

# Property Rights in Marriage and Family



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# About this Toolkit

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Property rights economically empower women by creating opportunities for earning income, securing their place in the community and ensuring their livelihoods. When women are economically empowered, it spurs development for their families and communities.

*Property Rights and Gender in Uganda: A Training Toolkit* seeks to strengthen understanding of property rights for women and men as equal citizens. Because women in Uganda are often not treated as equal citizens, toolkit materials address what rights women have, how to communicate women's rights, and the issues preventing women from exercising their rights.

The overarching goals of the training are to increase Ugandans'

- knowledge of their legal rights to property,
- understanding and recognition of women's and men's equality before Ugandan law, and
- ability to exercise and protect their own property rights while respecting others' rights.

The first step in securing property rights is bringing knowledge to women, men, leaders, and communities of *everyone's* legal rights and emphasizing that women's legal rights exist, are protected by law, and are just as important as men's.

The toolkit has five modules:

- Rights and Gender in Uganda
- Land Law and Gender
- Property Rights in Marriage and Family
- Inheritance Law, Wills and Women
- Monitoring Skills for the Community Rights Worker

Trainers can do all modules or focus on ones of their choosing. However, we recommend beginning with "Rights and Gender in Uganda," especially for community rights workers with little previous training. This module uses a human rights approach as a positive starting point to introduce women's rights, property rights and gender.

The modules use five different methods to engage participants:

- **Background** sections introduce new material, explain new concepts and discuss the gendered aspects of the module topic. Facilitators can use the Background sections as short lectures, reading exercises for participants or segues to new topics.
- **Lecture** sections provide specific information about the module topic. Facilitators need to present all of the information in Lecture sections clearly.
- **Discussion** sections promote group conversation, encourage participants to ask questions and share experiences, and highlight differences between custom and written law. The facilitator's role is more to guide the conversation than present information.
- **Exercise** sections give participants a chance to practice a new skill or idea. Exercises can be used to make the ideas in Background, Lecture and Discussion sections more concrete.
- **Handouts and Resources**, at the end of every module, can be used during the training and by community rights workers in their own outreach or sensitization work.

# Property Rights in Marriage and Family

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Marriage is an institution that can have a significant impact on men's and women's property rights. Family law in Uganda covers who can get married, the types of marriage that are legal, what makes a marriage legal, marriage rights and responsibilities, as well as marriage breakdown (either by separation or divorce). In practice, customary and religious rules and norms about marriage are applied to family law alongside statutory requirements. Regardless of differences in the written laws and in customary and religious rules, the Constitution provides the standard upon which ALL marriages are based to be fair to both men and women.

It is important to note that the family laws are currently under review because some are unfair or discriminatory to men and women, and the law has to change to reflect the equality embodied in the Constitution. *If and when the family laws are unfair or unclear, the Constitution is applied as the standard for both men and women in marriage.*

Even though property will be discussed in the context of marriage, it is important to remember that women have property rights outside marriage including when they are single, separated or divorced.

## Module Objectives:

Community rights workers will **understand**:

- Rights women and men have over property whether married or unmarried
- Procedures and documentation for different types of marriages
- What family land is
- Property gained after marriage is considered jointly owned by the couple unless otherwise stated

Community rights workers will be able to **communicate**:

- How some customary practices of marriage, divorce or separation may violate women's property rights
- Customary practices must not go against the equality of women and men declared in the Constitution

Community rights workers **will bring to their communities**:

- Knowledge and services to document and protect each spouse's property
- A view that women have rights to property outside of marriage and not dependent on men

## Handouts & Story/Role Play:

At the end of the module are handouts that can be used both during the training and by community rights workers in their own outreach or sensitization in their communities.

- Handout 1: Practices for a Church Marriage
- Handout 2: Practices for a Civil Marriage
- Handout 3: Practices for a Customary Marriage
- Handout 4: Practices for an Islamic Marriage
- Handout 5: Important Marriage Documents
- Handout 6: The Law on Separation & Divorce: Church & Civil Marriages
- Handout 7: The Law on Separation & Divorce: Customary Marriages
- Handout 8: The Law on Separation & Divorce: Islamic Marriages
- Handout 9: Women's Property Rights at Separation and Divorce

- Handout 10: Informal Dispute Resolution Institutions
- Handout 11: Formal Dispute Resolution Institutions

Also at the end of the module is a role play (Handout 12), which can be used as an optional exercise. The role play tells the story of a husband and wife who might split up and a community rights worker who explains to them their rights to separate or divorce according to the law. It touches on bride price, property rights and who can decide a divorce. The role play needs three persons to act it out but could also be told as a story.

**Total time:** 8.5 hours, plus 3 hours of optional exercise

# What Makes a Legal Marriage?

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## **Background** Marriage Laws

The main family laws in Uganda that this module draws on are:

1. The Marriage Act
2. The Customary Marriage (Registration) Act
3. The Marriage and Divorce of Mohammedans Act
4. The Divorce Act

## **Lecture/Discussion** Legal Marriages in Uganda (1 hour)

1. Begin with the following points:
  - Marriage is when a man and a woman decide to stay together for life of their own free will under any of the existing legally recognized forms of marriage in Uganda. Deciding to marry is not the same as living together or having children together. Unless a man and woman go through the procedures necessary for a church marriage, civil marriage, customary marriage, or Islamic marriage,<sup>1</sup> the law does not consider them to be married, even if they live together or have children together. This is important because the law gives certain rights and obligations to people who are legally married like rights to inheritance, property and family maintenance.
  - Cohabitation (where man and woman live together without going through any of the legally recognized marriages) is not legally recognized as a form of

marriage in Uganda. Consequently, cohabiting couples do not have the same property rights and legal protections as men and women who are married. For example, unless the land where they stay is registered in her name (either alone or jointly with her partner), a cohabiting woman has no legal protection to stop the man she is cohabiting with from selling, renting out, or giving away the land where the couple stays or farms, whereas a married woman would be protected in that her partner could not take any of these actions without her written consent.

2. Give a short lecture on the different kinds of marriages that are legally recognized in Uganda. For each kind of marriage, discuss the conditions, procedures, responsibilities and property rights. Use the following handouts in the lecture and refer participants to key points on the handouts:
  - Handout 1: Practices for a Church Marriage
  - Handout 2: Practices for a Civil Marriage
  - Handout 3: Practices for a Customary Marriage
  - Handout 4: Practices for an Islamic Marriage

As much as possible, make the lecture interactive. However, make sure to correct any misperceptions people have and focus on what the law says. For example, it may be necessary to remind the group that the custom of introduction to parents and parental consent are not required for a marriage to be legal.

