reproductive duties while balancing a significant number of other duties in the productive and community managing spheres.

Women exert considerable energy in their reproductive role, including childcare, cooking, washing, and managing the home. Many respondents acknowledged their ‘right’ to raise children on the property, and their ‘right’ to manage the household including oversee granaries and food supplies.

As women we have rights over land in order to bring up our children here…Our rights to customary land are fully obtained when we give birth because children are valued so much in Acholi culture.
Acholi communal land rights have long been “organized and managed, not only for the benefit of the living but for future generations.” Consequently women tend to be not only family-oriented in the present, but future-oriented, demonstrated through concern for the next generation and a preference for investing in land rather than selling it.

*We women of Lugwar want the land not to be sold but used for livelihoods like farming. We can sell our produce to pay school fees since some men have about three wives and do not take care of their children seriously.*

*It is the role of women now to look after the children, so I cannot sell off the land because it may become a routine, that after finishing all the money I should sell land. Instead of that I would rather carry out farming in the land rotationally in order to raise the children.*

*Acholi land should not be sold. Even if it is small it helps us to feed our children. It must be protected and remain as customary land so in the future children can farm it to get food.*

Consequently women’s productive roles include investing in the family’s welfare through cultivation of plots to ‘feed children’ and generation of revenue for child-related expenses. ‘Women’s land’ is reserved for tasks that directly sustain the clan, and they claim the ‘right’ to uphold livelihoods responsibilities therein.

*Women’s land should be fully utilized by farming on it or hiring it out so as to get money for school fees.*

*Your father in-law allocates for you and all other women in that family pieces of land to dig in, whereby you must feed the family and the clan at large.*

Land-related community managing roles include passing on knowledge of boundaries and rituals, advocating for children, and sometimes resolving disputes. Women claimed related ‘rights’ to alert the clan to trespassers, cook for and facilitate aspects of land ceremonies, and transfer knowledge to the next generation.

*Women have rights to stop other people from entering in their land boundaries.*

*Women have rights to stop any child from selling off land. They can even take one who is mismanaging or selling land to the government by reporting to the police.*

*We have the right to guard trees from being cut by foreigners who want to burn charcoal.*


41 See also the roles of Rwodi Okoro in Finding 11.
We attend meetings about land matters because in the future, young children may not understand about the land so it is our responsibility as women to tell them what we have heard regarding customary land while they are still young.

We have rights over some places such as rocks, mountains and other sacred sites. Women are responsible for them because we are very necessary in cooking and ritual performance and we know how to organize the elements …This right is not only in Lamwo but in the entire Acholi region. In our area of Orom East there is a tree where rain rituals are performed. If there is no rainfall or heavy hailstones destroys crops, the elders realize it is time to do the ritual to cleanse the place affected. Women grind Lalwinya paste and take it to the site. The preparation of certain food like ringoamuu(meat) and obwoloruka(mushrooms) begins in the morning, and many people from the village turn up like they are having a party. They feast and after a successful ritual it will not be long before rain begins to fall.

In addition to ‘land cleansing’ ceremonies, women may be involved in resolving land conflict through Acholi *traditional justice*, with roles centering on the ritual itself. Preparing different ceremony elements, collecting medicinal plants and cooking required food, and serving participants constitute “a significant and symbolic element of Acholi traditional justice…” While elderly women are given an opportunity to voice their opinions in the justice process, they “cannot interchangeably take over traditionally male tasks” in such occasions. However given their role as mothers, women often “end up exerting considerable influence in initiating traditional justice practices and liaising between children and elders” in the event that a child is denied rights.

43Ibid.
or has transgressed others (See Finding 10 for more on women’s agency).

Conformity to gender norms and relatively homogenous aspects of clan life may not inherently impede gender justice, but do limit the extent to which women take control or initiative in gender transformative activities. Rigid roles for male and female land users restrict a woman’s ability to stake her claims to land access or object to unfair land administration or sale.

10. **Currently the most secure form of customary land access is enjoyed by women whose bride price is paid and gender roles are fulfilled on matrimonial land.** Diligence in work and producing children are legitimizing factors for women married into a clan. In some instances women’s tenure is further secured when they reach old age, as they are presumed to possess extensive knowledge of land boundaries and clan customs.

   In Paibwore, married women—even the widows—participate in land activities without any denial to land.

As women married into the clan, we are still new here until we have stayed long.

My in-laws gave me land after I produced my first son because they were sure of my stay.

Once you produce children, you automatically get rights to the land. The children you bear give you confidence.

As older women we know the land boundaries. Recently there were some who were involved in showing the boundaries...The government should further help us with the law to prevent any further conflict on the land.

