

**Land Rights and Gender in Uganda: Widows' Journeys to Justice in  
Kapchorwa District**

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This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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## **Dedication**

I dedicate this research paper to my Dear Husband Mr. Isaac Chepkurui and our sons Mathias and Jesse. Thank you very much words cannot express your incredible love, support, commitment, reassurance and patience to see that I made it to this far. My God Bless you abundantly.

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## **Contents**

<i>List of Tables</i>	8
<i>List of Figures</i>	8
<i>List of Maps</i>	8
<i>List of Appendices</i>	8
<i>List of Acronyms</i>	9
<i>Abstract</i>	10
<b>Chapter 1 INTRODUCTION</b>	<b>11</b>
1.1 Widows and Land Justice: the Context	11
1.2 Ugandan Legislation of widows equal rights to land.	12
1.3 Researching a Dilemma: Widows' Land Rights under Customary Law	14
1.3 Objectives and Research Questions	14
1.3.1. Main Question	14
1.3.2. Sub questions	14
1.4. Significance of the Study	15
1.5. Justification	15
1.6. Methodology	15
1.6.1. Area of study:	16
1.6.2. Sampling	16
1.6.3. Primary Data collection	17
1.6.4. Secondary data Collection;	18
1.6.5 Data Analysis and Presentation.	18
1.6.6. Ethical Consideration	18
1.6.7. Limitations to the study	19
1.7. Overview of chapters	19
<b>Chapter 2 : CONCEPTUAL FRAMEWORK</b>	<b>20</b>
2.0. Introduction	20
2.1. Land Rights and widows	20
2.2. Land Tenure Systems in Uganda.	21
.2.3.Human Rights Based Approach to Widows Access to Land and justice	23
2.4. Intersectionality and widowhood.	24
2.5. Conclusion	25
<b>Chapter 3 . Widows Land Rights: Main causes of widow land violations</b>	<b>26</b>
3.1. Introduction	26
3.2. Death, Dispute and Violence	26

3.4. Inheritance Norms	28
3.5. Lack of Property Will	31
3.6. Lack of Education	32
3.5 Conclusion	33
<b>Chapter 4 : JOURNEY TO JUSTICE AND INJUSTICES</b>	<b>34</b>
4.0. Introduction	34
4.1 Institutions providing justice	34
4.1. Lack of information and knowledge about Legal Procedures	36
4.2. Lack of Legal Aid Services	37
4.3. Political, cultural and self-interested individual hindrances	37
4.4. Lack of Land Title and Clear Documentation	38
4.5. Lack of confidence and clear presentation of evidence.	39
4.6. Corruption	40
4.7. Long bureaucracy involved in court cases	40
4.8. Accessibility and effectiveness of the court	41
4.9 Summary of reviewed court case file at Kapchorwa Chief Magistrates court	42
4.9. Strategies to secure land by widows	43
4.10. The suggested ways to support widows land rights and access to justice	44
4.11. Conclusion	45
<b>Chapter 5 Conclusions and Recommendations</b>	<b>46</b>
5.1. Conclusions	46
5.2 Recommendations	48

## **List of Tables**

Table 1 where widows go to seek justice	34
Table 2 summary of reviewed court files	42

## **List of Figures**

## **List of Maps**

Map 1 land tenure systems in Kapchorwa District .....	55
Map 2 Uganda showing District- Particular Kapchorwa .....	56

## **List of Appendices**

Appendix 1 Interview Guide for Data Collection July-August 2015	56
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## List of Acronyms

CAFHUR	Community Action for Human Rights
CBOS	Community Based Organizations
CEDAW	Covenant on the Elimination of all forms of Discrimination against Women
CFPU	Child and Family production Unit
CPS	Central Police Station
ESCR	Economic Social and Cultural Rights
FAO	Food Agricultural Organization
FDGs	Focused Group Discussions
FGM	Female Gentile Mutilation
FIDA-(Uganda)	International Federation of Women Lawyers
IFAD	The International Fund For Agricultural Development.
ILDO	International Law Development Organization.
LC1	Local Council One
LCV	Local Council Five
MAAIF	Ministry of Agriculture, Animal Industry and Fisheries
NGOS	Non-Governmental Organizations
OC	Officer in charge
OHCHR	Office of High Commissioner for Human Rights
RBA	Rights Based Approach
RDC	Resident District Commissioner.
RPC	Regional Police Commander
UDHR	Universal Declaration of Human Rights
UG	Uganda Government
UNDP	United Nations Development Programme
UNDP	Uganda National Development Plan
UNHS	Uganda National Household Survey

## **Abstract**

The study investigated the land rights of widows and the challenges faced when they try to look for justice. The study considers how widows engage with existing institutions, such as the Magistrates courts, the police and civil society among others in Kapchorwa district. The gender dimension concerns the efforts of widows to seek remedy with the main focus on customary land tenure. The study considers factors that influence the outcomes of such land claims by widows in Kapchorwa District. A central concept in the study was land rights, which were approached from a rights-based perspective. RBA to land rights of women are viewed as basic human rights. Among the key study findings were that 1) widows land claims under customary tenure are complex, sensitive and fragile; 2) if not handled in a fair and appropriate way, formal courts, police and other authorities can even exacerbate the vulnerability of widows and their entire households; 3) the problems of widows in seeking land justice include violence. The study found that widows' efforts are constrained by patriarchal cultural norms, expensive and long bureaucracies of legal procedures coupled with lack of knowledge about the legal processes, corruption and limited enforcement of rights. It is critical that any crimes committed against widows due their vulnerability should be dealt with rapidly and effectively by the police and courts, rather than allowing impunity for perpetrators. Protecting this vulnerable group of women's land rights requires legal courts and police institutions to embark on a more rights-based approach that focuses on social justice and empowering the most vulnerable and marginalized groups in society.

## **Relevance to Development Studies**

The Land is a critical component in poverty reduction and empowerment for widows and other vulnerable women in rural areas of Uganda (Kapchorwa in the case). Land also has an essential relationship to socio-economic livelihoods, including those of widows and their families. When denied access to land, widows are exposed to additional risks of discrimination and even violence. They can also become victims of social, economic and sexual exploitation, and even torture and sexual violence. These can often be linked to the consequences of land disputes. Poor management and legal handling of land claims and attacks on widows, motivated by land seizure, can have a deep impact on widows' lives, survival and can contribute to increased gender inequality. To deal with this, lessening impunity and providing compensation could be a start in a more rights-based approach. District government should ensure those widows' land rights are guaranteed under the law effectively and not only on paper. Gender equality can enhance poverty reduction and ensure sustainable human development.

**Keywords;** Land rights, customary tenure, widows and access to justice

# **Chapter 1 Ownership of land: Acritical aspect for widows empowerment**

## **1.1 Widows and Land Justice: the Context**

One of the gateways for people to escape poverty in rural and agricultural communities is through the land assets (Lastarria-Cornhiel et al 2014: 117). In fact, land is a vital means of rural livelihoods (Ikdaahl et al 2005:1), with millions of women depending on it as a source of livelihood in Latin America, Africa and Asia (Benschop 2004:4). Even though millions of people all over the world are affected by the absence of security of tenure for land, widows face additional risk and denial from accessing land. Various thinkers, donors and policy makers have identified the significance of access and ownership of land as a critical factor in increasing productivity that can enable people to graduate out of poverty. Yet, Inheritance is a main source of acquiring land assets in rural and agricultural communities (Cooper 2012, Doss et al 2012,) While women in Sub-Sahara, in particular, the widows still struggle to secure land rights as a result of existing pattern of asset inheritance in Africa (Cooper, 2012:1-2, Peterman 2012:5). In Latin America, the principal means of women acquisition of land is deeply embedded in inheritance, even though it is more likely for men to inherit land than women (Doss et al. 2012:597-598).

The Lack of access to land has a direct impact on a widow's prospects or restraints on the incomes for livelihood that consequently makes them more vulnerable to impoverishment and severe chronic poverty. Uganda in particular, widows are among the poorest people who have continued to experience deprivation of productive resources including access to land as a result of discriminatory customs in the event of their spouse's death, the number of widows is ever increasing for instance from 874,000 in 2010 to 940,000 in 2013 (Uganda National Household Survey 2013:155). Moreover, they rely on subsistence farming, and over 82% of the widows are household heads with a large number of children to take care of plus others dependents. Unfortunately, even their literacy levels are estimated at 50% of those who have never been to school (Uganda National Household Survey 2013:154). Thus, secure land tenure and rights to land for vulnerable widows is critical and deserve attention especially if protected by legal institutions mandated to provide justice in the case of such violations.

In many sub-Saharan countries, statutory laws may guarantee a widow to inherit land and property however, Patriarchal systems deprive widows of land and property rights, it privileges males as the sons not the widows inherit land and at times brothers to the deceased. In fact with the increasing population and individualization of land widows are increasingly falling victims of land denial and violence (Asiimwe 200:125, Peterman 2012:7). Widowhood in Uganda is like a "curse" in the family of the deceased. Denied rights and property grabbing from widows causes immense depression to widows. As said by Lotspring at the time of mourning "the widows are anxious and grief stricken because they do not know what is going to befall them at the end of the morning period" (Lotspring 2007:258). Widows in polygamous marriages

are even worse as they are likely to face discrimination and conflicts over property from fellow wives, step children and brothers in law. Unfortunately even the law in Uganda does not recognize polygamous marriages (Lotspring 2007:259). While the widows experience such violations widowers (men) simply continue with their lives without any problem because customs believe all property belongs to males (Asiimwe 2001). Widows in rural areas are more prone to such violations because customs may still be stronger and it is hard to reach settings where access to law and legal justice services may be difficult. Thus, secure livelihoods of widows require tenure security and protection of land rights especially in patriarchal societies like Uganda.

International Development Law Organization (2014) notes that “law is an essential tool for advancing women’s rights and gender equality. When a society is governed by the rule of law, with an accessible and just legal system women can thrive, contribute to the system and improve it for future generations. An effective legal system based on the rule of law is central to assisting women to become equal partners in decision-making and development” (IDLO 2014:8). This implies that land justice is critical for a widow to enjoy land rights in the event of a violation. This research analysed how customary law and norms violate the land rights of widows in Kapchorwa district and how these women have tried to access justice and remedies to secure land using existing legal and other relevant institutions in the district.

## **1.2 Ugandan Legislation of widows equal rights to land.**

According to the Constitution, widows are guaranteed to inherit their husband’s land and property. This is done through the parliament passing legislation to govern such rights as stated in Article 31(2) “Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses” (Ugandan Constitution 1995).

Inheritance matters in Uganda are thus governed by “both statutory laws and informal use of customary and Islamic laws” (Bennet et al 2006:454). Thus, “The 1995 constitution and Succession Act (Amendment) Decree No.22/1972” (Asiimwe 2009:125). Article 33 recognizes the rights of women and sets precedence for Affirmative action for all “marginalized groups” by gender, sex or any other discriminatory cultural practices. Article 21, it provides that “all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respect and shall enjoy equal protection of the law” (Uganda Constitution, 1995).

Similarly, Article 26, clause (1-2) guarantees individual’s right to hold property as a person or with others, and “no person shall be compulsorily deprived of property or any interest in or right over property of any description” (Uganda constitution 1995). This guarantees equal rights to land for both men and women. Furthermore, women’s land rights have also been

reflected in a number of policy frameworks such as the Gender policy 2007, Land Act of 1988 and Land Policy 2013 and other legal provisions to enhance gender equality (Rugadya 2012:1-8).