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<sup>1</sup> Please note that while Hindu and Baha'i marriages are also recognized as legal marriages in Uganda, they are not included in this toolkit because they will not be found in the majority of communities where the community rights workers work.

Questions you may wish to use in discussion include:

- How is cohabitation different from marriage?
- What are at least five property rights that women have from the written law that relate to marriage, separation or divorce?
- What differences in a woman's property rights do you see across the different kinds of marriages?
- How are the rights and responsibilities for women and men similar to their rights in the Constitution? How are they different?
- What are some differences between a customary marriage and a civil marriage?
- What differences do participants see across the different marriages?

### **Lecture/Discussion Important** **Marriage Documents (30 minutes)**

1. Begin with the following points:

- Each of the legally recognized marriages in Uganda, including customary marriages, must be registered. In a civil marriage, the Chief Administration Officer (CAO) in each district (who often performs civil marriages) must sign and issue the marriage certificate. In Christian or Muslim marriages, the church or mosque must be legally licensed to perform marriages and must provide the couple a marriage certificate on behalf of the government. The church or mosque is also supposed to keep a register of all marriages performed there. For a customary marriage, the couple must register the marriage at sub-county headquarters within six months of the wedding, and they must bring two witnesses from the wedding. It is illegal to not register a customary marriage.

- To be valid, a marriage certificate must be signed by each spouse in front of two witnesses and be issued by a person who is legally authorized to perform marriages. Each spouse must be at least 18 years old.
- Depending on the religion or custom of the spouses, there may also be other proof that a couple is married. For example, among some communities in Buganda letters from parents state the identity of the child to be married, the clan, and that the child is permitted to marry. Islamic marriages often have a contract that goes into more detail than what is required by law about the conditions of the marriage. Across Uganda it is common for the husband's family to give the bride's family a bride price of money, animals or other goods. However, only the marriage certificate is legally recognized as proof of the marriage.

2. Use Handout 5, "Important Marriage Documents," to describe where and how to get marriage certificates for each type of marriage and to describe the benefits of having a marriage certificate.
3. Ask the participants to suggest ways that having a marriage certificate could be helpful. Below are suggestions you may offer if the participants do not.
- A marriage certificate shows that the marriage is legally recognized. This means that the spouses have certain rights and responsibilities according to the law.
  - A marriage certificate helps parents protect their children's right to inherit their property if they divorce or if either of the parents dies.
  - A marriage certificate can make it easier to protect widows' and widowers' rights to inherit property of their spouse.

- Having a marriage certificate can make it easier to obtain other documents like Letters of Administration or Certificates of No Objection.
- Registering marriages makes it clear who is required to give consent if one spouse wants to sell family land.
- If one spouse wants to leave the marriage and take with him/her all the property, the other spouse can produce the marriage certificate to show that s/he also has a claim to the property.



# Property Rights in Marriage

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## **Background** Property Rights in Marriage

According to Uganda’s Constitution and Land Act, both women and men have equal rights to own land and property, either as individuals or jointly with other people. When people get married, they do not lose these rights. However, because couples tend to share property, what belongs to the husband, what belongs to the wife, and what belongs to both can become confusing. In many cultures in Uganda, most or all property belongs to men, even if their wife has it before marriage or is the person to buy it or pay for it. It is important for women and men to know that they can own property before, during and after marriage.

## **Exercise** Husbands’ and Wives’ Property in Practice (45 minutes)

1. Arrange the participants into small groups. Ask each group to answer one or more of the following questions:
  - In a family, what property belongs to the man, what property belongs to the woman and what property is shared by both spouses? Property includes land, animals and other items like bicycles, pots and pans, farming tools, etc.
  - List as many cultural beliefs or rules about property in the home that you know about. Which of the cultural beliefs or rules advance women’s property rights and which ones do not?
  - What happens to property when the spouses divorce or separate? Which spouse usually receives which properties?
2. Ask the small groups to reconvene as a plenary to share their group work.

## **Discussion/Lecture** Women’s and Men’s Legal Property Rights In or Out of Marriage (1 hour)

1. Using the points below, give a brief lecture that reminds participants about the rights the Constitution and the Land Act give women and men to own property. Handouts 1 and 2 from the “Rights and Gender in Uganda” module and Handout 2 from the “Land Law and Gender” module, both part of the *Property Rights and Gender in Uganda: A Training Toolkit*, can be used as additional background material for this exercise.

Current marriage laws in Uganda do not clearly spell out the property rights of married men and women. Rather, this information comes from Common Law (the law passed on to Uganda by the British). It is important to remember that the Constitution is the ultimate guide for property rights in marriage. The following provisions of the Constitution apply to the property rights of both men and women regardless of the type of marriage, as long as that marriage is one that is legally recognized in Uganda:

- All people—men and women—are equal before the law in every area of life and shall be protected equally by the law. [Article 21]
- Women have the same right as men to have property that they can keep alone or share with other people and no one should take away their property for no good reason. [Article 26]
- Women have equal rights as men in getting married, during marriage, and if and when they decide to end the marriage. These rights include the right to property. [Article 31]

- The Constitution bans any laws, customs, cultures and traditions that treat women unfairly or deny women the same opportunities as men. [Article 32]

Some articles of the Land Act specifically protect the property rights of married people. The Land Act says that:

- Both husbands and wives have the right to use and live on family land. Family land is defined as land where the family home is situated, land that helps sustain the family (such as land for crops or animals or land from which the family earns an income), or land that according to the family's norms, custom or tradition is called family land.
- Both spouses—husbands and wives—must seek the approval of the other spouse before carrying out any transaction on family land. Such transactions include sale, exchange, mortgage or lease.

2. Invite questions from the participants at this point.
3. Ask participants to name similarities and differences in women's and men's property rights across the different types of marriages: civil, customary, church and Islamic. You can let participants use Handouts 1-4 at the end of this module.
4. Ask the participants the following questions:

According to law, can:

- an unmarried woman have land or other property that is just hers? (Answer: Yes)
- a married woman have land or other property that is just hers? (Answer: Yes)
- a married man have land or other property that is just his? (Answer: Yes)
- a husband and wife own a piece of land or property together? (Answer: Yes)

- a husband sell land that the family farms for their regular food without consent from his wife? (Answer: No)
- a wife sell land that the family farms for their regular food without consent from her husband? (Answer: No)

5. Invite questions from the participants at this point.

### **Exercise** **Debating the Bride Price** (Optional, 2 hours)

In promoting women's property rights, community rights workers will be challenged by opposing views. This exercise provides practice using convincing arguments and persuasive language to lead people to begin to see women's property rights in a new light.