As relations between women and their matrimonial families strengthen over time, ‘wives of the clan’ tend to feel more secure on land. However the likelihood of becoming widowed or divorced increases with age and after this point, experiences of land access vary, often based on the above factors. Whether on matrimonial or maiden land, women’s rights tend to hinge not only on performance of duties but also on maintenance of ‘proper’ demeanor and attitudes including obedience without complaining.

Anybody born there can utilize the land. The married women, and even those not married, if they are good mannered.

If you are a disrespectful woman, you are denied the rights to even settle in the land in spite of any condition you are in.

The family members are watching my character and behavior, when they have seen that I am respectful, my bride price is paid. Then more gardens are allocated to me and I am given rights to manage customary land at a low level.
Widows are also given land, if they are respectful to their in-laws.

In instances of cohabitation or polygamy, first wives may exercise greater agency than junior co-wives or cohabitees. Recognized first wives may also have ‘veto power’ alongside husbands in customary land related transactions.

As co-wives, our land allocation is not equal because the married wives get a larger portion of land.

If maybe your man wants to give another woman a piece of land, he needs to first sit down with you so together you agree on how the second wife will access land.

11. Some women who exercise greater agency over land take up additional leadership capacities. ‘Well-behaved’ women may be eligible to support the administration of customary land through sharing of views in the collective and other ancillary roles to men.

An elderly woman in the clan has equal rights over customary land like the males and can also be included in solving land conflicts, if only she is respectful and lives in harmony with people.

Our land rights are the same with men. We are even invited as women to join the men in land meetings.

Sometimes when husbands die, wives become the head of the household and assume the responsibilities of the male custodian.

By marriage a woman automatically accesses her rights. By inheritance a woman has rights to the husband’s land permanently; if he is dead she becomes the legal owner on behalf of her family and other factors remain constant. For instance today women can claim rights through legally registering land in their names.

I inherited [matrimonial] land from my mother-in-law. She was the one to give it to me since at the time I came here I found my father-in-law had already died.

You have come to take care of the home and all other things including the customary land of your husband, so that in case of the death of your husband, you will become the administrator of the estate.

There are also land leadership roles at the village level in which men and woman participate. Rwoot (plural: rwodi) kweri are male land trustees, typically with a ‘jurisdiction’ of any cultivated area within a village. Associated roles include inspection of land; guidance and advice; mediation; and serving as witnesses on boundaries, especially for farmland. Rwodikweri are chosen through village meetings where names of men are nominated and community members vote for the person they want, typically based on “good moral character and
RwotKweri helps in the administration of the land. In case of any problems pertaining to land they ensure that the problems are resolved amicably. They also mobilize youth for communal digging, which would help ensure even lazy people have food for their families.

Similarly, rwodiokoro are elderly women who mobilize other women for communal cultivation and encourage them to work hard in farming and weeding gardens together. They control portions of cultivated land at the village level and are responsible for ensuring “women have food in the granaries.” As cultural knowledge bearers and trustees of the land, rwodiokoro provide guidance and counseling, and mediate conflict through serving as witnesses on boundaries since “they know who cultivates which land.” Like rwodikweri, they are elected at village meetings in which community members nominate “elderly but strong” women to lead in these areas.

Both men and women are involved in the control and management of the customary land. In this clan of Olila, the Ladit Kaka (clan head) is the one who controls the land together with women who are Rwodi Okoro….The chief is the overall custodian of the customary land. He oversees the entire land of the Bwobomanam and ensures that the land is used productively to benefit the clan.

As women we get involved over land conflict through community dialogue and also attend as witnesses to land conflict resolutions by telling the truth about the disputed land. We know who rightly owns the land from history. RwotOkoro will clearly show the demarcation of the land and who owns it.

12. According to the Acholi tradition and popular understanding, clan-level land management should be decided collaboratively, with custodians “equitably taking account of the interests of all members.” However gender mainstreaming lags and some voices are excluded, as trustees and custodians are almost all male heads of household.

They have mobilized a few, but if the meeting included most people it would be easier to identify the most suppressed women who are denied access to rights to customary land.

We are usually not included in the clan land meetings. They say we only have control only over the garden given to us. Today we are being enlightened to ask for our rights to control customary land.

Women are not allowed to participate in decision-making and they are considered voiceless, such that men abuse them with all sorts of languages.

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45 Ibid.
46 PRRR
Women are intimidated by men who use insulting words, saying they were just married into the clan and cannot have input on customary land here. As women, this makes us fearful when issues of land arise.