Besides, the national legal framework Uganda is a signatory to a range of international human rights treaties and conventions including CEDAW<sup>1</sup>, Uganda has ratified the Protocol to the African Charter on Human and people's rights on the rights of African women<sup>2</sup>. To promote gender equality and women human rights. Despite this, disparities in land rights continues to prevail in Uganda. To these some scholars and women activists have challenged the discriminatory nature of some laws on women's land and property rights in Uganda. For instance inheritance laws and marriage and divorce which have been undergoing review for about 20 years (Asimwe 2011, Kafumbe 2006, Rugadya 2012,). Though, women may face discrimination than men either in customary and formal land tenure systems, widows situation tends to be worst when it comes to implementation and enforcement of policies by mandated institutions has not done much in protecting vulnerable women. Discriminatory traditional rules and practices against women as argued by many scholars continue to override the statutory laws in the enforcement of widow land claims( Doss et al. 2014:83, Obaikol 2013, Rudy et al. 2014:1).

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<sup>1</sup> Uganda signatory to many Human rights cedaw 22 July1985  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>2</sup> Ratification on the protocol to African charter on Human and people rights 22jul 2010 <  
<https://www1.umn.edu/humanrts/research/ratification-uganda.html>>

## **1.3 Researching a Dilemma: Widows' Land Rights under Customary Law**

In South –Asia, Africa in particular, women are systematically deprived of their fundamental human rights to control, own, access, or inherit land and property (Benschop 2004:1, Doss et al 2012), whether as mothers, daughters, widows, or any other female relatives of the deceased. In most developing countries, numbers of reported cases violation of widows land rights and in-laws evicting them upon the death of their husband are alarming. Widows are not regarded to be part of the clan since they are expected to return to their original families or fend for themselves, indeed little than 32% of widows in sub-Saharan Africa hardly inherit assets, with land inclusive. The value of inheritances, especially land for widows is substantial in defining improvement in long-term household well-being (Benschop 2004:2, Peterman 2012: 2-5). This study explores widows in Kapchorwa District in Uganda who suffer from unequal patriarch inheritance norms and laws as revealed by study findings analysed in the Chapters 3 and 4.

### **1.3 Objectives and Research Questions**

The research objectives are both to analyse the ways in which customary tenure and law have denied land rights of widows and to investigate how these women have gone about to seek justice to injustices within existing institutions in Kapchorwa District.

#### ***1.3.1. Main Question***

How has customary land ownership system discriminated and violated widows land rights. And how have the widows utilized the legal institutions to secure their land rights?

#### ***1.3.2. Sub questions***

1. What are the main causes of widow's access to land and ownership rights violations?
2. How have the widows engaged with the court to seek access and remedy for violations of their rights to land?
3. What are the main challenges that militate against their efforts in using the court to access justice?
4. What measures are these women adopting to secure better their land rights in future and how are the relevant stakeholder in the district addressed such to enhance women's access to justice?

## **1.4. Significance of the Study**

Widows' access to land is closely related to human rights and development. If widows are enabled to enjoy their rights to access, own property (land) and provided with opportunities as equal to men, it can lead to numerous positive outcomes. In Uganda, the land is a central concern for many households since it forms the basis for most rural livelihoods. Whenever people rely mainly on land for their income and food needs, land rights play a massive role in ensuring a secure livelihood, food security and even employment. The problem is that despite their contribution, widows are continuously being deprived of land through violent or subtle ways sometimes based on discriminatory customary norms (Garber 2013:14, National Development Plan 2010:31-31). Academically, this research will contribute additional knowledge in the sphere of development and the struggles for gender equality for women empowerment. It will also be relevant for women groups and legal institutions and civil society handling women land rights claims to identify strategies for improvement.

## **1.5. Justification**

Despite the fact, the Uganda is continuing to enhance gender equality in all spheres through legal laws and policies and being a signatory to many international, regional human rights treaties. Unfortunately the right of women to land is still lagging behind. This has raised critical concerns, criticisms and advocacy among scholars, women activists and civil society concerning the gender-discriminatory policies and the limitations confined in them, for example, the succession act (Asimmwe 2009:127, Doss et al. 2012:598, Kafumbe 2006:100). Vulnerability and discrimination of widows from accessing productive resources including land raises lasting questions that need answers. Moreover, more than 50% of widows are uneducated, and land means everything for survival (Uganda National Housing Survey report 2013). Therefore secure access to land is critical for their well-being, especially if protected by the law and institutions mandated to dispense justice.

## **1.6. Methodology**

This research used mixed methods mainly qualitative and partly quantitative. Qualitative interview necessitates the use of descriptions and natural surroundings suitable for focused groups discussions and interviews. As observed that "a qualitative interview allows the researcher to explore and get information of the lived experience of people" (Brinkmann and Kvale 2009:11). This become visible during data collection as key respondents shared their experiences about their land rights concerns openly.

For purposes of triangulation defined as "a process of using multiple perceptions to clarify meaning, verify the repeatability of an observation or interpretation" (Stake 2000:443). I used various techniques of data collection to verify and allow deeper reflection and understanding of key issues surrounding

widow's access to land and justice in Kapchorwa. In-depth interviews with key respondents who could provide vital information to meet the research objectives thus; widows, judicial and police officers, NGO and civil society staff, local councils and clan leaders and some government officials charged with similar responsibility of protecting land rights. As stated by Bernard (2011:157-158) that in depth interviews are relevant in a situation where you may not get another chance with interviewee. This was vital because some respondents had busy schedules. I also reviewed court case files involving women land disputes/claims in the Chief Magistrates Court for the period 2005 to 2015.

These techniques applied enabled critical analysis of findings and appropriate literature on land rights and gender justice in Kapchorwa district within the rights-based approach considering in mind the different notions concerning women and land rights especially in a male dominant society with robust cultural norms.

### ***1.6.1. Area of study:***

Kapchorwa District lies on the slopes of Mt Elgon in Uganda. The district population according to the National Population and housing census 2014 is currently estimated at 104,580 with annual growth rate of 2.87 out of this women account for 53,411 and men 51,169. Over 92,235 of the total population live in the rural areas<sup>3</sup> Subsistence farming is the main economic activity and source of livelihood in Kapchorwa. Women provide most of the farm labor work in addition to unpaid household work yet women have no control, claim over land and decision making as a result customary tenure system (Doss et al 2012:86-92, Soini 2007:23). Kapchorwa district is known for its strong cultural practices that discriminate and violate women human rights like female genital mutilation. These customs also exclude widows from land ownership (Alinyo and Leah 2012:340). Therefore, the experience of widows in this area deserve investigation to help us understand how women can secure their tenure right through the justice system in such an area

### ***1.6.2. Sampling***

The sample size and choice of respondents involved in the interviews conducted in the field was through purposive sampling. This technique enabled me to select eight (8) key respondents who included; the police and judicial officers, district land board chairperson, the resident district commissioner, local council court president, clan leaders, elders and staff in NGOs working in areas of human rights and land rights in the area. Also, seven (7) widows who are parties to land disputes and claimants for justice

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<sup>3</sup> Uganda Bureau of statistics (2014) National population and housing census 2014, provisional results. November revised version.  
<<http://www.ubos.org/onlinefiles/uploads/ubos/NPHC/NPHC%202014%20PROVISIONAL%20RESULTS%20REPORT.pdf>>



were also interviewed. The total number of respondents interviewed was fifteen (15). For the focus group discussion, I selected 6 participants each for two focus group discussions making a total number of 12. Thus, the overall number of respondents who participated in the study was Twenty-seven (27)

### ***1.6.3. Primary Data collection***

Data collection started from 13<sup>th</sup> July to 28<sup>th</sup> August 2015. I conducted Individual in-depth interviews with both key informants and respondents using an interview guide with set of question. Semi-structured interviews with focused group discussion using open-ended questions. 2 focused group discussions with 8 participant's each were conducted as articulated by Cronin (2002:165) that small groups are feasible and allows the researcher to explore and get insight knowledge, perceptions and views of participants on a particular topic under study and also easy to moderate. Also, interviews were conducted in safe and conducive environment that could be appropriate due to the various natures of settings in which the interviews were conducted while in the field, for instance, home, office, court, memorial service among others. The interviews involved one on one conversation. I was flexible to adjust the guide during the conversation to allow the flow of the discussion if there was more information relevant to the study.

Court records on Land cases reported by widows were reviewed in Kapchorwa Chief Magistrates Court for the period 2005 to 2015. This was done to supplement information gathered from respondents and to understand more on the nature of land violations cases reported and how the court handles such cases. Looking at the records enabled me to sample a few files to examine more details and identified the parties to the dispute including their contact information. This became a reference point to identify the key informants (widows) who have had their cases reach court. I was then able follow them up the (widows) especially those within reach to discuss their experiences in details. Much as I was particular on customary land and individual titling I was able to have a general understanding of land claims brought to court by women.

Both focused groups and in-depth interview conversations were recorded with consent from participants as articulated by Bernard that "Don't rely on your memory in interviewing; use a voice recorder in all structured and semi structured interviews, except where people specifically ask you not to do" (Bernard 2011:170).

In addition to the interviews, focus groups and court file reviews, I also used some observations to gather extra information that could not have been brought forward directly. I was invited by one of the organization in the field of human rights in the district (CAFHUR) to attend a mediation case for a widow on the 8th August 2015. This was equally important because I was able to observe a lot of aspects on how the widow presented and defended her case;

it also showed me how the defendants try to reason them out basing on customary norms of land tenure. In this instance, the accused decided to deny the widow right to access, use and own land just because it was family land and his other brother had a dispute with the widow.

#### ***1.6.4. Secondary data Collection;***

I collected secondary data by undertaking desk review of published literature, journals, text books, reports, and international human rights instruments, land laws, and policies of Uganda, Constitution of the Republic of Uganda 1995, unpublished reports and various publications that were essential to the re-search.

#### ***1.6.5 Data Analysis and Presentation.***

During interviews and focus groups, permission was sought from respondents and information was recorded in addition to field notes. These were later transcribed to facilitate data analysis. Qualitative analysis was used to interpret data and make conclusions from field findings relevant to the study topic. First all the interview, field notes, and recording were referred severally to verify information. The data was then coded methodically to get relevant data that could help in drawing conclusions for each research question. The emerging themes and information were continuously compared with field notes and observations to enable uniformity of analysis whereas looking for similarities and differences between them so has to have a clear understanding of data in the context widows land claims and access to justice.

#### ***1.6.6. Ethical Consideration***

Land matters are very complicated and inclined to the lives of people especially vulnerable and needy groups. As articulated by O'Leary that ethical matters should consider "ensuring that respondents have given informed consent, ensuring no harm to respondents, confidentiality and if appropriate anonymity" (O'Leary 2014:64). Ethical issues were carefully looked into through the entire data collection. Critical ones such as consent, explicit information, voluntary participation, confidentiality and respect of vulnerable women and all respondents were crucial during the study. To ensure the participants understand the importance of the study, I explained the nature and purpose of the research to the relevant respondents during the time of obtaining appointments and during the interviews. I used the ISS introductory letter and identity card to support field objectives. I was aware of possible bias and perceptions as the research study was carried out in my district. But to ensure that the bias did not affect the credibility of this study, my views are clearly indicated if it's applicable in this study. Above all, due respect was accorded to the entire process of research as emphasized by scholars that "ethical principles should not be limited to data collection but deserves

attention from the start to final dissemination of the report” (Kvale and Brinkmann 2009:62-69).