#### ***Preparations and Materials***

On a flipchart, write the following: "Bride Price Makes Women Property. Property Cannot Own Property." In addition to the flipchart and markers, you will need materials like copies of Uganda's laws, the Bible, the Qur'an, and other sources that the participants may use to bolster their arguments in the debate.

#### ***Part I: Debate (1 hour 30 minutes)***

1. Explain that you are going to have a debate with the following rules:
  - You will divide the participants into two groups.
  - One group will make a case in favor of the statement and the other group will argue against it.
  - Each group must give clear reasons for their argument and cite sources they are using. For example, if they say something is in the Bible, they have to say where. Or if they use an international convention, they have to say which one.

- Remind the participants that each group is playing a role. They do not need to necessarily believe what they are arguing in the debate. It is important for all participants to make the best argument they can for their side to be able to understand different points of view and to practice making respectful and persuasive arguments.
- Each group will have 45 minutes to prepare their argument.
- Two volunteers from each group should be nominated to present the case.
- Each group will have a maximum of 15 minutes to present their case.
- Present the flipchart with the statement to be debated.
- Divide the group in two. Ensure that the group arguing “Against” the statement has an articulate member who will be able to make the argument against the statement convincingly.
- Conduct the debate as described above.
- During the debate, the opposing group members must listen carefully and cannot interrupt. They can take notes and prepare a short rebuttal (about 5-10 minutes) to the argument after the presentation. Emphasize that because the rebuttal is their response to the arguments presented by their opponents, they need to refer to what their opponents said.

### ***Part II: Discussion (30 minutes)***

1. After each group has had an opportunity for a presentation and a rebuttal, the floor is open for a free exchange and discussion.
2. Summarize the discussion and key points made by each side.
3. Ask the members of the team that argued “for” the statement to add any arguments they may have used if they were the opponents.
4. Ask the participants if there were any arguments or approaches from the debate that would have worked well in their communities.

# Separation and Divorce

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## **Background** Separation and Divorce

While it is hoped that couples will be happy in a lasting marriage, the reality is that sometimes marriages do not work out and the spouses choose to separate or divorce. Community rights workers can either advise couples to get counseling for marital problems or can help in mediating marital problems. At the same time, rights workers need to know what legal advice to give a husband or wife who chooses to separate or divorce.

Please remember to note that because cohabitation is not recognized as a form of marriage in Uganda, the law on separation and divorce does not apply to or protect cohabitating couples who end their relationship.

## **Lecture** What Happens in Separation and in Divorce? (1 hour)

**Separation** is a situation where a husband and wife stay away from each other for a given period either because they have agreed

(*Separation by Agreement*) or because the court has ordered the separation (*Judicial Separation*). Separation does not end a marriage, but only suspends certain rights of the husband and the wife. The husband and wife are still considered to be married. Neither can marry another person during the separation. Separation cannot go beyond two years.

**Divorce** is the permanent ending of a marriage. It only applies to legally recognized marriages. The procedure for divorce depends on the type of marriage the parties had. The proper legal procedures have to be followed for a divorce to be valid and for the marriage to be permanently finished. Leaving or chasing away a spouse does not amount to divorce or put a legal end to a marriage.

The table below helps summarize the differences between separation and divorce.

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### **Separation**

It is temporary and does not end a marriage.

Marital rights and obligations are suspended during the period of separation.

The husband and wife are still legally married. They work out ways of managing their affairs and looking after children.

The parties cannot marry or be sexually involved with another man or woman.

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### **Divorce**

It is permanent. The marriage ends.

Marital rights and obligations end.

The parties are no longer husband and wife. Property is divided between them and custody of children is agreed upon or a court order is given.

The parties may re-marry because they are no longer considered husband and wife.

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As important as it is to get the right marriage documents as proof of legality of the marriage, it is equally important to get the right documents when one gets a divorce. The documents are proof that the marriage has ended in case any of the parties wants to marry again.

- For a divorce with church and civil marriages, courts will give a divorce order which states that the marriage no longer exists.
- For a divorce with customary marriage, in some instances, return of bride price is enough proof of the termination of the marriage. In other instances, the person who gave away the bride (father, paternal uncle or other elder appointed by the clan) writes a letter stating that the marriage no longer exists.
- For separation by law, the court will issue the separation order.
- For separation by agreement, each party should have the signed separation agreement which spells out clearly the terms and conditions to be observed during the separation.

Custody of children is addressed by court when a marriage is dissolved. The court considers which of the spouses is in a better position to give the children a proper home and to care for and meet the children's needs. The ages, sexes, feelings and wishes of the children are also considered in custody decisions. Custody is decided on a case by case basis.

### **Lecture/Discussion** How to Obtain a Separation or Divorce (1 hour)

1. Begin by explaining the differences between separation and divorce. It may be helpful to use the table above.

Using Handouts 6, 7 and 8, give a short lecture about the grounds, procedures, and institutions involved in obtaining

a separation or divorce for church/civil, customary, and Islamic marriages.

In particular, note the section in each of these handouts, "Who has power over matters of separation or divorce," to emphasize that a court (civil, customary or Islamic) has the power to grant a divorce. Not living together does not mean a couple is divorced. One partner evicting the other from the home or leaving the other partner is not a divorce.

As much as possible, make the lecture interactive by asking the group what they know about the conditions, procedures, and responsibilities involved for both parties in case of a separation or divorce, as well as their property rights. Make sure to correct any misperceptions people have and focus on what the law says.

2. Ask the participants to compare the rights and responsibilities in case of separation or divorce for each type of marriage.
3. Wrap up the discussion by answering any questions the participants may have.

### **Background** What Happens to Property in Separation or Divorce?

When a marriage ends or couples separate, the properties that they have must be divided. Women and men may bring their own property into a marriage. They may also acquire or improve property together while they are husband and wife. It is important to understand women's property rights in divorce and separation. It is common for women to lose property in divorce even if it was their personal property or they contributed to it because many cultures and traditions say that only men can own property, or they limit the properties that women can have.

## **Exercise** Divorce and Separation in Our Communities (30 minutes)

The purpose of this exercise is to have participants explain what happens when a couple separates or divorces in their communities.

1. Ask the participants if couples who split up typically go through a divorce, separation or some other process.
2. Break the participants into two groups. Ask each group to answer one set of questions:

Group 1:

- When a couple splits up, what does the wife keep, in terms of property or income?
- What does the husband keep, in terms of property or income?
- How is it decided who will keep what properties?
- Who are the people or institutions involved in deciding?

Group 2:

- When a couple splits up, where will the wife stay after the divorce or separation?
- Where will the husband stay?
- Whom will the children stay with?
- Who are the people or institutions involved in deciding who the children will live with?