Challenges and Risks for the Most Marginalized Individuals

13. Levels of integration and involvement in clan matters tend to vary depending on the ‘category’ of woman. Yet-unmarried girls, returned daughters of ‘failed’ marriages, single mothers and ‘nieces’ born out of wedlock, sons’ junior co-wives and cohabiting ‘friends’ whose bride price is not paid may still be allowed to settle, but are among the least respected in the homestead.

Unmarried women and barren women are most times sidelined.

A Local Council leader who is my brother was chasing me out of our father’s land. It is accepted here that (daughters of the clan) have a fraction of percentage on the customary land. We went to court, and the elders of the clan sat in a meeting, and it was solved. I am using the land now, but we no longer talk to each other.

We are using the land well, but as a widow I have no access to land. My brother-in-law had grabbed almost all the land. I have only a small piece I am using, which I got back from him in a difficult way.
14. It is not only women who are vulnerable to land grabbing and denial of customary rights. Anyone with “less than first rank land claims” may be rendered extremely vulnerable by insecure tenure.47 Descendants of guests, war returnees, PWDs, and adopted or ‘step’ children of either sex who were not born to core clan members may be more susceptible to violations, with significantly weaker land use and inheritance claims than those of women in general.

Children born outside the clan have no rights, and their mothers who are daughters of the clan are seriously oppressed.

If one of the oppressed orphans tries to complain they violently attack him, yet it is his father’s land.

Since some of us are formally abducted LRA mothers with few options, we hire out our ngomkwaro (customary land) so that we can get some money to provide for the children that we came back with from the bush.

If a child is okay, they grow up working just like everyone else. But disabled people are affected [by land access issues] because they are not able to cultivate.

Those who have returned are given small portion of land and they can’t protest because they have no rights over the land. They are even drained more emotionally by calling them “Mac lyetloka” which means “You are a returnee with no place here.”

15. Widowed women report a range of treatment, from being highly respected to completely under attack.

I have a right and my views are listened to. I have land with my children and nobody disturbs me; for example, I had problems from intruders from Bolo Lamac, so the elders helped me. I spoke and I was heard, and now I have my land back.

My in-law has opposed me, chasing me off my land because my husband died.

I have stubborn neighbors, who want to take over my land because I am aged and have no able bodied children to protect me.

Our culture allows women to use the land, but here in Puranga that is not happening. We widows are not accessing the land our husbands left. Even girls who return home are not in full control over their ancestral land.

In reality, many widowed women are at risk of insecure land tenure. Although the Acholi PPRR provides married women the option to remain on the land of

a deceased husband and assume his role as head of household, and unmarried women with the right to receive land from their own parents, “family members often conspire to deny (widows) their rights.” Often a woman’s age at the time of widowhood and the number of children born to the clan are determinants of her security. If the woman has given birth to few or no children, or is deemed young and able to remarry, she may be at greater risk of forceful eviction from her land.

If an elder in the family passes on and leaves a wife with many children, the widow may control the land because her time [to remarry] was wasted.

Further, a widowed woman is traditionally given the option to elect a ‘protector’ upon the husband’s death. But when stripped of the element of consent, this relationship can be distorted into mandatory wife inheritance, whereby her role as head of household may be bypassed, subjecting her to potential rights violations and harm.

A widow together with her children has rights over land, but these rights are overseen by the household head, most often the elder brother-in-law.

Your [deceased] husband’s brother takes you as his wife. When you start claiming for your husband’s land he says that it’s all his and you have no rights over it.

In the absence of protection, widowed women may employ strategies to intimidate intruders in efforts to deter property grabbing.

Some leaders may support a person in disturbing the widow, so she can undress to enable them to see what is in the world, and then they shall fear continuing.

Nephews should not be given (my) land. They cannot chase me away; instead I will chase them because they were brought from elsewhere.

When you are a widow, the men in the clan force you to use a small piece of the land. But if you have strong eyes, then nobody will grab it away from you.

According to Acholi PPRR, the option to return to maiden land, or remain on matrimonial land and be ‘inherited’ or not, remains the choice of the woman who has been widowed. These and other protection practices may be revived to ensure just outcomes for disenfranchised women with ‘nowhere else to go.’ However sympathetic reactions must not supplant the a priori legal and customary rights of widows and the most marginalized from a land justice perspective.

16. **Land allocation and accommodation practices are among the in-built mechanisms to protect the most marginalized individuals in Acholiland.**

All women who have come back home from failed marriages are to be allocated land to take care of their children. Widows and widowers, whether with or without children, have the right to stay on the land they were allocated when they were married. The clan nieces and nephews [children born out of wedlock to women of the clan] are given land to settle and use. Orphans have rights over land allocated to their parents and no one can take the land away from them. They use and settle in the land under the protection of clan until they become won [head of household]. All clan members have rights to use and access communally held areas.