### ***1.6.7. Limitations to the study***

Being a rural based research, I faced the challenge of transportation to get to the residence of the informants due to impassable roads. It was rainy season and at some point people, were busy with day to day activities like harvesting while other were planting, so getting them immediately to participate in the study was quite difficult. I tried to deal with these obstacles by spending more time in the field and even wait for respondents returning from work in the evening. Whenever I could not meet a participant I secured another appointment and followed up. The court case records on land cases lodged by widows were mixed up in the general register including those referred from Bukwo and Kween districts. I had to create more time to review and read in-depth the file while asking for guidance wherever clarification was needed.

However, I was not able to access some register from 2005 to 2009 because it became difficult for the office supervisor-in-charge of records to get them. I was able to review files from 2009 to 2015 only. Then I sampled ten individual case files to review. The officer in charge case file records could not tress all the files due to massive case backlog I then reviewed 6(six) files out of 10. Secondly I had anticipated attending a court hearing on widows/women land claims to observe some features on faced by the widow but it was not possible at the very time of collecting data because court was on recess for civil suits. But this was compensated by attending the mediation stated earlier.

### ***1.7. Overview of chapters***

This paper is structured into five chapters; Chapter one has introduced the research topic, back ground to the study while explaining the relevance methodology. Chapter two discusses the conceptual framework and relevant literature in relation to widows land rights, land tenure and rights based access to justice. In Chapter three and four, the field data is presented, discussed and analysed with key findings identified. And lastly Chapter five is conclusions and recommendations.

## **Chapter 2 : CONCEPTUAL FRAMEWORK**

### **2.0. Introduction**

This chapter discusses the bane of widow extensively in accessing land in Uganda. First I discussed the Ugandan Legislation of women equal rights to land. Then through the lens of various concepts such as land rights, land tenure system, rights-based approach, and intersectionality, I critically and appropriately set the foundation to addresses the research questions, interpret and analyze the data later in chapter four of this study. It becomes imperative to discuss these concepts and see how they will enable us to make sense of data collected on the field. But first, let us look at the Uganda legislation on women

### **2.1. Land Rights and widows**

Women's access, control, and ownership of property, in particular, land is justifiable for achieving sustainable development (Fortmann et al. 2006:160). Widows like other women need land including housing to have a safe home to live, viable means of livelihood and ability to access credit in the current monetized global world which requires land as security. Without these land rights widow is bond to a cycle of poverty and destitute.

Land rights as a concept provided the foundation for this study by exploring the land rights claims of widows and assess the challenges they face in seeking to enjoy fully the legal guarantees that formally exist. Since this study aims is to understand how the roles of different stakeholders mandated to protect and enable the fulfilment of widows land rights, operate in practice in supporting the efforts of widows seeking remedy for land claims. The concept will enable us to identify the different Land rights violations experienced by widows.

Land rights according to Nneamaka refers to "...inalienable ability of individuals and groups of individuals to obtain, possess and utilize land at their discretion, so long as their activities on land do not violate the inalienable human rights of others as outlined in numerous international human rights agreements" (Nneamaka 2009:16). In line with Article 17 of the UDHR and Article 26 of the Constitution of the Republic of Uganda provide for "The right to own property either individually or in association with others" (UN General Assembly 1948 and Uganda constitution 1995).

Additionally every individual is entitled to land rights based on International Human Rights Treaties and Conventions. Under the Universal Declaration of Human Rights, Article 1 guarantees that every person is equal to the other and has rights to own resources endowed to them. Article 7 stated that every individual is equal before the law and deserves protection. Women's

Rights including land rights are upheld under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It provides that parties to the convention must ensure women enjoy equal rights of ownership of property in marriage and restraint all forms of discrimination (Theo Van Banning 2004:22). Uganda has become a party state to these treaties. Thus, it has made a global commitment to protect rural women.

According to Agarwal (1994) refers land rights as “claims that are legally and socially recognized and enforceable by an external legitimized authority, be it a village level institutions or some higher-level judicial” (Agarwal 1994:235). The realization of Land rights offers widows the opportunity to access, use control and exchange rights that also include the utilization for other related benefits. It’s important to understand that these rights originate from different sources such as inheritance, communal basis or joint family purchase. “The enjoyment of these rights is dependent on the enforcement. If rights remain on paper women are bound to inequalities” (Agarwal 1994:19).

## **2.2. Land Tenure Systems in Uganda.**

Land tenure is a concept that looks at how people gain access to land and how they make use of it. In the wider African context, in particular, Uganda majority of its land tenure is commonly depicted as traditional or customary and state or statutory (Coutla et al. 2004:1). In Sub Saharan communities, there are cases where women's land ownership is problematical by the gender dogma that women are ineligible to own personal property, most especially land and housing. Women who own properties are likely to be labeled as self-assertive and uncontrollable, and therefore not marriage worthy (Quansah, 2013:141)

Land is a significant resource for sustainable livelihoods in rural communities and human development. The majority of African rural women play a prominent role in agricultural production making the aspects of laws, statutory machinery, cultural norms and local practices that influence their access to productive resource and land very necessary. Whitehead (2003) argues that factors that affect women's land rights are diverse and complex noting that “norms, practices about women's land access as well as who get land, how much and from who are not static but have changed and are changing-over-time”(Whitehead et al. 2003:67). Historians and anthropologists have stressed that the meanings, concepts and perspectives relating to African land tenure forms can be traced from colonial history where a new framework of land holding was introduced as African communal land forms were viewed as backward and not providing individual rights/ownership of land which was associated with economic development.

Chanock (1991), who looked at the development of colonial property law in Africa, said that first British colonial leaders advanced a mutual framework for understanding land tenure system that subjugated the entire colonial era (Chanock 1991a:73 cited in Whitehead et al. 2003:67). It is argued that in

Uganda, the British colonial administrators introduced new tenure holdings. It includes customary, freehold, leasehold and Mailo land which the post independent colonial state renormalized in the national law and national land policy – characterizing the current land tenure system in the Uganda (Constitution of Uganda 1995, Land Policy 2013:15-20).

Article 237 of the constitution declares that Land belongs to the citizens and is bestowed by the four forms of land holding, and people have the freedom to own land in association with others or individually. Within these four tenure forms, customary land tenure continues to be the primary system of access to land for majority population in Uganda (National Land Policy 2013:17). Being one of the economic arrangement preferred for peasant farming within the custom as the colonial administrators sought it would be more disastrous to transform customs since it would impact negatively on the administration of local communities under the leadership of kings and local chiefs. Thus to please these leaders and strengthening political supporters for active colonial administration in Uganda, policies that considered customary land was holding as non-registered where introduced besides the other two tenure forms leasehold and mailo that had been reformed as registered tenure systems (National Land Policy, Draft 6, 2010). Bassett also argues from this perspective that the British colonialists employed the perception of communal African land tenure to advance their interest of control over land by instituting the legalized rights to separate land by crafting crown land and proclaiming the unused land belongs to the government (Bassett 1993, cited in white head et 2003:68). New forms of western property ownership like leasehold and freehold were introduced to provide individual property rights and related policies which included formal legal pluralism were the statutory law with customary were created and recognized as alienate systems in the regulation of land rights. This dichotomy of rights to property related to tenure forms and management, whose preservation and effective implementation has evolved to be complex and perplexing in the contemporary changing social, economic and political environments is a manifestation of current land conflicts in the country (Uganda National land policy 2013:1-3)

The current state of customary concept of land tenure systems is relevant to the study in answering and understanding the type of tenure holding that these marginalized rural women could be seeking claims and protection. Land tenure system has a direct link with Land rights concept. Tenure systems will be helpful in identifying how women access to land and it regulations within customary tenure as well as exploring violations/deprivations experienced by women particularly the widows

## **2.3. Human Rights Based Approach to Widows Access to Land and Justice**

The application of Human Rights-Based Approach provided an overall understanding of the conceptual framework for this research paper. According to the UN Office of the High Commission for Human Rights OHCHR (2013), Rights based approach is based on International Human Rights principles and standards that emphasize the approach as a better strategy to the realization of women's access to land and other vital resources. This approach considers the main needs of vulnerable women with much emphasis to protect and promote their rights, including meaningful participation of women at all stages. In this way, it visualizes that the women are empowered to know and claim their rights and ensure the need for accountability of stakeholders and access to remedies for women in situations when their rights are violated (UN OHCHR 2013:14-15)

The Rights Based Approach stands on principles of human rights as interrelated and interdependent, universal, equality and non-discrimination, participation, transparency, sustainability, empowerment, accountability and rule of law (UNIFEM 2007:19-37). Each person is entitled to rights as a human being. Equally all human rights are interrelated and interdependent, therefore, the realization of one right often dependent on each.

The concept of RBA is centered on the values of justice for vulnerable groups. These values of justice are highlighted by Hicky (2009) which include; equality, equity, dignity, inclusion, and respect. The author's view of justice is that rights cannot be achieved alone. It requires the participation of the right holders and empowering them to know and demand them will enable the achievement of the rights entitled. For Hicky, advocates or those in authority who are mandated to protect and deliver justice to the vulnerable groups tend to pay little attention to their empowerment (Hicky et al 2009:166). It goes without discussing the critique of applying rights-based justices. According to Gready (2005) RBA is unequivocal about the qualitative scope of justice through its normative context centered on human rights on the one hand, but the reality of establishing this parameter are difficult on the other hand. At times human rights principles in the justice arena are insufficient to provide suitable protection of rights violated, for example, in a civil case, on the other hand, the existence of multiple normative orders in the society are overlooked seeing from international sphere and the societal norms or the "living law" (Gready 2005:180-181). As pointed by Gready that much as they are accepted as the standard, hierarchical affiliations amongst them are presumed normative which do not relate to reality. For example "independence" is not necessarily worthy in the perspective of informal justice structures where kinship dominant is critical. While it's implicit that delayed and failures in justice can impact economic development, to the poor there are even more

crucial problems to their livelihoods and lives are even endangered (Gready and Ensor 2005:180-181).

Nevertheless, according to Tapscott (2012) Rights Based Approach is relevant for development and realization of human rights goals. Rights Based Approach has the following advantages according to the author. When women access to land there is increased agricultural production and reduced food insecurity, women with land rights make longer-term and also promotes equitable security to access, use and own land for all (Tapscott 2012:42). Thus, this approach provides a relevant framework for the study to assess all the underlying factors and various aspect of women's on challenges to access justice and how this has affected their enjoyment of other human rights entitlements. It is, however, helpful in examining the level of institutional accountability to their claimants.

## **2.4. Intersectionality and widowhood.**

The research will used the feminist theory of intersectionality and incorporate it as an analytical tool to enhance data analysis. It has been observed that, “intersectionality is one of the most important theoretical contributions of the feminist’s scholars that look at constraints and interlocking factor to perpetuate gender discrimination and inequality” (McCall 2005). This concept offers scholars the opportunity to interpret the differences between women which results in practical claims that can be applied in the realm of policy formulation and implementation. It helps institutions to address women diverse problems by offering potential ways of understanding women’s lived through investigating individuals multifaceted and complexity identify. Thus, it decentralizes gender as a category with possibility to contextualize other identities such as sex, social status, disability, and culture. It allows the analysis of the relations between them and how they construct lived experiences of women as a group or individual (McCall 2005: 1771).

In fact, the theory looks at the society being a response to the individual through the creation of diverse identities derived from the social relation and cultures that discriminate on the basis different identified created to define an individual. It focuses on interconnectedness of the identities by allowing us analyse how systems of power relations and inequality are produced and how it affects individuals, groups, and communities separately while exploring how these power relations change over time within different spaces of social, political and economic in a multi-layered structure( Winker and Degele 2011:51-52).