3. Have the two groups present their answers and discuss.

## **Lecture/Discussion** Women's Property Rights in Separation and Divorce

(30 minutes)

1. Remind the participants about the Constitution stating that women and men are equal before the law and have equal rights to have property.
2. Give a short lecture using Handout 9, "Women's Property Rights at Separation and Divorce."

As much as possible, make the lecture interactive by asking the group what they know about the conditions, procedures, and responsibilities involved for both parties in case of a separation or divorce, as well as their property rights. Make sure to correct any misperceptions people have and focus on what the law says.

3. Ask the participants to compare women's property rights in divorce for each type of marriage.
4. Wrap up the discussion by answering any questions the participants may have.

# Property Conflicts: Where to Refer People for Help

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## **Background** Resolving Disputes

There is a range of dispute resolution institutions to address property-related conflicts in the family. Often, the nature and size of the problem will determine which institution is best suited to handle the conflict. One thing to note is that Uganda is moving toward incorporating mediation into the formal legal process. People in conflict are encouraged to first try to amicably resolve their problem before resorting to the more formal institutions such as courts. This is meant to encourage conflict resolution and peace building right from the smallest units in society—homes and villages.

Community rights workers may carry out mediation of conflicts at the family and community level. However, if the rights worker fails to mediate a case successfully, s/he needs to know where to refer the clients to seek solutions for their problems, including formal mediation using lawyers or local government like Local Council (LC) courts or the Magistrates courts.

## **Lecture/Discussion** Informal and Formal Dispute Resolution (45 minutes)

1. Explain that there are two categories of services available to help resolve conflicts. *Informal dispute resolution institutions* are not part of the formal legal justice system but can help inform people of their rights, provide advice and mediate. Examples are community rights workers, legal aid clinics, religious leaders, clan meetings and family gatherings. *Formal dispute resolution institutions* are part of the formal legal justice system. Examples include LC courts, *Qadhi* courts, Magistrates courts and the High Court. *Regardless of whether the institution is informal or formal, any decision it reaches or advice it gives should agree with the law and support women's equal rights.*
2. Using Handouts 10 and 11, give a brief lecture about the roles, mandate and jurisdiction of the different dispute resolution institutions. Throughout the lecture, ask the participants to share their own positive and negative experiences in working with each institution.

## **Exercise** Case Studies for Referrals (45 minutes)

Now that the participants understand the roles and mandates of the different institutions, we will practice making recommendations for referrals.

1. Divide the participants into small groups. Depending on the number of participants, you may decide to have all groups do all cases or assign different cases to different groups.
2. Ask the groups to read through the case studies (see below, following the directions) and determine:
  - what additional information they would want to know,
  - what documentation they would ask for, and
  - where they would refer the client, and why.
3. Have each group present their work and explain their advice about information, documentation and referrals.

4. Use the guide to the facilitator that follows the case studies to ensure that certain points are covered in discussion.
5. Wrap up the session by explaining the importance of correct referrals.

**Directions:** Answer the following for each case that you have been assigned:

1. What is the main problem the client is asking for help with?
2. What other information might you, as a community rights worker, want to find out before you advise your client or refer him/her elsewhere?
3. What documentation might you recommend s/he bring to wherever you refer him/her?
4. How would you approach mediating this case yourself?
5. If you were not able to successfully mediate the case, where would you refer the client and why?

### **Case 1**

Dear Community Rights Worker,

I had four children with a woman I had married legally. Her behavior was very unbecoming and to maintain peace I moved out and started another life. I even married another woman with whom I have a child. When I moved out, my estranged wife sold the flat which was in both our names on goodwill and bought another house which I gather she put in her name alone. Is there a way I can reclaim my due?

(Source: Courtesy of Women's Vision's Editor of *New Vision*, based on real letter seeking advice)

### **Case 2**

Dear Community Rights Worker,

My wife, with whom I have three children, walked out of our marriage for no apparent reason and started renting a house where she now lives. She had been allocated a house by her employers, which I renovated and where we all lived together. She is now claiming it and wants to evict me and the children. I married this woman in church and we have been together for the last 17 years. The house is in her name. I am a retired civil servant and used all my benefits to renovate this house. Can the law allow her to evict us (me and the children) from this house? How can I handle the situation?

(Source: Courtesy of Women's Vision's Editor of *New Vision*, based on real letter seeking advice)

### **Case 3**

Dear Community Rights Worker,

I am 30 years old and a graduate. I am three years into my marriage. I would like some advice on how to handle my husband concerning issues of property ownership.

Recently, he bought land and also processed a plan for a building to be set up on that piece of land, but all were registered in his names. He told me to borrow 3 million shillings from my workplace, which he used to buy some commercial assets, but all the receipts are in his names and the assets were engraved in his initials. All the money he gets from these assets is used for building and on home expenses. He always says there is no money when I need something, yet I am servicing the loan.

On learning that my name was not on any of the assets despite my contributions to them, I bought a small plot of land in town, which I registered in my name. I have now started



building, but he is very bitter about it and has even stopped talking to me. A relationship without communication is not good. What can I do? I am scared of what the future holds without any viable assets.

(Source: Courtesy of Women's Vision's Editor of *New Vision*, based on real letter seeking advice)

#### **Case 4**

John is a teacher earning a salary of 400,000 shillings per month. His wife, Mary, is a nurse working in a clinic in town earning a salary of 200,000 shillings per month. The two have been married for three years and have no children. They live in the school quarters. John owns a *kibanja* (customary piece of land) in Mayuge district on which he has a semi-permanent house. He inherited the *kibanja* from his father. John and Mary use this *kibanja* for growing various food crops such as bananas, potatoes, beans and cassava. Twice every month the couple goes to the *kibanja* and spends a weekend there. They always go on Friday and return on Sunday evening loaded with sacks of food from the *kibanja*, enough to last two weeks. On such weekends, the couple stays in the semi-permanent house.

John has decided to sell the *kibanja* and buy a new pickup which he will use as a commercial vehicle to supplement his income. He has identified Phillip as a potential buyer. When John discussed the matter with Mary and sought her go ahead, she refused. She says that the *kibanja* is the only property they own and a pickup is not an adequate substitute. Nonetheless, John decided to tell Phillip that he was ready to go ahead with the deal, as he owned the *kibanja* before they got married. Furthermore, he reasoned, they do not reside on the *kibanja*, each of them has a salaried job, and according to Kisoga culture women are not supposed to have a say on such matters. However, Phillip insists that based on his lawyer's advice, John's wife must give her consent. Because Mary does not want to consent to the deal, John has come to you for advice.

(Source: Uganda Land Alliance. *Training of Paralegals: A Resource Manual on Land Law and Dispute Resolution for a Paralegal Training Program*. October 2007.)