Historically, Acholi villages were flexible and rarely occupied by exclusively the nuclear family. ‘Guests’ were typically accommodated peacefully, including “households of women returning to the clans into which they were born, usually with their husbands, but sometimes as women-headed households after leaving their husband’s clan” as well as in-laws, friends, clients, refugees, war captives, or children of any of the above. “Once accepted by the clan head and elders, such guests were allocated a portion of the host clan’s land that they, and their descendants, had the right to live on and use as long as they remained, but not to increase…without permission.”

*In those days, land was given to great friends, usually by Rwot, clan heads, elders, or household heads.*

Today these traditions have evolved but may still include apportioning customary land to widowed or single women, child mothers, orphaned children, PWDs and non-clan ‘guests’ who are in need. Land is also occasionally gifted to ‘friends’ from outside the clan.

*Sometimes it is the clan leader or the household leader who allocates land to us. Especially when your husband is a serious drunkard and is selling the land anyhow, then the clan leadership can intervene and help us.*

Revival of such traditional justice and protection mechanisms is needed more than ever, due to social and economic underdevelopment over the last decade that resulted from the war.

*Since many men died (in the war), the widows should be given land to control and to help raise their children.*

*Children born outside the clan have no right and their mothers who are daughters of the clan are seriously oppressed.*

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49 Hopwood and Atkinson (2013), p.6
However, respondents indicated that practices of accepting foreigners and accommodating marginalized individuals on customary land are reportedly less common since reconstruction. Communal farming is limited to certain qualifying members.

Those days before the camp, people used to farm together. But now that people returned from the camp things have changed.

Two days ago, a girl child came back to her (deceased) father’s land to be shown the boundaries, but she wasn’t accepted to do anything; rather she was told to go back where she came from.

Rising population growth and disputed boundaries may potentially drive conflict if ‘guests’ assume full ownership rights or encroach on additional land, or if people with loose ties return claiming the right to settle on land after long periods away.

In 1990 my husband gave a plot to some young man to stay in during the wartime. But after the war ended this man started claiming that the land belongs to him and now he is disturbing my children. Whenever he goes out he tells people that if the chiefdom grants him permission, he will sell it off.

Children who grow up in the camp don’t know boundary demarcations of the land. They dig without minding any boundaries and become rude or violent when corrected. If we hadn’t gone to the camps we would not have had such problems.

I am a daughter of the clan. I was born here but grew up in a foreign land. My elder brother gave me land to use but my younger brother has denied me access to it, and yet it is problems which have brought me back home in the first place. What do we do?

However Acholi is atypical as population density is still relatively low and “area pressure on land is unlikely to become intense for several decades.”50 In addition, by 2013, just seven years after the conflict ended, declining rates of land disputes and high rates of resolution were already emerging in the sub-region. This is perhaps linked to recovery and increasing effectiveness of “internal resources for managing conflict within rural communities”51 particularly through traditional justice leaders.

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50 Hopwood and Atkinson (2013), p.62
51 Ibid, p.61
17. Though overall declining, land disputes are still common in 2017. To adjudicate and resolve matters amicably, traditional justice is widely preferred over formal courts.

Land issues must not be taken to the already corrupted court system. The poor keep losing all land cases taken to courts, even when they are right.

Women don’t have money for court. Then the courts take advantage of widows. They are forced to return to their parents’ home because the clan won’t accept them to do anything on that land and the court listens to people with money.

The traditional system is notably less costly than formal justice processes that require hiring of lawyers and transportation to court. In addition, many sense that traditional leaders are “less susceptible to influence by wealth and power”\(^\text{52}\). As community members with memory of the pre-war land use arrangements, criteria that clan elders use to judge cases may be more aligned with expectations of disputants than the criteria of magistrates. However there are inherent patriarchal biases within the village courts.

\(^{52}\) Lonergan, Kate. *Gender and Generation in Acholi Traditional Justice Mechanisms*. JRP Field Note XVII: Justice and Reconciliation Project, November 2012. p.15
One study of Acholi traditional justice found that women generally have “no say” during conflict resolution processes, but are “encouraged to participate as witnesses and observers.” Under such conditions, alternative dispute resolution (ADR) and similar non-formal justice mechanisms have been found to favor men, over-emphasize forgiveness from the side of women in the name of reconciliation, and sideline the more vulnerable party in settling domestic disputes. While women struggle to be heard and get justice for land claims, youth have greater confidence they will receive a “successful outcome through traditional leaders who are more likely (than magistrates) to honor informal land-use agreements, even if the original parties to the agreement are no longer alive.”