As a framework the concept emphasis that it is not enough to know that women are marginalized as a gender, but also, to consider a combination of factors like class, race, gender identity, religion, disability and socioeconomic status to understand the inequalities and discrimination encountered. It entails knowing how different dynamics of identity produced to categorize the



similarities and differences experienced by these particular women to advocate for solidarity and equality. Intersectionality will be critical in exploring how gender and other social relations such as class, education, geographical location, marital status affects a person's access and treatment by those institutions in charge of delivering justice and ensuring people's rights and understand justice as an outcome by exploring pathways

## **2.5. Conclusion**

I discussed the concept of land right and land tenure related issue in Uganda. While the concept of Rights based approach stress the existence of direct connections between lack of access to legal remedies and deterioration in people's wellbeing. Most importantly, to understand the conventional linkage concerning access to legal remedies, reproduction of deprivation based on a causal relationship analysis. Even when the legislations of Uganda provide safe security and redress for gender equality in land matters for both men and women. The situation in practice does not seem satisfactory in protecting women interests to land and rights. Widows in Kapchorwa district enjoy limited rights because of the interplay of patriarchal norms and existing statutory laws providing land rights.

## **Chapter 3 . Widows Land Rights: Main causes of widow land violations**

### **3.1. Introduction**

Understanding the roots of injustices behind why widows seek remedy in existing legal institutions was vital during the field study.

In this chapter, I present, analyze and discuss the study findings that are organized under themes developed around the study objectives and research questions. I discuss the underlying factors behind the violation of widow's access and ownership of land. This includes but not limited to disputes and violence, inheritance norms, lack of property will, and education.

### **3.2. Death, Dispute and Violence**

According to the findings, land was the primary source of many disputes in the district especially for widows. A Police officer upheld this assumption;

“in this district majority of the land is customary and much of the land disputes and claims reported are just around the customary land where the family members have a lot of powers”(Mr. Musumba, OC station 22/7/2015).

It was noted that the causes of land rights violations are diversely interlinked and experienced in various ways among widows and committed by different actors. Deininger (2006), says that land conflicts can have a negative bearing on productivity and equity of female-headed households and widows making them vulnerable and needs to be looked from a social and economic perspective for equity and protection of women land rights (Deininger 2006:17).

The findings indicated that death is the first thing that triggers land disputes and violations of rights to access, use, and control land. The widows interviewed expressed misery of their status after the death of a spouse;

“If I could be given an opportunity to choose, I would never elect to be a widow. For sure I had peace and security when my husband was still alive, no one showed up claiming our land given to us and those we bought”(Chesha Mary, Aged 37. Interview on 17/7/2015)

Widows are vulnerable to Land and property grabbing may take a form of gender based violence as widows are forcefully evicted or threatened from her matrimonial home and land either by husband's relatives, neighbors, traditional or clan leaders, making the widows unable to even take her own property (Izumi 2007: 12). Another widow stressed that;

“The day my husband was laid to rest was the beginning of all these problems I am facing today. I never step my foot again into my garden, his brothers said I am now useless to them since their beloved one had gone. They said to

me that my land would only be useful if I leave children behind, and I go to our home” (Kokop Chebet, Aged 50. Interview 5/8/2015).

Such expressions as we can see above indicates that widowhood is a status that no women wish for because they are exposed to the insecurity that they had not faced before the death of their husband. Loft spring asserts that when a woman husband died, it leaves her in a vulnerable economic circumstance in a “society where women seldom own land and, due to devastatingly unequal inheritance laws and customs have little means to support themselves or their children when widowed” (Loftspring 2007:243). One thing that is clear from this study so far is that widows often fall victims of denied access, use or control of land upon the death of her husband as a result of disputes that include land grab, boundary conflict, inheritance and cultural norms. A widow can be denied ownership, control or restricted use of the land by the brothers/relatives of the deceased. The District Police Commander revealed that some widows go into drinking alcohol because of depression and end up committing crimes as a way of fighting to claim her land. As a result, they end up pursuing another case rather than the land in question on one hand. On the other hand, the opponents organize crimes such rape and battery against the widow. Especially when she has reported her case of land denial, the intentions are to disorganize and distort her from perusing land case and focus on the criminal case. According to him;

“Up to 80 incidences of land cases annually are reported to police by widows. These issues include; malicious damage to crops and property, assault, threatening violence, criminal tress pass, eviction, and rape”(interview with District police commander on 23/7/2015).

It was pointed out that widows are abused by those interested in their land at the time they were looking for a remedy to secure their land. Clan members committed these actions, close relatives of the deceased, self-interested individuals, step-children, their sons, and daughters. According to the OC station at police, acts are criminal cases. Here he pointed out that criminal cases are offenses committed against the government, the victims become a principal witness for the prosecution and the punishment for the culprit is incarceration so, in this case, a widow cannot be compensated, unlike civil suit whose remedy is compensated and the winner takes it all. However, boundary disputes, inheritance of family land, encroachment and land grabs are the main customary land problems experienced by widows. Interaction with various respondents from both the interviews and focus groups discussion revealed that clan member evicts or denies widow access to land. The widow situation is even worse if she only has girl children if she was taken as stubborn, not loving the husband’s relatives, lazy, indiscipline or bewitched her husband. It is worst if the widow had separated before the death of the husband. One of the clan elders elucidates further by, he said that;

“Some widows create these problems for themselves- immediately the husband passes away some of them sell family land for their interest or even when they have problems to solve problems like school fees. If she doesn’t

make it clearly to the husband's relative- they feel bad and even allege her to have killed her husband so as to have the freedom to do whatever she wanted with land" (Clan Elder Aged 56, FDG on 4/8/2015).

The above statement speaks a lot about the gender disparity when it comes to issues of rights in Uganda. Land rights remain a major constraint to the realization of women rights and development even with the national constitution and gender policy of 2007 guaranteeing equality rights to land for both man and women (National Development Plan 2010: 20- 21). According to McFerson (2010), gender inequalities and poverty among African women arise from their social exclusion in traditional and patrimonial structures of economic and political power relations. Securing women land rights is crucial for sustainable development in Africa. It requires gender equality that necessitate strategies consideration the situations of diverse groups of women and enhancing better opportunities for women's rights and "voice" (McFerson 2010:50-53, Odeny 2013:2-8). In a focused group discussion, the respondents said that some people don't mind committing crimes against the widows because they know even they are imprisoned they will bribe or have money for court bill, and they continue using her land. In the same line, the magistrate Grade 1 revealed from his experience about the violence widows encounter. He maintained that;

"During my visit to the locus, I found that the stepson of this widow had evicted and destroyed her house, took all the produce from her garden that she planted, and she was not allowed to talk. When her daughter intervened it turned bloody claiming that who was the daughter to speak since she was married in another clan" (Mr. Ibrahim, interview on 28/7/2015)

It was quite touching for me as I encountered a similar case during the inter-view on 24/7/2015 with Lwanga a staff of FIDA Kapchorwa office. In the process of the interview, a widow following her case she had reported comes inside the FIDA staff office. She had been assaulted by in-laws under the directive of her father-in-law that resulted to the lost all her front teeth. She had two girls, her land had been taken back, and the aim was to chase her away. However, the situation of widows land rights violations involves the intersection of so many aspects of customary ownership and the level at which each widow experience the violation of their land rights is diverse. Customary tenure does not give absolute rights to the widows regarding decision making of what to use her land and produce for including transfer rights just because clan powers regulating such are strong

### **3.4. Inheritance Norms**

Various thinkers, donors and policy maker have identified the significance of access and ownership of land as critical factor in increasing productivity that can enable people to graduate out of poverty. Yet, Inheritance is a main source of acquiring land assets in rural and agricultural communities (Doss et al 2012:598). Nevertheless, women, in particular the widows still struggle to

secure land rights as a result of existing pattern of asset inheritance in Africa (Cooper 2012:1-2).

The finding of this research also shows that women are not considered having right to own land in particular when they become a widow. Even if they manage to possess one, they don't know the demarcations of their land because culturally men are more involved on land issues than women. Therefore, people use their vulnerability to take over their land. Family members of the deceased become hostile to them immediately the husband dies, they are sent off/evicted from the land, not allowed to access or use that land or in some cases they grab big portions and fertile areas leaving them with unproductive parts on claims that women did not come with land, and so they cannot own land. This form of gender oppression comes as a result of cultural beliefs that even what she acquired with her husband upon marriage is regarded as clan property, and sometimes widow who purchases their land have boundary disputes or use husband's brother to mediate the purchase who alter the land documents. This makes it hard for them to win a claim leaving her more vulnerable.

Widow's marginalization is also reinforced by widow inheritance practices sometimes a widow can be inherited with her acceptance. The clan and family of the deceased identify someone among the family members to oversee or take care of the deceased family. It is often this opportunity that the heir seeks to destabilize the widow and grab her property including land. This is also supported by the interview with the officer in charge of child and family protection unit who added that the heir can sell a widows land without her consent or transfer property to his legal wife. By the time, the widow realizes she gets confused and depressed. In addition to the Inheritance problems-by clan members, close family relatives who have their interests create problems for the widow if she refuses to be inherited. The predominant belief is that the land belongs to the family of her late husband she has no right to claim, even if she contributed to the purchase of land or individually bought after the death of her husband. Zelda, one of the widows that participated in the focus group discussion shared her story

“I was chased out of the land that I jointly purchased with my late husband by his family members because they alleged me of killing him to take over the land. I begged them for more than six months because the land is the only source of income that I have to take care of my children, but they only give the condition that if I want the land back, I have to marry my husband junior brother” (Zeld Aged 45, FDG 4/8/2015)

In patrilineal societies, which are most prevalent in Uganda, Women do not inherit land from either their fathers or their husbands (Tripp 2004: 3). Tripp argued that, to prevent daughters from taking the land outside to other clans they got married to, fathers often do not bequeath land to their daughters. Similarly, husbands every so often do not hand down land to their wives for the same reason for the worries that the widow might sell the land to

non-clan members or remarries outside the clan after their death raising fears that the clan land she has acquired is lost. Although under customary law, which is predominant in Uganda, a woman may jointly acquire land with her husband but cannot claim ownership of the property when he dies. The land normally goes to the sons, but may also be left to daughters in some cases. On the other hand, he may still leave the wife with no land in his will and, therefore, no source of subsistence (Tripp 2004: 4-6). Interaction with Florence, a widow helps us to understand the comprehensive predicament of a woman that lost her husband. Florence was very bitter and emotional when sharing her experience. She said that;

“I have seen problems in this world if I was to be given the second chance I would never choose to be a widow because the status is of a widow is the bastion of discrimination and mistreatment. My husband had a son with another wife, but he brought him home and gave his portion of land, he is called Christopher. When my husband died in 2010, this very son started disorganizing the home till today. He was advised to chase me away so that all the land will belong to him; he has brought me all kinds of trouble and threats. I cannot sleep in the house I used to go the neighbors but one day I said to myself what if they follow me there I would cause terrible to my neighbor. I just decided to be sleeping in the bush because he sends people to disturb me at night. I took my case to police it was forward to court when he was told about it; he disappeared for about two months. I spend money looking for him until the police arrested and took him to court. He hired two lawyers as for me I did not have, and I was worried” (Florence, Aged 58. Interview on 27/7/2015).