## Guide to Facilitator: Key Points to Draw from Case Studies

### Case Study 1

- A key question to ask the man is if he has any documentation or other proof that the flat was in both their names.
- The man might try either informal or formal mediation to get the money due him from the sale of the flat.
- If mediation fails, he has a right to go to a Local Council court or a Magistrates court, depending on the value of the flat.
- Be cautious in deciding whether to mention that he has committed adultery by failing to obtain a divorce before remarrying. This opens an entirely new topic and is not the issue he is seeking advice on. If he mentions that he wants a divorce, it would be appropriate to inform him that the court may consider his new relationship as adultery in making decisions about allocating property in a divorce.

### Case Study 2

- Participants should be able to describe whether the house is part of matrimonial property or family land based on what they have learned.
- The husband has a legal claim to family land.
- Because the two are still married (though separated), the wife must seek her husband's consent to manage family land (sell, lease, etc.).
- If the client mentions that he would like a divorce, inform him that he must file for divorce in court and the court will decide how to divide the property.
- Parties can always be advised to seek mediation before court action.

### Case Study 3

- Both married men and married women have the right to acquire and own individual property.
- Neither of the two parties in this case has done anything illegal with regard to property acquisition.
- Do there exist any documents related to the loan, the land the woman bought, the land the man bought, or any receipts showing that money from the loan is going to develop the land?
- Advise that when a person invests in his/her spouse's individual property, s/he may be entitled to a share of that property.
- Advise about how to register property both individually and jointly.
- One way to create transparency about property in the future is to make written agreements for major property transactions.
- The woman has the option to use mediation to address the issues of ownership of assets, repayment of the loan, and how to communicate about property in the marriage.

### Case Study 4

- Participants should be able to describe whether the *kibanja* in question is family land based on what they have learned.
- The law requires spousal consent for any dealing on family land.
- Consent must not be withheld unreasonably. (Do the participants think Mary is being unreasonable? Why or why not?)
- John can be advised to try informal mediation.
- If informal mediation fails, he has the option to resort to formal mediation through use of a formal mediator (for more detail, see Handout 4 in the module, "Land Law and Gender" in *Property Rights and Gender in Uganda: A Training Toolkit*).

# Pending Legislation

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## **Background** Possible Changes to Marriage Laws

There have been proposed changes to Uganda's marriage and divorce law that could affect women's and men's property rights. You may have heard about the Marriage and Divorce Bill or the Administration of Muslim Personal Law Bill. *As of August 2010, neither of these has been made into law. The descriptions of them below are not law but describe some of the changes that are being proposed. It is possible that the government could make changes to what is below if they pass either of the bills. These bills are not laws, but there has been much discussion about them.*

### **Property Rights in the Marriage and Divorce Bill**

The Marriage and Divorce Bill, though not yet passed into law, contains detailed provisions about the property rights of married men and women. The Marriage and Divorce Bill applies to all marriages in Uganda except Muslim marriages, as the Muslim community has obtained permission to have their own marriage and divorce law.

The Marriage and Divorce Bill is supposed to give effect to Article 31 of the Constitution, which gives men and women equal rights in getting married, during marriage, and if and when they decide to end the marriage.

Among other things, the Marriage and Divorce Bill would:

- Make widow inheritance illegal. Widow inheritance is when a male family member of a deceased man marries his widow without her consent.
- Make asking for the return of bride price a crime. Bride price would remain legal under the bill but is not required.

- Make sex with a wife or husband without her/his consent a crime.

A new and important aspect of the Marriage and Divorce Bill is that it defines property rights for cohabiting couples. Current law is silent on property rights of cohabiting couples and only applies to married couples.

Regarding men and women's property during marriage, the Marriage and Divorce Bill states that:

- Both the man and women have the right to get their own individual property while they are married, if they so wish. *This is the same as current law.*
- Where either the man or woman helps the other spouse improve their individual property (bought before or during the marriage), then the person gets an interest in the property.
- Gifts that spouses or cohabitees give each other during marriage or cohabitation are assumed to be the property of the receiver.
- Spouses have equal rights to use and benefit from matrimonial property. Matrimonial property is owned equally in common by both spouses.
- Matrimonial property includes the matrimonial home (or home where the family lives), the household property in the matrimonial home, any property acquired before or during the marriage which both the spouses agree is shared, to-be matrimonial property, property toward which a spouse has made a contribution, and seed money a spouse provided to start a business.
- Both spouses—husbands and wives—first have to request the written approval [consent] of the other spouse before carrying out any transaction on property that the

family uses for its sustenance. *This is the same as current law.*

- If a husband has more than one wife, matrimonial property acquired by the husband and the first wife before marriage of the second wife is owned in common by the husband and first wife. Later wives will have an interest only in their husband's share of the property.
- Two persons can make an agreement before cohabitation or marriage about how property will be owned separately or jointly during the marriage or cohabitation. The agreement can be oral or in writing, and each party must have a witness.
- Two persons can also make an agreement about how property will be owned or distributed if the marriage or cohabitation ends. The agreement can be oral or in writing, and each party must have a witness.
- The court can change or ignore the agreement if it determines that the agreement exploits one person's unequal bargaining position, the terms of the agreement are unconscionable or all property was not fully disclosed.
- If a spouse incurs a debt before marriage, the responsibility for the debt stays with that person unless the spouses agree that it will be shared or unless any property gained by the debt becomes matrimonial property.

## ***Property Rights of Women in Islamic Marriages***

A bill is currently being developed titled "The Administration of Muslim Personal Law 2008" to regulate marriages, divorce, separation, inheritance of property, and other related matters for Ugandan Muslims based on principles of Islamic Law as laid down in the Qur'an and Sunnah (Islamic Holy Teachings). The bill is also based on Article 129(1)(d) of the Constitution which states that "Judicial power in Uganda shall be exercised by the courts of judicature which shall consist of...qadhis courts for marriage, divorce, inheritance of property and guardianship..." As of August 2010, the bill has been stalled for many months.

The proposed bill spells out the property rights of women in Islamic marriages:

- A married woman has the right to the property she got before the marriage as well as the right to get her own property during marriage.
- A married woman's salary or income of every kind (e.g. savings, investments, etc.) belongs to her to do with as she considers proper.
- In Islam, a married woman has the absolute right to own, sell, give away or manage her property. This property includes the gift given to her by her husband at the time of marriage. This gift is called *mahr*. The husband has no rights over the *mahr* at all and cannot take it away from his wife.
- A husband and wife can acquire property together during the marriage.

## Handout 1

# Practices for a Church Marriage

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### Conditions Parties Have to Meet

Both the man and woman must be 18 years or older.