Continued reliance on traditional leaders to adjudicate land conflicts and facilitate reconciliation between disputants indicates the need to engage local actors in village courts in greater gender sensitization.

18. Through recent initiatives to increase public awareness on the rights of women and girls, some Acholi communities report progress towards improved gender relations.

Women’s emancipation brought by the current government of Museveni does advocate equal rights between men and women. The widows are now able to access land without denial.

Properties of widowed women are not sold or taken away, including land, which is how we know we have rights. This has been brought by the government and used not to be there in Acholi tradition.

Those days when we were not enlightened, there used to be suppression of rights for women on land use. At least these days we know our rights and men also knows their rights. However some women are still being suppressed, like the widows, so the government needs to continue sensitizing the community on that.

Nonetheless, real implementation gaps exist between legislated and delivered rights, for example statutory provisions that widows may not be evicted, or mandates that women must serve on Area Land Committees. Though respondents demonstrated varying levels of awareness of such policies, many still feel they lack agency in land matters.

Laws that stipulate gender inclusiveness are rarely implemented in our chiefdom. For example at most meetings pertaining land issues, it is only men who attend.

53 Lonergan, Kate. Gender and Generation in Acholi Traditional Justice Mechanisms. JRP Field Note XVII: Justice and Reconciliation Project, November 2012. p.15
55 Although ‘youth’ here may be predominately male.
56 Lonergan, Kate. p.15
I talked to one of the elders. I was trying to tell him that a girl or a woman gets one-third of the family customary land, but this elder rushed to shut me down. He completely stopped me from talking about it, which is a sign that women’s rights are still being violated.

19. Although a majority express frustration with hardships related to gender discrimination, some women voice internalized patriarchal norms in ways that may contradict their own long-term self-interest or the interests of their female children. In some instances, women also justify discrimination against girls, bride price refund, and gender-unequal practices and traditions that relegate girls to the status of property.

Women just cause confusion. Hence we are not chosen to lead land issues.

Women married into a clan are not allowing the daughters of that clan [their nieces through marriage] to also use it for farming.

Women with relative power may also disenfranchise others of lesser ‘rank.’ One study in Acholiland found that in cases involving one or more female-headed households (FHH), 45% of disputes centered on a woman’s right to inherit customary land, from husbands as well as fathers, grandfathers, other male relatives, mothers and even grandmothers. (Importantly, FHHs were often successful or perceived as ‘in the right’, indicating an evolving understanding and application of women’s customary land rights from their paternal line.) While some 30% of FHH cases mirrored the classic ‘powerful male relative’ narrative, over 20% involved a female ‘aggressor’—including widows and divorcees—seeking to displace another land user with weaker rights, such as guests, junior co-wives, or descendants of either.57

Women who are recently married in the clan are given the part that is not fertile to farm, like the grazing land, while the elder women take the fertile parts.

Discussion

The Status of Women

In northern Uganda, tenure security remains elusive for vulnerable classes of women who may not feel truly ‘home’ in either maiden or matrimonial clans. Both men and women may view girls as _brides-in-waiting_, young wives as _flight risks_, and widows as the _burden_ of the ‘other’ family. If a woman returns to her land of origin, there are often social repercussions as her marriage is considered a _failure_ and her character open to question. Women’s insecurity is exacerbated by near-unanimous male leadership, dependency on bride price to legitimize customary marriage, polygamous unions and practices perpetuating unequal power between women and men. Mechanisms have long existed to cater for basic needs of vulnerable society members; however even these have been distorted by the post-war context and hemmed in by restrictive gender roles.

Currently women have right of use, exercised with a husband or male relative’s consent. While men do not own customary land, they maintain disproportionate control at the expense of single, divorced, barren and widowed women, and other persons with ‘weaker claims’ to land rights. In spite of its historical conceptualization as a resource of the commons, “the _predominance of patriarchy in law, policy, and practice ensures that the land has owners, but that they are not women._”\(^{58}\)

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Structural discrimination is underpinned by beliefs and reinforced by normative behaviors. Nevertheless, shaming an overarching group for its means of operation can alienate victims from their strongest purpose and deepest sense of identity—the clan. The “denigration of their own culture leaves women feeling that somehow their specific injustices are not really related to the agenda (of urban-centered gender activism); that the abstract campaigns for equality, and against their own culture, that are being urged upon them are not the same battle as the one which they are fighting for, which is for their land rights not to be violated by land grabbers. “To rural women the fight for individual rights is often foreign and not relatable—′something from Kampala.’”