Land under customary tenure is inherited mostly through male relations as the spouse, son or father. These patrilineal forms of succession remain dominant in many rural areas of Uganda as according to this research finding. It became more apparent how customary inheritance practices have tended to increase the vulnerability of women's access to property and land rather than reducing it. This is especially the case where local cultural norms view women themselves as a form of assets of men (Alinyo and Leah 2012). Upon separation/divorce, widowhood or the failure of a marriage, women are sent off without any property or compensation. Even where she has acquired land title individually, this land may be taken from her, and regarded as the property of the man (Asiimwe 2001: 74). In addition to the earlier discussion, interview with the Chief Magistrate Kapchorwa Magistrate's court revealed that widows that are in the district are deprived of land rights access, use and ownership simultaneously by relatives of the deceased and step children. This argument was supported by his experience. He elucidates that during a visit to the locus on a land claim by a widow he found out that the stepson had evicted and chased away the widow, demolished her house and denied access to land including all her crops in the garden. Intervention by her daughter was hot-blooded as the son threatened and confronted her having no powers over the issue since she was married to another clan, and she can't talk about it

### 3.5. Lack of Property Will

Lack of clear land documentation or wills to provide security for widows land rights was major finding of the study. Patriarchal practices and customary norms cannot allow widows to get customary land title. Because land belong to the clan, in the event of death the clan have powers to do anything. Finding showed that without the above documents clan members manipulate the distribution of the deceased land and property against the widow. And in a situation that the family members considered the widow in the redistribution of land, they give her the utmost infertile portions and the good and fertile site is controlled by the heir. One of the respondents discussed her experiences

“My husband died without leaving a will behind, so the family members decided to share the land among the children and the other wives because my husband married three wives. But I was left out of the distribution because I was alleged to be the one that was responsible for my husband death. When I threatened to take them to court, they decided to give me a piece of land that is unproductive. I later reported them to the local council chief; he called them to a meeting and they said to him we already gave her land and that is nothing like infertile land. They said to me that my witchcraft has made the land unproductive” (Mama chemai Aged 32, interviewed on 30<sup>th</sup>/7/2015)

On the other hand, a widow can also be deprived in a written will much as the husband may write it the distribution may disfavor a widow’s especially in polygamous home and if the widow was considered unruly. A woman during FDGs said;

“My brother had three wives when he died he bequeath all his property and big portion of land to his third wife and first son. This brought a lot of conflicts and mocking of the widow”

Without a doubt, it is imperative to contest the inherent discrimination and inequalities that are generated as a result of unequal power relations in land tenures. However, gender issues in terms of land are problematical in nature which is embroil in politically sensitive expanses, deeply-rooted, and unequal power structures who do not even consider a women’s contribution to her household. In an effort to promote lands rights for the widows, it is highly essential to be conscious of this dimension, because resolving issues related to women’s lands rights goes beyond the technical aspects of legal and institutional frameworks at the country level (Kafumbe 2006:100-101). Nevertheless, traditional norms and practices serves as impediment to women in realizing their rights to matrimonial assets unless the widow husband specified clearly in his will that the wife was to inherit his share. Even at that, the widow is likely to face an enormous task to acquire or possess such property unless the wife is appointed sole executor of the will (Bennett et al 2006: 456-459)

The findings from the FDGs revealed why people don’t make wills, they maintained that most men in the community do not have the knowledge of what is a will or how to make one. Besides, they don’t know what the succession act says about it in addition to the many superstitions attributed to wills

that making one only implies that one is inviting untimely death. A local council testified to this;

“even as I talk to you here, am 61years but I haven’t made one, making a will is the hardest thing people can easily do or think about, because of myth and fear that you can die the next day. Also, if one gets to know that you have a will, you may be killed but somehow we have seen few people try it out, and it is very helpful in the management of the deceased property” (Arapyeke, Aged 42, FDG on 4/8/2015)

An elderly clan leader also noted that

“customarily wills were made verbally by a man telling either his wife or family relatives when he dies this was obeyed and followed during the distribution of land and property. But nowadays, this generation has drastically changed; I don’t understand where this world is going to. Anyway people can alter documents not to talk of a verbal message” (Kukop Mela, Aged 52, FDG on 31/7/2015).

It has been established that formal law have limited impact in protecting women right in a community where traditional norms and practices hold sway. This is not unconnected to the fact that women are view as purchased property as a result of the payment of bride price and therefore not entitled to own property of their own (Giovarelli 2005:805-807). The respondents noted that clan leaders continue to be prominent and influential in distributing property and land of the deceased if a will is not left behind. At times, a will can also be manipulated if they realize that the deceased did not consider some of them. Interview with Magistrate apparently confirmed interfacing complaints of such kind were letters of administration were applied and enforced without widow’s knowledge by the time she gets to know it late and begins to look for justice. I also observed a similar land rights violation claim among the court files I reviewed and the fortunate part of it was that the widow won the case.

### **3.6. Lack of Education**

The low literacy level in rural areas and lack of knowledge on law, land rights and will making or information on land titling has implication to widows not enjoying land rights in kapchorwa. A widow make reference to the lack of education as one of the major factor, “myself I don’t know where to go if want to get a title for my land, my husband passed away three months ago despite this short time I have not had peace some people come and disturb us at night”. In another response from the interaction with police officer in charge child and family protection unit, she explained to me that

“Recent example happened in June 2015 in one of the district sub-county. The man died, and the brothers with some clan members had chased away the wife before the husband died accusing her of “witchcraft”. She is a primary teacher at the time her husband passed on she was not allowed to attend her husband’s burial neither to take any single belonging. The reason was to divide property and land and immediately during the last funeral rites-her land was divided, they started following up reimbursement of medical



bills from his employer- however because every document including land agreements had been written in both names of these spouses she acquired a lot of support and prevented them from selling the remaining property. As police, we were able to recover the vehicle” ( Rebecca, Aged38, on 22/7/2015)

From the above position, it can be noted that the situation of widows is one of denial and discrimination based on gender and social relations. While she was able to prevent the clan from selling her land because she was educated and as a teacher knows her right because of intersect of education, gender, and cultural norms comes to play. The Same thing cannot be said of widow without education. For example; there was a recent case of a man that died where the official wife was denied access to her house, the clan divided property and gave out her land including houses and other assets to the concubine just because she did not have a good relationship. The clan uses their powers to marginalize the already vulnerable widow because she is not educated.

### **3.5 Conclusion**

Indeed, widows in Kapchorwa district are victims of denied land rights, and they labor every day to be seeking remedy from any office they feel can do something to defend their vulnerability. In conclusion, land claims for widow is a struggle which is intercepted by intersections of various factors gender insensitivity seen from biased institutions, misuse and interpretation of law, poor coordination and implementation of law, interference of cultural norms/discrimination and the general lack of support to safeguard women land rights despite their effort to seek remedy from established legal institutions. This situation is worrisome and has implications for gender equality and sustainable development, in particular, the livelihoods of widows when the rule of law is not visible. Widows who fail to get justice are vulnerable to more injustices like abuse, stigma, and discrimination, sexual violence. It is also unfair under circumstances to be blind of social implications on child welfare.

# Chapter 4 : JOURNEY TO JUSTICE AND INJUSTICES

## 4.0. Introduction

In the previous chapter, I discussed the main causes of widow's access to land and ownership rights violations in Kapchorwa District. The focus of this chapter looks deeply into the main challenges that militate against widows efforts in using the court to access justice. Besides, to bring to the fore the measures that these women adopted to secure their land rights in future and how are the relevant stakeholder in the district addressed such to enhance women's access to justice.

## 4.1 Institutions providing justice

**Table 1 where widows go to seek justice**

<b>Institutions</b>	<b>Frequency</b>
Clan/traditional courts	10
NGO and CSOs	15
Women organization	1
Community paralegals	3
Local council courts	11
Police	12
Magistrates Court	09

**Source: field data 2015**

The study findings observed that widows seek justice from all the relevant office they think can protect them. From the above table (15) respondents noted that majority of widows reported to NGO and civil society because their procedures are not complicated and less expensive. The respondents (12) said many widows take land complaints to police because of the violence involved making them criminal cases that need the actor to be apprehended. Further, (09) respondents noted that few widows report to court direct because of long, complicated administrative bureaucracies and legal procedures, corruption and often negative outcomes for women have discouraged widows from going to court.

Finding showed other women go to Regional police commanders and RDCs office if the case is being dragged /complicated and or not handled. The women identified that when denied land they normally seek help first from neighbors, friends, family members and religious leader before moving forward. This is because of accessibility and to avoid being ridiculed for taking the case first to court a belief that custom should attempt to resolve.

Interaction with the magistrate showed that whereas widowhood ranges between 15years across to 88years in the district. A majority of the young widows bit back when face with land violations because of customs and fear to be evicted/separated with her children. At older age when their capacity has depreciated and handicapped by poverty. Rich men, relatives and grandchildren grab their land and drag them to court (Interview on 30/07/2015)

The journey to justice for widows in Kapchorwa is long and complicated depending on the nature of widows land rights violated. A widow's experience upholds this:

"I reported a criminal case to police over my land that a neighbor forcefully encroached and claimed. He bribed police and they referred the case to clan chairperson and local council 1. Nothing was done I guess he was buying time. I then decided to follow the criminal case left in police only to my surprise I was summon for a civil suit in court that my opponent had lodged. I did not understand how my case was dropped and I was not allowed to question during court hearing. I had trust for the court but when I lost my case, I presume it was manipulated because his wife is a police officer and she understands court processes" (Interview with Maria Aged 42, on 28/7/2015). With bitterness in her heart she sees no justice for a widow and no need of institutions while regretting her status

Interview with OC Kapchorwa police station on 22/7/2015. Pointed that;

"These widows report case to many institutions within the district before it is completed in a particular office, she has gone to the other. By end of day even good cases get so complicated and difficult to deal with"

In another interaction with Rebecca the in charge child and family protection unit in police voiced her feelings about the situation of widows seeking justice when she said:

" am personally burdened by the situation of widows, the journey to justice is not an easy one, when I refer this women to court I get so embarrassed to often see them walking there for years, sometimes i meet on the way and she requests you for money to take her back home. Some of these widows end up spending lots of money others even die before the case has been decided in court"( Interview with officer in charge child and family protect unit at police 21/07/2015).

One can see that widows land rights violation require an urgent attention to the injustices right from community to the justice institutions. In fact Cotula et al admonished that the "lack of clear chain of command and co-ordination between the various organizations dealing with women justice increases confusion and intensifies tenure insecurity because Parties to a land disputes apply diverse means to defend conflicting claims, and can select any resolution channel they feel can favour or be manipulated" (Cotula et al 2004:2). Access to justice should not only be narrowed to people's ability to utilize formal and informal justice's services. Rights based explicitly that justice should not be just a matter of legal issue but as a social process and duty bearer need to pay attention to the process and outcome equally.

Despite the situations faced by widows, majority of them try so much to seek remedy land violations. From Magistrate Grade 1 he showed that court

receives over 50 land cases lodged by widows annually. He said however, that majority of the cases reported are criminal resulting from violence in grabbing land. He said that lodging a civil suit requires money which some widows cannot afford so land aggressors take this opportunity because they know a win will take all.