Both parties must have freely agreed (given their consent) to marry one another. By law, forced marriages are not allowed in Uganda.

The man and woman must not be married to any other person at the time of marriage.

The man and woman must not be closely related (e.g. child, mother, father, etc.).

A church marriage is monogamous.

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### Procedures for Conducting the Marriage

Announcements of the intended marriage have to be made in church for three consecutive weeks.

The church where the marriage is solemnized must be authorized by law to conduct marriages.

The religious official who conducts the marriage must be authorized by law to conduct marriages.

The marriage should be recorded in a register kept by the church where the marriage takes place.

The church must issue a marriage certificate. The certificate must be signed by the bride, the groom, two witnesses and the presiding minister.

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### Rights and Responsibilities of Spouses Under this Marriage

The man and woman have a right to own property, either jointly or individually. Each has the responsibility to take care of his/her property and manage it correctly. Property obtained after marriage is considered jointly owned unless the wife or husband states otherwise or unless it is recorded as individual property.

The man and woman have a responsibility to look after one another. Each spouse has the right to be looked after by the other.

The man and woman have a right and responsibility to protect each other from harm, including not being violent toward each other.

The man and woman have a right and responsibility to nurture and maintain their children. Children born within the marriage are presumed to be the children of the marriage, and the husband is presumed to be the father, unless the contrary is proven or stated.

The man and woman have a right and responsibility to meet each other's sexual (intimate) needs.

## Handout 2

# Practices for a Civil Marriage

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### Conditions Parties Have to Meet

Both the man and woman must be 18 years or older.

Both parties must have freely agreed (given their consent) to marry one another. By law, forced marriages are not allowed in Uganda.

The man and woman must not be married to any other person at the time of marriage.

The man and woman must not be closely related (e.g. child, mother, father, etc.).

A civil marriage is monogamous.

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### Procedures for Conducting the Marriage

Notice of the intended marriage must be displayed at the Registrar's office notice board (if in Kampala) or at the Chief Administrative Officer's (CAO) notice board (all districts outside Kampala) at least 21 days before the intended marriage.

The marriage must be recorded in the marriage register kept in the Registrar's or the CAO's office.

The CAO or Registrar must give the bride and groom a marriage certificate. The marriage certificate must be signed by the bride and the groom, two witnesses, and the Registrar or CAO.

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### Rights and Responsibilities of Spouses Under this Marriage

The man and woman have a right to own property, either jointly or individually. Each has the responsibility to take care of his/her property and manage it correctly. Property obtained after marriage is considered jointly owned unless the wife or husband states otherwise or unless it is recorded as individual property.

The man and woman have a responsibility to look after one another. Each spouse has the right to be looked after by the other.

The man and woman have a right and responsibility to protect each other from harm, including not being violent toward each other.

The man and woman have a right and responsibility to nurture and maintain their children. Children born within the marriage are presumed to be the children of the marriage, and the husband is presumed to be the father, unless the contrary is proven or stated.

The man and woman have a right and responsibility to meet each other's sexual (intimate) needs.

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## Handout 3

# Practices for a Customary Marriage

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**Explanation** This is a marriage conducted according to the customs of the community/tribe to which the parties belong. Among some tribes, a man can marry more than one wife as long as he meets the customary requirements of marriage.

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**Conditions Parties Have to Meet** Both the man and woman must be 18 years or older.

Both parties must have freely agreed (given their consent) to marry one another. By law, forced marriages are not allowed in Uganda.

Marrying a close blood relative is forbidden among most tribes/communities in Uganda.

The man should be single or already married customarily. The woman must be single.

The man must fulfill the customary requirements for each individual woman he marries.

In most customary practices, the giving of bride wealth by the man is important in establishing the legality of the marriage. What is given as bride wealth, however, varies among customs and families.

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**Procedures for Conducting the Marriage** Most customs require that a traditional ceremony be performed to make the marriage official. The traditional ceremony is witnessed by family members from both the man's and the woman's sides.

The marriage must be registered at the sub-county headquarters within six months of the traditional ceremony. The sub-county headquarters will issue a Certificate of Customary Marriage to show that the marriage is legal. Two people who were present at the marriage ceremony must witness the registration of the customary marriage.

It is an offense against the law not to register a customary marriage.

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**Rights and Responsibilities of Spouses Under this Marriage** The man and woman have a right to own property, either jointly or individually. Each has the responsibility to take care of his/her property and manage it correctly. Property obtained after marriage is considered jointly owned unless the wife or husband states otherwise or unless it is recorded as individual property.

The man and woman have a responsibility to look after one another. Each spouse has the right to be looked after by the other.

The man and woman have a right and responsibility to protect each other from harm, including not being violent toward each other.

Both the man and woman have a right and responsibility to nurture and maintain their children. Children born within the marriage are presumed to be the children of the marriage, and the husband is presumed to be the father, unless the contrary is proven or stated.

The man and woman have a right and responsibility to meet each other's sexual (intimate) needs.

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## Handout 4

# Practices for an Islamic Marriage

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**Explanation** This is a potentially polygamous marriage although a Muslim man is by law only allowed to marry up to four wives.

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**Conditions Parties Have to Meet**

Both the man and woman must be 18 years or older.

Both parties must have freely agreed (given their consent) to marry one another. By law, forced marriages are not allowed in Uganda.

Marrying a close blood relative is forbidden under Islam.

The man must make a declaration of offer to marry the woman, and the woman must consent to marry the man.

The *wali*, or guardian of the woman, also has to consent to the woman's marrying the man. The *wali* must be a Muslim man of sound mind.

The man must pay or promise to pay *mahr*. *Mahr* is the mandatory gift paid by the husband to the wife at the time the marriage takes place.

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**Procedures for Conducting the Marriage**

Notice of the intended marriage must be given to the marriage officer at least 30 days before the marriage ceremony. The marriage notice has to be displayed on a notice board at a licensed place of worship.

There must be at least two witnesses at the marriage, and these witnesses must be adult Muslims of sound mind.

The marriage ceremony must also take place in the presence of the *wali* or his representative.

The marriage ceremony may be solemnized in any part of Uganda by a marriage officer of a licensed place of worship in accordance with the Islamic faith.

The marriage officer gives a marriage certificate to the man and woman.

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**Rights and Responsibilities of Spouses Under this Marriage**

The man and woman have a right to own property, either jointly or individually. Each has the responsibility to take care of his/her property and manage it correctly. Property obtained after marriage is considered jointly owned unless the wife or husband states otherwise or unless it is recorded as individual property.

The main teaching in Islam with regard to matrimonial rights and responsibilities is that husband and wife should do everything in their means and work together for their united happiness.

It is the husband's responsibility to maintain his wife during marriage.