Moving forward, a key challenge under the plural legal system is misconstruing of urban women’s equal ownership rights as immediate universal needs for all Uganda women. The gender costs of bypassing the statutory system in urban Uganda are significant, but as yet, are distinct from rural post-conflict contexts like the greater part of northern Uganda.

Emerging from the context of Acholiland—i.e. the village, most women’s social reality—are rural strategic gender needs, which first demand opportunities for all women to participate in communal land management equally with other clan members. Under current understanding of Acholi customary law, protecting women’s land rights is less about transferring ownership and more concerned with ensuring access and control. Consistent access means vulnerable women and other marginalized individuals have equal ability to use and benefit from communal resources without fear of exploitation or eviction. Greater control is needed for women to take equal part as custodians and trustees determining customary land use, allocation, sale, and acquisition.

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<tr>
<th>Practical Gender Needs</th>
<th>Strategic Gender Needs</th>
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<td><strong>Short Term</strong></td>
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<td>• Women and marginalized individuals are immediately safe from violence and landlessness</td>
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<td>• Widows access protections</td>
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<td>• The most marginalized are accommodated</td>
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<td>• All clan members continue to access land</td>
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<td><strong>Medium Term</strong></td>
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<td>• Threat of gender-based land grabbing is reduced; women accessing land through men are not at risk of denial or eviction</td>
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<td>• Polygamous unions are legitimized</td>
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<td>• Bride price is paid for cohabitees; they and their children inherit from matrimonial land</td>
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<td><strong>Customary marriage is validated by ceremony instead of bride price transfer</strong></td>
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<td>• Gender unequal practices like ‘bride price refund’ and evicting divorcees/widows are eradicated</td>
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<td>• Polygamy becomes less common</td>
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<td>• Wife inheritance is no longer necessary as widows have independent tenure security</td>
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59Ibid.
The *de jure* position on land rights may provide for gender neutrality, but this “cannot be achieved in practice” due to predominance of patriarchy across rural Uganda. Constitutionally men and women *should* have equal land access, but subjective interpretation and unchecked application of customary law risks perpetuating existing gender inequalities. As the traditional heads of household and occupants of most leadership roles, men have greater power to determine whether the household or clan adheres to rules, and who is eligible for protection and for how long. This pattern also ensures men would “constitute the exclusive locus of landholding (if and) when individual tenure is introduced.”

The instrument of law can be used to reinforce or make permanent social injustices such as patriarchy, ableism, stigmatization of war returnees, and socioeconomic inequality. On customary land in sub-Saharan Africa, privatizing and individually titling properties has proven to be “profoundly unhelpful” to the majority of people who live in rural poverty, especially women and the most marginalized. As Hopwood and Atkinson argue, the approach of converting customary to freehold is “legally unworkable and of benefit chiefly to land grabbers” in Acholi. Similarly, issuing Certificates of Customary Ownership (CCOs) to clans could potentially fuel conflict or undermine “natural justice” by alienating land resources from those with “real and historical rights” to it as users.

The Ugandan Judiciary has called for local leaders to “embrace land registration in a bid to curb land grabbing now rampant in Acholi.”

Previously the position of the Paramount Chief, JASLF and other area organizations working in the sector was issuance of titles and CCOs only in instances where land is already individuated, and thus not on Acholi communal land. However the JASLF is now collaborating with Ministry of Lands to secure CCOs at a clan level (though still not for households or individuals), as this may serve to protect the Acholi land system as it operates customarily.

In the short to medium term, the GOU need not regulate traditional law so much

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60 Kameri-Mbote, Patricia (2006), p. 11
61 Ibid, p. 11
63 Ibid, p.63
65 Hopwood and Atkinson (2013), p.63
as support its evolution, such that women’s rights are made more secure and the most marginalized are no longer at risk of landlessness and violence. To do this, some clans need the structural ‘hardware’ that provides for gender inclusion in leadership, so women serve an equal role with men in determining land use. Most also need ‘software’, including sensitization on gender empowerment and social inclusion, so that public understanding of women’s and girls’ rights continues to expand, and marginalized individuals and families derive equal benefits from communal land. Support and accountability are required for both.

**Strengths of Acholi Culture**

While the movement for women’s land rights in Uganda is often portrayed as a struggle against harmful socio-cultural practices, “enlisting indigenous beliefs about fairness as allies” may prove more effective in mobilizing communities to achieve equitable solutions to land injustice. Indeed the revival of traditional values and continued evolution of ‘rights’ as a concept are critical for ensuring the welfare of Acholi’s most vulnerable individuals and groups.