#### **4.1. Lack of information and knowledge about Legal Procedures**

Widows/women, in general, are not aware or knowledgeable of the court proceedings. The lack of information on women land rights and how to claim them can be a critical impediment to the enjoyment of rights. Findings reveal the lack of knowledge of how state attorney, clerks, and courts work, rules and standards followed by the court in adjudicating cases, how to lodge a case, orders permissible in civil suits, timeframe way case deposition, the process of judgment and available remedies. So seeking a solution is like a try and error. Interview with staff of FIDA supported this argument;

“Widows do not even know issues of Appeals which are supposed to be done within 14 days after the ruling, only a few can to appeal court but late in most cases. The distance to high court is far another district and due lack of funds to follow up cases after spending everything at the start in most cases majority lose hope and just give up” (Interview with Debora, 5th/8/ 2015)

Inline to the above interview with the FIDA staff, there is a lack of adequate information on women’s land rights under customary and statutory law and how they are applied to women and the general public. He noted that court in itself was not doing much on awareness as this was being done civil societies. Nevertheless he critiqued the model of sensitization by civil society that involved radio and television noting that majority of the vulnerable groups did not have access to such medium of communication. On the other hand interview with a staff of civil society pointed that it’s difficult to get the time of judicial officers to interact and inform people about justice even after trying on several occasions to attend talk shows. Women’s ignorance of tenure systems or even their rights under the customary law makes them vulnerable not only to land grabs but violence as well ( Garber 2013:12-15). The findings revealed that due to the lack of information on relevant institutions widows reported their claims to several offices and at the end a good case messed up, and it becomes complicated to handle. According to Pamela, a widow with five children

“I took a criminal case to Kapchorwa police station; the file was forward to court in 2010 till 2013. When he was to be arrested, he bribed the cops, and he applied for a civil suit. I was summoned for a civil suit, and I did not know how my criminal case was dropped. I asked, and no one explained to me, you cannot be allowed to talk in court. I took all my witness, spend money, but the magistrate refused my witnesses to testify. The day of ruling I did not get information, and when I eventually went to court, the judge accused me of failing to reimburse transport costs of the plaintiff, I was arrested and slept in

prison for one day. I was disappointed in the ruling, and I cursed the day I took my case to court. If courts cannot help women, then they should close them” (Chesang Aged 46, interview on 3/8/2015)

Women’s legal position, however, is not only framed by the consent of the law but also the extent to which they can access it and the extent to which it is likely to work in their interest. Access to justice involves the physical and economic capacity to engage with legal processes as well as the ability of legal procedures to deliver justice unbiased by gender discrimination (Kafumbe 2006:100). Findings show that due to the fact court outcomes may frustrate their efforts most widows/women have lost hope with the court.

## **4.2. Lack of Legal Aid Services**

Generally speaking, access to justice by widows shouldn’t be reduced to the accessibility of lawyers and courts. “It includes the insurance that rights, and their correlative protections, are recognized through law – formal and informal. It also includes access to institutions, including customary/traditional ones, and to clear, simple and affordable procedures, as well as an efficient and accessible remedy for the violation or abuse of rights”(FAO 2013:2). However, this it doesn’t underscore the importance to access to free legal aids services. Legal aid is critical to enhancing access to justice and equality before the law for vulnerable groups like widows who may not afford legal representation and complex court procedures.

Findings from the study show the lack of legal aid service in the district to support women seeking remedy. FIDA Kapchorwa field office was the only organization that started operating in 2014 and covering three districts of the sub-region. Interview with the staff indicated the overwhelming task of the office which has only one staff in charge of all the district, community sensitization, and legal representation. Other civil society and police also refer women to this office.

## **4.3. Political, cultural and self-interested individual hindrances**

The challenges of access to justice for widows are not only out of their fault. It was pointed by the regional police commander that some selfishly interested individuals find joy in the vulnerable state of widows. They are first to report, or they never tell the truth- they confuse the process of gathering rightful evidence as they keep frustrating the defendants. The magistrate highlighted such individuals also drag widows to court especially at old age because they want to own or benefit from the property. These could be their sons, grandchildren, husband’s relatives or persons outside the family. According to the focused group discussions, participants noted that Local leaders focus on the wrong side of the widow instead of looking at her

situation and survival of the children and often rule cases against widows. The clan leaders always intervene whenever a case is taken to court or police and plead with authorities to go and resolve the matter at the family level. Unfortunately, this are used as a delaying tactic to gather evidence against the widow.

“I was tossed up and down, the clan members kept provoking us until my children could no longer handle, they want to the garden by force and immediately these people run and brought the police to arrest my children and told me you better drop that case otherwise you will never see those so called children, I had no lawyer that can help me with my case so I obeyed, I will rather have my children safe and suffer than looking at them going to prison” (Chemayek anna, Aged 60, on 4/8/2015).

Indeed, gender discrimination does more harm to women; such can only be dealt with women rising against such acts and defending their humanity. Tripp (2004) argues that cultural practices and perceptions continue to discriminate women as the power of clan elders who regulate customary land is still central in rural areas. However, There are also other factors that comes into play besides access and ownership as highlight by Wanyeki “the nature of the women’s land right, the position of women in the land, the consequence of gender inequality in land rights and lack of effective resolution mechanisms” (Wanyeki 2003:245). Thus widow’s rights and access to land should be dealt with in a holistic manner.

#### **4.4. Lack of Land Title and Clear Documentation**

Land titles, agreements of purchase of land and written wills are the first proof of land ownership in any legal process. The main argument here is customary land is hereditary and women access to land through male relations either as husband and proof of ownership relays on evidence from clan members or written will. The findings revealed that clan members discriminate widows on such grounds in court. she cannot use children or widowhood to claim land. Without a doubt under customary tenure, it’s even difficult for a widow to title the land amidst customary norms. Doss et al affirms that landholders under this tenure do not have formal titles for the land they use and much as the statutory law accords equal land rights for man and women. The customary law usually provides women lesser rights to land and likewise in situations where a conflict of both laws arise. The Constitution provides that state law must prevail however in reality this practiced is overlooked (Doss et al. 2014:83). Findings show that while women have legal guarantees inheritance and land rights, customary norms, particularly in rural areas militate the efforts of widows to enjoy them.

Furthermore, respondents in a focused group argued that the lack of wills possess a serious threat to tenure security of the widow because the clan members can manipulate the distribution of property at the expense of the widow. During FDG a widow brought up her experience why wills are vital;

“I think husbands should not hesitate from making wills. Indeed, they are helpful. My husband had three wives each one with more than five children. He made his will and during his burial, the will was read to the mourners and handed over to the clan leadership. Some of the children went and bribed the clan to hand over all the land to them without considering the other widows. They divided the land and chased us away. I reported the case to the LC1 and got support from the community. These people were stopped from the misconduct as a result of the will. So I suggest this strategy is helpful for every man and women especially extended families” (Maria, Aged 50, FDG on 3/8/2015)

In support of the above, the magistrate noted that when widows provide documentation the process of adjudication becomes easy, and normally the outcomes favor the widow. He pointed out that when the deceased dies without a will customary marriage law provides that customary law is applied. Bennet et al. clarifies that according to succession laws of Uganda when a man dies without a will distribution of his property is left in the hands of family leaders, clan or religious leaders who can be biased against the surviving spouse (Bennet et al. 2006:456-457).

Similarly, widows with recognized legal marriage with proof have a high chance of winning a land case. “In a recent case the brothers of the deceased divided her land including where her toilet was and gave to concubine and her son they brought home immediately after the deceased was buried. The official wife proofed her case and regained ownership of land” (interview judicial officer on 31/7/2015). Cooper (2012:645) critic the current Uganda laws that do not defend rights of women in unrecognized marriages as discriminatory. The study found out most of the women in the district is in unregistered marriages, and this can be a challenge to defending their future land security.

#### **4.5. Lack of confidence and clear presentation of evidence.**

Interview with Lwanga FIDA staff revealed that most widows have low self- esteem due to the land struggles, and also they are not conversant with the law and legal procedures and during cross-examination they keep changing statements, feel nervous and end up losing a case. A Judicial officer that I discussed with corroborated this argument, he said;

“ sometimes you see a widow has a good case but how she presents matters, I feel disappointed when I ask questions, and they don’t respond as appropriately and because am supposed to be impartial I try to ask leading questions or advise them to get legal representation because of unforeseen legal technicality”( mr Ibrahim, interview 28/7/2015) .

However, widows complained of the unfriendly court environment, language used and threats of witnesses and themselves by the opponents, lack of knowledge on how to seduce evidence in court. It is evidence from the findings that the experience and rigour that widow went through can be traumatizing even when someone present evidence, it became worse. The

Magistrate pointed out that visiting the locus can help them to gather evidence not presented in court however this is often constrained by resources. Observations of the mediation revealed how a friendly environment can create opportunity for parties involved to discuss and forge a way forward, however, it was noted by some respondents that culprits are very stubborn sometimes ignore outcomes of mediations because they know the penalty is not harsh

## **4.6. Corruption**

The finding indicates pervasive corruption right from clan leaders to the formal legal institutions. Widows have low economic status and often burden with the household responsibilities, getting access money is difficult. Access to justice is equated to how much one spends. “Corruption has killed the truth when you tell the truth as long as the opponent has money you will be turned into a suspect” (Mayek, Aged 37, FDG, 4/8/2015). In the focused group discussion respondents emphasized that corruption has turned complainant to defendant in many occasions. Even the LC1 get scared of going to court to support women because the opponents can forge anything and get them arrested. Respondents maintained that witnesses were arrested or threatened when they give evidence, and no investigation can be done without giving money. In as much as the officials did not point this issue directly interview with an official referred to the local leaders as being corrupt and interrupting police investigations when culprits give them money. From rights-based perspective Gready says Ineffective lawful and justice mechanisms which stimulate for “rent seeking by attorneys, judges and court personnel and corruption may benefit those who can afford it” (Gready 2005:172-177) need to be context by empowering rights holders to demand accountability and transparency in the justice systems.

## **4.7. Long bureaucracy involved in court cases**

Finding revealed that such procedures reduces the trust of court and are costly to the litigants according to the respondents. The processes involved, from registration of a case to the final judgment comprises of plethora of barrier that inhibit the widows access to justice. A widow whose case has been in court from 2005 to date expressed disappointment with lack of hope on when it will be concluded

“Someone we lease our land to when my husband was still alive claimed ownership and took the case to court. Till date, the case has not been concluded; I have spent money on transport and taking care of witnesses’ and up to date it has not been completed. I need your help” (Kokop cheptei, Aged 71, interview on 5/8/2015)

Interview with NGO staff supported the widow’s claims that land cases in courts take as long as 3 or more years depending on the nature of the case. However, the costs involved is too much for a poor widow, meeting transport



cost for herself and witnesses who at times don't appear at once, application of civil suit requires money they don't have so most of them get discouraged and give up on the process. For example instead for the police going to the ground to gather evidence from witnesses, they advise complaints to bring witnesses to office if they cannot meet the costs and those who cannot afford just never show up again. Out of curiosity, I probed further to know why such financial burden is placed on the widow. The district police commander and Magistrate stressed the lack of adequate funding for Justice Institutions.

#### **4.8. Accessibility and effectiveness of the court**

Since the accessibility of formal legal proceedings to secure their land rights is expensive for many widows, the findings revealed that the substitute that is less costly is to approach the Local council courts. Unfortunately, representatives of this court are politically elected and do not have knowledge of human rights especially women land rights – they are bribed and are biased against women. Whereas, customary courts have unwritten laws and its application not uniform depending on the practices valued by cultural norms and it mostly disfavors women (interview with Resident District Commissioner, 19/8/2015).