The man and woman have a right and responsibility to protect each other from harm, including not being violent toward each other.

The man and woman have a right and responsibility to meet each other's sexual (intimate) needs.

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## Handout 5

# Important Marriage Documents

Document Type	Where/How to Get It	Why It Is Good to Have and What It Can Be Used For
<b>Marriage Certificate (for a church marriage)</b>	<p>All churches that are licensed to marry must give marriage certificates.</p> <p>All churches that conduct marriage ceremonies give the bride and groom their marriage certificate either on the day of the wedding or soon after.</p> <p>A marriage certificate has to be signed by the bride and the groom, two witnesses and the presiding minister in the church.</p>	<p>The marriage certificate is proof of the legality of the marriage between the husband and wife.</p> <p>Having the marriage certificate is especially crucial where the legality of the marriage is contested or where proof of marriage is required, for example:</p> <ul style="list-style-type: none"><li>■ in giving spousal consent for transactions on family land</li><li>■ getting letters of administration upon the death of one of the spouses</li><li>■ when one spouse wants to obtain a divorce or separation</li></ul>
<b>Marriage Certificate (for a civil marriage)</b>	<p>The CAO must give marriage certificates. This can be done at the district level and can be done either on the day of the wedding or shortly after.</p> <p>A marriage certificate has to be signed by the bride and the groom, two witnesses and the CAO.</p>	
<b>Customary Marriage Certificate</b>	<p>To obtain a Certificate of Customary Marriage, the marriage should be registered at the sub-county headquarters (LC III) within six months of the traditional ceremony.</p> <p>Two people who were present at the marriage ceremony must witness the registration of the customary marriage.</p>	
<b>Muslim Marriage Certificate</b>	<p>The marriage officer gives a marriage certificate to the man and the woman after the ceremony.</p>	

## Handout 6

# The Law on Separation & Divorce: Church & Civil Marriages

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Marriage Type	Church Marriage or Civil Marriage
<b>Grounds for Separation</b>	<p>The grounds for judicial separation for both husband and wife are:</p> <ul style="list-style-type: none"><li>■ Cruelty</li><li>■ Adultery</li><li>■ Desertion without reasonable excuse for two or more years</li></ul>
<b>Grounds for Divorce</b>	<p>The section of the Divorce Act that describes the grounds for divorce has been declared unconstitutional and made null and void because it made it easier for men to divorce women than for women to divorce men.</p> <p>According to the Constitutional Court's ruling, women and men should have equal grounds for divorce. Like men, women should have the right to divorce their spouse for the sole ground of adultery. However, Parliament has not yet amended the Divorce Act to treat women and men equally in this regard.</p>
<b>Procedures for Obtaining a Separation or Divorce</b>	<p>The husband or wife presents a petition (a formal request) to court requesting either a separation or divorce. The court then makes a decision based on the evidence presented in support of the petition.</p> <p>The courts grant a divorce in two stages. The first order of divorce is called a <b>Decree Nisi</b>. This lasts six months and is given to allow the husband and wife an opportunity to reconcile.</p> <p>If no reconciliation takes place, the court gives the second order called a <b>Decree Absolute</b>. This decree is the final ending of the marriage.</p> <p>Along with the <i>Decree Absolute</i>, the court gives orders regarding how property is to be divided between the husband and wife, who is to have custody of the children, and whether and how much the husband or wife is to pay toward maintenance of the other until he or she dies or remarries.</p>
<b>Who Has Power Over Matters of Separation or Divorce?</b>	<p>Under civil or church marriage, only the court can grant a divorce or a judicial separation.</p> <p>If both the husband and wife are Africans, then the request for separation or divorce is made to the Magistrate Grade 1 or the Chief Magistrate Court. In all other cases (African and non-African unions, non-Africans) the request for separation or divorce is made to the High Court.</p> <p>In instances of separation by agreement, the husband or wife can seek the services of a qualified lawyer to draft a separation agreement. The separation agreement lays down the conditions that the husband and wife will follow during the period of separation.</p>

## Handout 7

# The Law on Separation & Divorce: Customary Marriages

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Marriage Type	Customary Marriage
<b>Grounds for Separation</b>	There are no uniform grounds for separation under customary marriage. Instead, the grounds are determined by the customs of the particular tribe or community to which the husband or wife belongs.
<b>Grounds for Divorce</b>	There are no uniform grounds for divorce under customary marriage. Instead, the grounds are determined by the customs of the particular tribe or community to which the husband or wife belongs.
<b>Procedures for Obtaining a Separation or Divorce</b>	<p>There is no uniform procedure for divorce under customary marriage. Instead, the procedure is determined by the customs of the particular tribe or community to which the husband or wife belongs.</p> <p>A customary marriage can also be terminated by court of law following the procedure used for church and civil marriages.</p> <p>The procedures for ending a customary marriage should follow the constitutional standards of equality between men and women. The Constitution gives women and men the same rights when they decide to end the marriage; and it bans any customs, cultures, and traditions that treat women unfairly.</p>
<b>Who Has Power Over Matters of Separation or Divorce</b>	A customary separation or divorce is usually brought before a clan or family court where evidence is presented. The clan or family court decides whether to grant the separation or divorce, as well as the terms and conditions to be followed by both the husband and the wife.

## Handout 8

# The Law on Separation & Divorce: Islamic Marriages

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Marriage Type	Islamic Marriage
Grounds for Separation	Ugandan law does not address separation within Islamic marriages.
Grounds for Divorce	<ul style="list-style-type: none"><li>■ The husband or wife has changed from Islam to another faith.</li><li>■ The husband or wife has committed adultery.</li><li>■ The husband or wife has not seen and does not know where the other spouse is for a period of more than one year.</li><li>■ The husband or wife has failed to perform his/her marital obligation without reasonable cause.</li><li>■ The husband or wife was and remains barren or impotent from the time of marriage.</li><li>■ The husband or wife has been insane for two years or has a serious and dangerous disease which is either infectious or chronic (persistent) and would take long to heal and thus affects the continuation of the marriage.</li><li>■ The husband or wife treats the other spouse with cruelty.</li><li>■ After four months of the marriage, the husband or wife has deliberately refused to consummate the marriage.</li></ul> <p><i>Grounds specific to the husband:</i> In addition to the above, a husband may divorce his wife if at the time of marriage she was not yet 18 years, or the wife did not consent to the marriage.</p>
Procedures for Obtaining a Separation or Divorce	<p>Muslims have several forms of divorce, including:</p> <p><i>Talaq</i>: Here the divorce is given verbally or in writing by the husband and must take place in the presence of witnesses. The husband pronounces <i>talaq</i> in three distinct and separate periods (to give the chance for reconciliation) at intervals of one month. The husband must abstain from intercourse with his wife after pronouncing <i>talaq</i>. At the third <i>talaq</i> the divorce becomes final if the parties have failed to reconcile. If before pronouncing the third <i>talaq</i> the husband resumes intercourse with his wife, then he has to start the procedure from the beginning if he still wishes to divorce his wife.</p> <p><i>Khul</i> is divorce initiated by the wife and in which the wife asks her husband to release her from her marital duties where the husband does not want to pronounce <i>talaq</i>.</p> <p><i>Lian</i>, or divorce by oath, occurs when either the husband or wife claims that the other committed adultery but they do not have witnesses to attest to that fact. In this case they must swear four times by Allah that they are telling the truth and a fifth time that Allah should curse them if they are telling lies.</p> <p><i>Ila</i> is a divorce granted to a woman whose husband vows to abstain from having intercourse with her and keeps this vow for four months.</p>
Who Has Power Over Matters of Separation or Divorce	<p>Apart from <i>talaq</i>, all other divorces are witnessed and made effective by the <i>Qadhi</i> (Islamic court).</p> <p>All divorces have to be registered by the Registrar of the <i>Qadhi</i> court.</p>