Considerable variation in customary practices stems from the localized power inherent in Acholi chiefdoms, which sit under a respected *ruotmoo* but whose land matters are governed by the clan leadership rather than their chief himself. The highly decentralized pre-colonial clan system is one reason why the Acholi people were not easily ruled by a single direct leader and thus suffered marginalization under British rule. However, the local influence of village leaders is now cited by Hopwood and Atkinson as an emerging strength since “understanding and protecting the rights of those with what might be conceived as second tier claims—e.g. women and guests—requires a very local focus.”

Codifying the varying Acholi traditional principles and practices is theoretically possible, yet could eliminate the very qualities of customary law that are most valuable to women and the most marginalized—namely its negotiability. It is this evolving nature that has allowed gender relations to already improve in some chiefdoms. The number of women now contesting and appealing their degree of land access during inheritance and transition periods further illuminates this “apparent evolutionary strengthening” of women’s land rights claims.

Many traditional leaders accept the existence of women’s rights in theory, illustrated through beliefs that it is wrong to deny refuge to a daughter who returns from a domestic violence relationship, or to neglect to protect widows. Leveraged effectively, the moral authority of these village-level leaders may be useful in building a movement for gender equality around indigenous values. Acholi chiefdoms have publicly stated a desire to redefine their role in guaranteeing the “dignity and survival of women and families”, with the

67 Hopwood and Atkinson (2013), p. 61
Paramount Chief insisting that it is *cowardice* and not *culture* that “makes men do bad things to women.” In efforts to end gender-based violence, he has called upon Acholi communities to “be exemplary in using culture to develop and not as a means for suppressing others.”

Pride in the strengths of one’s cultural group can be a driver of social change. Clan members attribute great significance to *collective identities*, which may be leveraged in the application of shame as well as honor. Acholi clans were once known for unity, peaceful coexistence and protection of their weakest members.

*Acholi customary land is the land we always used together for feeding our children, since those times when the whole clan was free of violence, division and hatred.*

As bearers of the Acholi collective identity, traditional leaders have a natural opportunity to protect, listen to and include women, by capitalizing on the indigenous *value* of fairness and Acholi *tradition* of involving the clan to build consensus in localized decision-making. Deliberate inclusion of women is needed to enhance opportunities for their meaningful participation and active leadership in land management and dispute resolution processes.

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Brian Odwar, Photo 9: Acholi women celebrating
Conclusion
Towards a Gender-Sensitive Integration of Customary and Statutory Law

Uganda has signed various UN conventions that support women’s access and ownership of land and other property rights:

- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted in 1979;
- The Global Platform for Action emanating from the World Conference on Women (Beijing Platform) adopted in 1995; and
- The Habitat Agenda adopted at the 1996 Habitat II Conference in Istanbul.

Domestically, the Constitution has taken steps to mainstream gender by stipulating not only equality but also affirmative action for women. The Land Act further requires female representation for at least one out of five members of the Uganda Land Commission, one third of the membership on the District Land Boards, and one out of four members on Area Land Committees.

Still rural land rights must be determined at the local level. Therefore a combination of national and localized solutions is needed to ensure that both progress towards gender equality in statutory law impacts land users under the customary system, and reciprocally, that gains for women at the grassroots are consolidated. Overly codifying customs can snuff out the strengths of clans as evolving, participatory and adaptive communities. This may inadvertently entrench the status quo gender disparities through the same risks as individual titling, i.e. “favoring male family heads at the expense of those with more conditional rights including women and guests.”

One solution is for households and clans to “encapsulate themselves” as entities that “relate externally to the State as legal persons holding their land under formal tenure, while internally regulating and adjudicating the rights of their members according to their traditions and customs.” Under such an arrangement, women have the opportunity to increase their agency. While ‘rights’ may seem precarious as there is no precise legal meaning attached, their de facto fulfillment can be contextualized within the spirit of the Acholi tradition, appealing to the best of cultural values, rules and protection practices that “occurred mostly in situations where land was plentiful.”

As precepts are socially constructed and embedded, the customary systems governing village life are free to evolve, as women gain relative influence, to meet the strategic gender needs of all community members.

In well-managed customary systems, cohabitees, single mothers, orphaned children and ‘guests’ do have security. In the short to medium-term these protections must be extended to all marginalized persons as beneficiaries of land

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72 Ibid.
73 Ibid.
accommodation. For the longer-term, permanent tenure “should be earned or deduced from an entity’s relationship to the land” with rights “anchored on use and subjected to greater public good resident in the trusteeship over land for posterity.”