Regardless that as many as 115 countries, Uganda inclusive presently recognize women's property rights on equal terms to those of men. Two decades after the Beijing Global Conference on Women, unfortunately there are still gargantuan obstacles related to the enforcement of laws and implementation of policy (Rudy 2014:2-5). On effectiveness of court in helping women, participants in the focused group discussion expressed the challenges of navigating in a formal system. Women voiced serious glitches in interacting with police and in the events to access magistrate's courts. A widow shares her story of how a clan leader deprived her of land she jointly acquired with her deceased spouse:

“He said it was against their custom for a women to claim land, saying since when did women start opening their mouths and having such opportunity. I tried to proof by showing the purchase documents and he mocked at me saying those papulas (papers) are nothing that I will regret having them. He said that I was not supposed to claim inheritance but the brother of the deceased should and even take all animals and manage my household. After his decision I reported to the local council court for help who also supported the clan leader. I then when to Kapchorwa magistrate court but I was told that because it customary land the clan should be involved, I was referred back to the clan chairperson. They decided to may disadvantage and eventually shared same family relatives and other clan relatives shared my land. Now I struggle on my own” (Sanga Beatrice, aged 3, interview on 21/8/2015)

Discussion with judicial officers revealed that even when court gives a decree in favour of women clan leaders challenge the rulings on grounds that its customary land. The general situation of the widows in relation to their land

right can only be resolved through a Right based Approach. RBA stresses accountability and transparency by establishing rights-holders and their claims with corresponding duty-bearers and their responsibilities (OHCHR report 2013:14-15, UNDP report 2005:3-5). The approach addresses both the “positive” obligations of duty-bearers to know, respect, defend, uphold and deliver rights and the “contrary” onuses to cease from rights abuses. Because RBA centres on discrimination, vulnerability, inequality, and equity, thus access and delivery justice needs to absorb marginalized groups since their vulnerability differs in context and normatively embedded in social relations (Gready& Ensor 2005:172-177, UNIFEM 2007:20-37)

#### 4.9 Summary of reviewed court case file at Kapchorwa Chief Magistrates court

Table 2 summary of reviewed court files

Land disputes reported by widows	Claims presented before court	Status of case in court
Forceful encroachment Eviction, inheritance conflicts, boundary disputes, land grabbing, denied access and ownership, land sale without consent, letters of administration without knowledge of widow,	Order vacation of plaintiff land, Damages for delaying usage for about 7 years, Declaration of ownership of land by the plaintiff, Vacant possession of the land and permanent injunction, general damages and costs of the suit	Consent judgement entered, Case completed; Judgement entered in favour of the plaintiff and costs be paid by the defendant, Court order for vacation granted, Cases adjourned for over five times, Case pending hearing before Magistrate grade 1 and Chief ,Case withdrawn, referred to clan, Visited locus before judgment made, Case lacks sufficient evidence, Dismissed for want of prosecution

*Source: field data 2015. Researcher own construction. Information extracted from court records on 21<sup>st</sup> to 24<sup>th</sup> July 2015*

From the court files reviewed, I observed that majority of the claims were under customary tenure, and the violations ranged from denied access, use, and ownership of the land. However, the management of these cases seemed slow because the longest was 9years against 2year before judgment.

The insufficient record of evidence and parties' agreement to resolve the matter outside court, judgements passed in the absence of the plaintiff. According to the magistrate he noted individual or relatives gang against the widow and she gets confused about who accuse exactly so she files a long list that may have consequences on how long the case will be completed.

#### **4.9. Strategies to secure land by widows**

Uganda is known as a country with a resilient civil society that participates in research and advocacy with those working for rights of the most marginalized people to achieve fairness in land rights. They all work in different areas of the country with different approach and paradigm. They do so through different strategies, including working with the legal systems to solve land disputes, using action research to develop community dialogue approaches, using the media for public debate, providing legal advice or paralegal support, and building capacities of local authorities(Quintero et al. 2014:4). From the findings, there are numerous examples of widows seeking justice and influencing their land tenure status, often with the help of intermediary organizations.

The study shows that although the vast majority of women are still suffering greatly from cultural barriers and the failure of the government institutions to tackle corruption in the police force and the judiciary. However, there a few widows that has a success story of getting back their lands from the aggressors. This was possible if there is some level of support from some of their family members, local leaders if the Magistrates visits the location of the disputed land to acquire more evidence that may not have been presented in court. The most important success factor is the zeal and commitment by the widows to demand their rights in court without the panic of coercion. One of the widows shared her experience on how she used the civil society to win back her land in court

“The moment my husband family started their troubles asking me to relinquish the land, I immediately contacted the FIDA that advocates for women’s right in the district. I know that if they file the report for me, it will be difficult for the police or the Magistrate to collect bribe because they are scared of what the NGO might do. They can report to higher authority in Kampala or even go to the press” (Selestin, Age 47, interview 17/7/2015)

Although, Uganda is a country that land is governed by different legal systems but the majority of land is customary owned. Nonetheless, Quintero et al (2014) argued that the insistence of clashes around land, severe fissures and inconsistencies in the legal framework, dearth of explicit rule and implementation mechanisms of the justice and administration systems. In addition to discriminatory laws and practices, are the foremost impediments for people’s prerogatives to land, particularly those of vulnerable groups like women and youth. Quintero and others note that land tenure in Uganda, however, is in transition. “Proposals for more gender-sensitive legislation and

policies on land, property and succession were discussed and included in the new Land Policy approved in February 2014” (Quintero et al. 2014:4). This has brought to the forefront of discourse in land policy the protection of land rights, as well as the recognition of the role of community-based structures for land administration and dispute resolution. However despite those efforts, the findings indicated the widows at grass root level are not mobilized to challenge power relations in these social structures

#### **4.10. The suggested ways to support widows land rights and access to justice**

During the study, some respondents highlighted some areas that can enhance widow’s access to justice for land rights land rights in Kapchorwa District. Knowledge extension by civil society and government about their land rights and legal procedures and women empowerment through the promotion of education, in particular, adult education that can help those who are not educated were suggested by a respondent of RPC. Sensitization was noted

“as a right way to have people access knowledge and information, however, his concern was but the nature of sensitizing people in Uganda using televisions and radio shows and yet small percentage of the population especially vulnerable groups have or access this equipment’s and language used is not understood by all (interview with RPC Sipi region, 16/7/2015).

Among others suggested way forward includes an extension of free legal aid services to the district to enable widow and other women to access free legal representation in court. The provision of legal advice on how to take appropriate legal procedures to secure their land and property as soon as their spouses pass on is also suggested by the respondents. Translation of legal proceedings into the local language can fasten the hearing and resolution of the cases;

“I worked as a magistrate in a place I knew the local language, and this helped me to dissolve cases in a shorter time as I would understand what is being said at first hand. But for here we rely on the court interpreter that consumes a lot of time because” (interview with a judicial officer on 30/7/2015).

One of the respondents of the interview with staffs of civil society and Community Action for Human Rights (CAFHUR) identified some of the steps they are trying out to reach out the community and women so as to promote knowledge on land rights. She said that they are doing a lot of mediations of land disputes, outreach programs- radio talk shows on topics on inheritance succession and property issues, women utilize this information, encouraging men to make a will and clear documentation of the land jointly with the wife, Referrals to other institutions like police –court. Also, guidance and counselling for widows is offered because as victims land violations they are depressed as a result of forcefully evicted from her land and matrimonial home and yet she has extra responsibility of children.

The Deputy Regional police commander Mr. Kulany indicated that, there had been delays by all concerned stakeholders to support the widows given their vulnerability. He emphasized the need for departments and chambers in charge of women land claims in government justice institutions. Community sensitization as necessary and must be done if fairness and equality for widows are to be achieved and clan leaders should be targeted.

“Widows need legal support to use the legal system. As for the office of RPC, we have started to organize community meetings and call LC1 to start court hearing as we observe the follow. This allows us to gather facts about women claims”.

From the discussion with various relevant stakeholders and actors that are in the position to advance the widows rights to land, it is clear that there is an urgent need to Strengthened coordination of relevant stakeholder and NGOS to deliver, protect and promote the human rights of widows. This can only be done through networking and increasing community education on land laws and legal empowerment on women land rights. On the other hand, respondents also voiced a particular focus be on the traditional/clan leaders and strengthening the capacity of local council courts through training on human rights and the law to deliver justice equally and protect widows.

#### **4.11. Conclusion**

The study findings revealed that widows land rights and gender justice in Kapchorwa district are constrained by both community/individual factors including cultural norms attached to customary tenure system and institutional weakness to deliver effective and efficient services to the vulnerable women. These issues have hindered the enjoyment of justice and land rights for women at large.

## Chapter 5 Conclusions and Recommendations

### 5.1. Conclusions

In this chapter, I present my research conclusions and also bring forward the recommendations arising from research findings and general observations of the whole study.

This research has demonstrated that widow's rights to access, use and own land under customary tenure are increasingly being weakened and denied. The debates surrounding this deprivations are complex and fragile as it is influenced by interplay of patriarchal norms and gender biases. The study observed that cultural norms and social safety nets that once used to protect the widows despite gender bias in it seem to have eroded and thus, the relatives, individuals and community have turned against the widows and orphans to deprive them of land rights through, land grab, encroachment, forceful evictions and inheritance disputes.

For research question one; the main source of violation of women land rights stems from cultural biases of discrimination of women, increase in population and land scarcity has affected value of land and hence directly impacts on land violations by various actors discussed throughout this paper. Land aggressors use various means, direct violence and subtle moves and even conspire with staff in institutions to ensure reported cases of such by widows do not materialize. I learnt that deprivation of widow's land involved frequent instances of gender-based violence against widows and her children as a result of land and inheritance disputes. They are intentionally committed to distorting the widows from following up reported cases of denied land rights. The lack of customary land titles for women even exposed them to more risks because they it is difficult to proof ownership. The denied rights also varied from, access, use and ownerships with multiple injustices suffered by widows.

For research question two; the findings showed that due the magnitude of the violations and significance of land as a primary livelihood source, widows try all their efforts to look for remedy and justice through existing structures within the district. Ranging from friends, family, clan and religious leaders. Formal institutions, local council courts, district land tribunals, police, and Magistrates courts and as well NGOs and Civil Society. Finding proved that most widows shy away to report violations due to fear of losing her land entirely or being separated from her children hence they try to comprise with customs.

For research question three; the study showed access to justice is frequently constrained in both formal and informal courts ascribed by gender biases reflected in the decisions of these courts responsible for interpretation of the law and protection of rights. The challenges that constrain widows from accessing justice ranged from; inadequate knowledge of land rights in the law

and court procedures, lack of legal representation, long bureaucracies and expensive costs involved to engage with the legal process, Lack of support from close family relative, threatening of witnesses supporting widows, lack of documentation(titles, will, purchase agreements)including unrecognized marriage. Losing a case leads to more stigmatization and violence of a widow. At community, Court orders can be rejected by clan leaders- making it had to enforce, powers of clan dictate land claims of women, threats against the widows for reporting the case to any office, general lack of knowledge on law and will making. Within Institutional levels, there is pervasive corruption to the extent that the widows have lost trust in courts but rather prefer civil society. Corruption stimulates Gender biased decisions- in a dominant male institution with patriarchal prejudices. Unfriendly court settings, insufficient legal aid services as only one organization (FIDA-field office) is doing besides covering three districts with one staff and overwhelming cases of women. Political and cultural influences over widow's cases from the community to courts, limited funding for courts to facilitate effective justice, language constraint, inaccessible and above all costly with long bureaucracies- as land cases take more than 3years.

For research question four; the study showed that widows reported their cases to various offices within the district. Due to the associated constraints in reaching magistrate courts, most of them when to civil society who normally conducted mediations within a short period but because perpetrators are never restless they even violate sometimes agreements because they know civil society penalties are not harsh. However, they are doing their best to raise awareness of land rights. Some widows who have succeeded have trust with Civil society as the only way to secure their land tenure right; others are into small businesses to enable them to raise income to process titles for their land.

I learnt that unwritten customary law seems to be the major contributing factors to widows land problems. Besides, the application of statutory guarantees both formal and informal frameworks of justice are mediated by customary perceptions of masculinity and femininity. In fact, one can agree with Kameri- who said that “predominance of patriarchy in law, policy and practice ensures that the land has its owners, and these are not women” (Kameri-Mbote 2005:19). However engagement with the community to reduce such injustices can be a better way to support the practical realization of legal laws.

Finally widow's legal position on land claims is not only secure by approval of the law but by the extent to which vulnerable groups can access it and the magnitude at which it's possible to work towards their claims. The fact is access to justice will always involve physical and financial ability to engage in legal processes but should as well reflect the capacity of the legal system with its processes to deliver justice unprejudiced by gender. Whereas courts of

justice may be male prejudiced and adds discrimination against the widows and women in general, they are also in position of ability to bring change to the realization of land rights for women if only they are determined for example the Abolition of FGM in the district and enforcement of its law in the community has resulted in the reduction of the practice, if widows land rights violations can be protected in this way there is high chance of gender equality and justice in land rights. The Duty bearers have a vital role to perform, judges and magistrates, who are influential actors in the resolution of disputes have the competence to contest power injustices and its dynamics underlying a dispute through various means like cooperation, arbitration and litigation within courtrooms and public domain. Adhering to these principles and law in a rights based approach will also necessitate building capacity rights holders and soliciting support of the community and civil society.

## **5.2 Recommendations**

Drawing from findings the following recommendations are made;

The local governments, civil society and particularly police and court should embrace the rights based approach to enhance access to justice for widows and generally vulnerable people. There is need to empower women on the legal procedures and the rights provided by law as rights holders so they are able to claim and defend them.

The judicial system should built the capacities of local council courts and clan leaders by training them on women land rights under the law and how they can handle land disputes concerning women.

The NGOs and CBOs together with government should put more emphasis on advocacy campaigns on will making and land titling by encouraging and training the community on how make them. This will protect the widows and orphans to some extent from land aggressor by enabling proof of ownership in seeking justice.

The courts of judicature should also advocate from the translation of legal proceedings and national laws into local languages. This will empower the women and men to appreciate their rights and also facilitate access to justice for all especially vulnerable groups in rural areas like Kapchorwa.

The is need for courts to provide friendly services that guide widows and women in general on how to go about the court procedures and diversifying the means of informing litigants in hard to reach areas about court proceedings and hearing dates to avoid over burdening vulnerable widows



More emphasis should be to hold leaders right from informal to formal justice chain in charge of handling women violations accountable especially if they fail to perform their obligations as per the laws. Those who are corrupt and fuel violence for women should be penalised by the law.

The courts should also create appropriate mechanisms of gathering evidence/witnesses on land cases especially for women, for example a time frame to mobilize all witnesses and present in court at once can serve widows a lot of time and resource constraints.

Formation of widows groups and strong association at the district can enable them built a strong network and gain knowledge of their rights. And also have capacity to struggle to protect their rights together. This was because during the study there was no clear organisation at district engaged on widows issues.

There is need for improved record management and information of all land related matters particularly women starting from local council courts, police, courts and district land departments. This will provide knowledge on whether on the status of women land rights.

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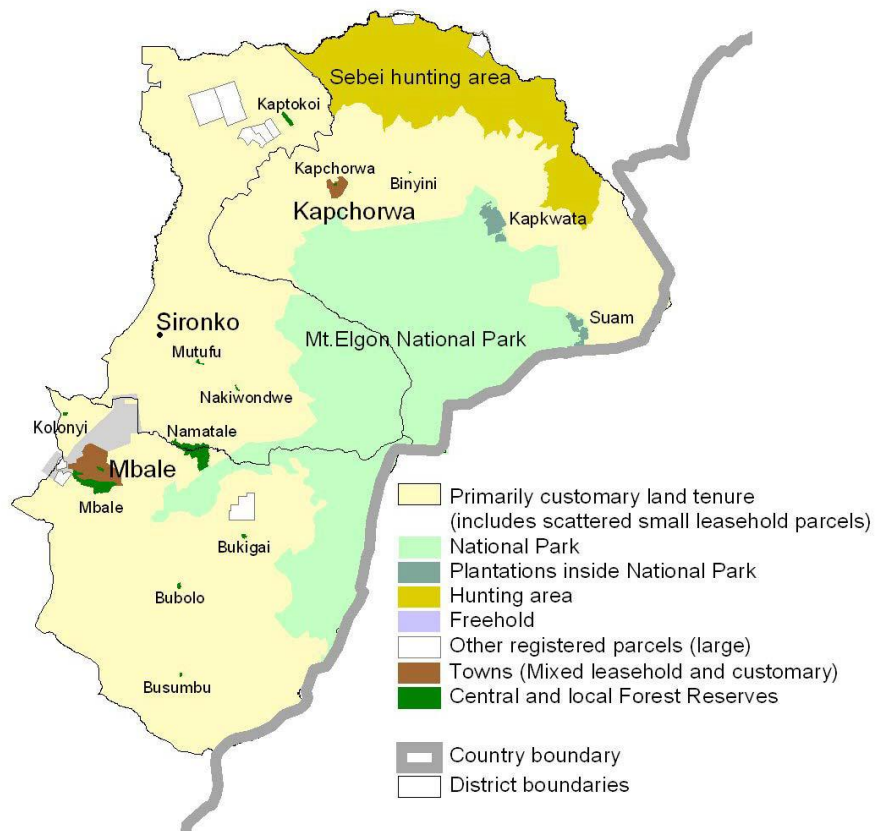
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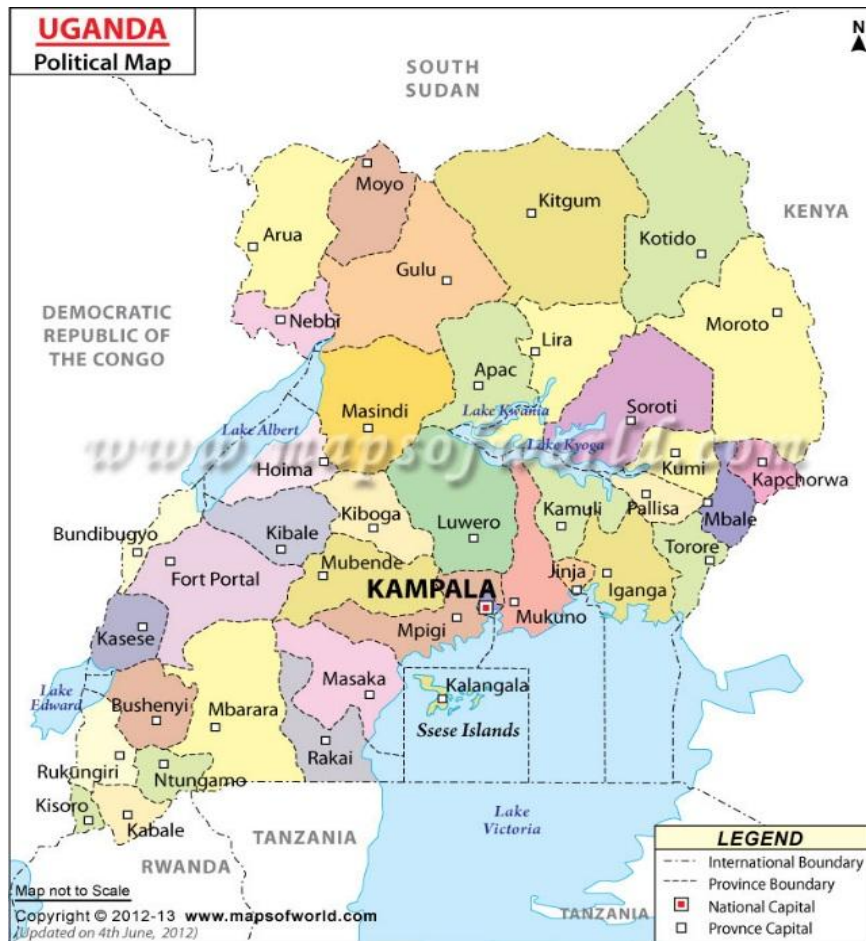
**APPENDIX.**

**Map 1 land tenure systems in Kapchorwa District**



**Source:** Soini, E (2007). Page 23

**Map 2 Uganda showing District- Particular Kapchorwa**



Source; google maps

## Appendix 1 Interview Guide for Data Collection July-August 2015

### A. Interview guide for Key informants

#### Section (i): Background information;

Name, age, sex, marital status, residence location, level of education

#### Section (ii): Detailed Interview-questions

1. Do you have land, how did you acquire that land? Do you think your land is secure or insecure?
2. Have you ever had any problem regarding your land as a widow?
3. If yes, what was the central focus of the dispute
4. How did it come about and what was the impact on your life
5. Did you know what to do about it/ or was there anyone who helped you what to do next?
6. What system of justice did you use to resolve the dispute?
7. How was your experience using court? Did you like it, if so why and if not why. How long did it?



8. Were you satisfied with the outcomes, what kept you motivated or disappointed
9. Do you think people had any say about you taking the case to court?
10. What happened to your family survival at the time your land case was in court and before?
11. Do you think anything should be done to help widows with land rights problems?
12. Any relevant issue you would like to share in relation to the conversation.

**B. Guide for judicial officers and police officer, relevant district offices and the Resident District Commissioner Briefing**

- introduction
- Objectives
- Ethical consideration
- participation

**Section (i): Background information.**

Name, sex, age, title/ position, level of education

**Section (ii); In-depth Interview questions**

1. Where do women go to seek justice on land and property issues in the district
2. What are the common claims addressed in your office in relation to widows access to land under customary tenure?
3. What do you think about the causes of such violations
4. What challenges do widows encounter in seeking to access justice in the relevant existing legal institutions in the district
5. What factors can influence success of a widows land claim in court?
6. What challenges are you/ those dealing with widows land rights violations face in ensuring they get justice and security for tenure?
7. What can be done to improve access to justice for widows and what has your institution tried to ensure equal access for both men and women
8. Is there any other relevant issue you would like to discuss concerning access to justice for widows?

**C. Guide for identified Organizations dealing with human rights and land in the district**

**Background information:** name of organization, name of interviewee, sex, age, title

1. How long has your organization been working in the district.
2. Where do women report to resolve violations of land rights under customary tenure?
3. What common cases are related to widow's land rights are handled by your organization
4. What does your organization do to help widow's access justice for their land rights claims?

5. What obstacles are experienced by the widows in securing their land rights using the court?
6. Are there any challenges faced by your organizations and other institution solving widows land claims?
7. What measures have you tried enable widow's access to justice?
8. What can be done to support widows enjoy land rights under customary tenure?

**D. Focused Group Discussions;**

The number of participants will be 6-10 people. Two discussions to be conducted (one for men and other for women). Purposive sampling will be used to select participants.

**Questions;**

What land ownership problems under customary in the community affect women?

Who are the most affected category and why

How have the widows been able to secure/protect their land rights?

To what extend are the legal institutions effective in addressing the plight

How can the problem of widows land claims be improved by community and institutions mandated to promote and protect women rights to land.

**E. Reviewing court case files of victims (widows) of land rights violation;** Purposive sampling will be used to select files to be reviewed.

- Purpose; review about 20 court case files of widows land claims for the chosen period 2005-2015. To acquire information on the trend of widow's utilization of legal system and understand some factors that contributes to widow's success on land claims.
- How widows cases are handled in court- details provided for its judgment.
- Relevant facts regarding sampled files, date of filing and completion, type of land tenure and claims presented , place of occurrence, witnesses (age, sex, relationship to victims)
- General status of these cases

Table; for studying case files at Magistrate's court/ Kapchorwa District.

Case No	Date Filed	Parties	Type of Dispute (coded	Evidence	Status of the matter	date concluded