Given women’s extensive contributions to land cultivation and husbandry in Acholiland, their future-orientation in reproductive and productive roles, and their community managing capacities as knowledge and culture bearers, such an approach would easily recognize women as “loci for rights’ grants.” Deriving rights from real relationships and contributions can therefore redress “the skewed gender and land relations under customary law” that are further entrenched by preemptive titling of clan land under male leaders.

**Recommendations**

*For law and policy to influence gender relations in the tenure realm, there is need to deconstruct, reconstruct, and reconceptualise customary law notions around the issues of access, control, and ownership.*

Tremendous potential exists to leverage strengths of the traditional system at this particular time in Acholi history. With regards to customary land management and governance, there is already growing awareness among clans that more deliberate inclusion of women is required for peaceful, equitable development. However, the process will face resistance if “men and women who value the principle that land is family-owned are told that their culture is discriminatory and backward.” Thus any change process over the gradual fusion of legal systems should be facilitated transparently and with great care, seeking participation from clans and *Ker Kwaro Acholi* throughout.

1. **Support customary land tenure systems to evolve.**

1.1. Fully integrate women in all decision-making structures and processes regarding access to and use of land:
   - At least one of four members of parish land committees is female
   - Women empowered to participate at household and clan level, e.g. *rwotokoro* and other female leaders

1.2. Build capacity on gender empowerment in male and female traditional leaders:
   - Complying with statutory law on Land Act and Succession Act,

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76 Ibid.
including safeguarding rights of women, children and the most marginalized
  o Gender sensitive facilitation of ADR
  o Importance of following minimum standards for gender inclusion among land committees, during election of trustees, etc.

1.3. ‘Restore’ power to traditional leaders on land matters, conditional on their sensitivity to rights of vulnerable groups and the participation of women in all decision-making structures and processes.

1.4. Sensitize public on gender equality in northern Uganda:
  o Rights of widows, unmarried women, single mothers and their children, divorcees, and other vulnerable classes of clan members
  o Importance of women’s participation in household decisions on customary land access, control, ‘ownership’ and sale

1.5. Greater GOU involvement in promoting and overseeing customary institution’s adherence to law (e.g. Land, Divorce, and Succession Acts):
  o Monitor access, use, and ‘ownership’ rights of women, children, widows, and PWDs under customary law
  o Ensure head of family is held to account on his/her fiduciary duties over family land held in trust

1.6. Consult with female and male leaders of traditional institutions to review PPRRs, ensuring unfair practices are addressed; e.g. those impeding transmission of land to women and children or allowing abuse of land held in family trusts

2. Build political will to amend statutory laws and bridge implementation gaps, in order to more effectively cater for the rights of vulnerable groups.

2.1. Domesticate international conventions ratified by Uganda

2.2. Amend content of statutory laws to redress gender inequities in inheritance and ownership, e.g. under the Land Act (Cap 227), Divorce Act (Cap 249) and Succession Act (Cap 162)

2.3. Resolve ambiguity of roles for LCI and LCII as first courts of instance for land disputes,79
  o Once roles are legitimized and officials freshly elected, LCs must also be trained on gender sensitive ADR and case management.

2.4. Staff and facilitate State justice organs to a functional level in northern Uganda
  o Family and Magistrates Courts, State Attorneys, State Briefs, Victim Services and Witness Protection

2.5. Some respondents preferred to circumvent courts and even LCs due to distrust in public justice system, high costs and time wastage. However as plural legal systems are gradually fused, ‘gender success stories’ of using

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79The 2006 LC Courts Act established Local Council One (LCI) as first court to handle land conflict of a customary nature. This was overruled by 2004 Land Amendments Act that stipulated LCII as first court of instance. As LC positions have not been re-elected since installation over 15 years ago, the GOU must decide how to resolve the conflicting mandates and conduct fresh elections.
designated channels for land crimes should be publicized for deterrence:
  o Highlight instances where an LC ensured a woman’s voice was given appropriate weight before a customary plot was sold, or if she did not approve, the LC refused to endorse the transaction.
  o Raise awareness of gender-based land-related crimes, as well as reporting channels and prevention resources within LCs and police
  o Broadcast cases in which ‘land grabbers’ are convicted of property damage, theft, trespass, unlawful eviction, boundary removal, etc.

Annex I: Data Collection Tools
Available upon request from info@trocare.org
Annex II: Acholi PPRR  
*Principles and Practices of Customary Tenure in Acholi Land* by Ker Kwaro Acholi.

Revised by Arcadia Advocates (2016) and available from [info@arcadialaw.co.ug](mailto:info@arcadialaw.co.ug)

Annex III: Focus Group Discussions

Available data on location and composition of FGDs in Acholiland.

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<th>Sub-county</th>
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