## Handout 9

# Women's Property Rights at Separation and Divorce

The table below presents the effects of separation and divorce on the property rights of women. As always, remember that the Constitution is the yardstick for the rights of both women and men. Where the current law, customs, or traditions treat women or men unfairly or discriminate between them, the Constitution takes priority.

Type of Marriage	Property Rights at Separation	Property Rights Upon Divorce
<b>Church Marriage and Civil Marriages</b>	<p>The wife has a right to acquire her own property during a judicial separation. The husband has the same right.</p> <p>The wife has full authority over property she acquires while she is separated without having to first seek approval or consent from her husband. The husband has the same right.</p> <p>The wife is entitled to receive any income from joint property of the marriage during the time of separation. The husband has the same right.</p> <p>The wife is solely responsible for any debts she incurs during a judicial separation, except where she incurs debts for "necessaries" because the husband has failed to provide her maintenance as ordered by the court. The husband is also solely responsible for any debts he incurs during judicial separation.</p> <p>The court can order that the wife remain in the matrimonial home during the judicial separation.</p>	<p>The court decides how to deal with the property of the marriage. The court may order that the property be divided between the husband and wife or that the property be sold and the income shared.</p> <p>The court decides who should retain or stay in the matrimonial home.</p> <p>In making decisions, the court is required to:</p> <ul style="list-style-type: none"><li>■ Treat all parties fairly</li><li>■ Ensure that justice is done to all, regardless of social or economic status</li><li>■ Promote reconciliation between parties</li></ul>
<b>Customary Marriage</b>	<p>The property rights of a woman separated under customary law are determined by the customs of the particular tribe or community to which the husband or wife belong as long as the customs treat women and men equally in agreement with the Constitution.</p>	<p>The property rights of a woman divorced under customary law are determined by the customs of the particular tribe or community to which the husband or wife belong as long as the customs treat women and men equally in agreement with the Constitution.</p>

*continued on reverse*

## Handout 9: Women’s Property Rights at Separation and Divorce, *continued*

Type of Marriage	Property Rights at Separation	Property Rights Upon Divorce
<b>Islamic Marriage</b>	<p>Under the <i>talaq</i> divorce, the wife stays in the matrimonial home until the final <i>talaq</i> is made by her husband.</p> <p>All other property rights of the wife are the same as in marriage.</p> <p>All property rights of the husband are the same as in marriage.</p>	<p>A divorced wife retains her right to the <i>mahr</i>. It is hers in total, and no one can take it away or claim any part of it.</p> <p>A divorced woman is free to stay in the matrimonial home if her husband is unable to provide her other suitable accommodation.</p> <p>The woman loses her right to the matrimonial home when the children have grown (reached age 18) and she is no longer taking care of them, when she remarries, or if she is guilty of open lewdness.</p> <p>Both the <i>Qadhi</i> and secular courts have the power to make orders about the property upon divorce. The court may order that the property be divided between the husband and wife, or that the property be sold and the income shared.</p> <p>In making the decision about division of property, the court considers the following:</p> <ul style="list-style-type: none"><li>■ The extent of the contribution of both the husband and the wife toward acquiring the property</li><li>■ Any debts either the wife or the husband incurred that were for their joint benefit</li><li>■ The needs of the minor children</li></ul> <p>A divorced wife can apply to the court for <i>Mut’ah</i>, a gift given as compensation to a divorced wife. After hearing the case, the court may ask the husband either to pay the wife in money or property.</p>

## Handout 10

# Informal Dispute Resolution Institutions

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Institution	Role
<b>Community Rights Workers</b>	<p>One of the roles of the community rights worker is to offer immediate or preliminary solutions by providing initial legal guidance and information.</p> <p>Community rights workers are also trained to provide legal services as well as mediation and conciliation services for disputes arising between members of the community. As conciliators, they encourage the community to negotiate and settle their disputes among themselves.</p>
<b>Family Gatherings</b>	<p>Many cultures use family gatherings to discuss family problems to arrive at a solution. This involves hearing both parties, agreeing on the issues, providing information and counseling where necessary, and agreeing on a solution.</p> <p>Community rights workers may attend family gatherings if requested by one of the parties in conflict. The role of the community rights worker at a family gathering would be to sensitize the family on relevant laws and procedures to enable the family to develop a solution that is lawful.</p>
<b>Clan Meetings</b>	<p>Clan meetings are also used for resolving family conflicts. Mediation at the clan level is usually done by clan leaders/elders who are considered to know the rules, values and norms of the particular community.</p> <p>Community rights workers may attend clan meetings to provide legal advice where necessary or to help record the outcome of the meeting in an agreement that both parties to the conflict sign as a way to bind the parties to implement the resolutions.</p>
<b>Religious Leaders</b>	<p>Many married people seek help from religious leaders when faced with family conflicts. The role of the religious leader is usually to mediate the case in a way that enables the husband and wife to come to an amicable settlement. Religious leaders are also often known to follow up with the conflicting couple to ensure that the conflict is resolved and that there is peace in the home.</p>
<b>Legal Aid Clinics</b>	<p>Legal aid clinics help parties mediate cases and often do not charge fees. They are run by lawyers and are certified by the Law Council. There are several legal aid clinics throughout Uganda, including clinics run by the Uganda Association of Women Lawyers (FIDA-U), Legal Aid Project (LAP) and Uganda Land Alliance (ULA).</p>





## Handout 11

# Formal Dispute Resolution Institutions

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The law gives formal dispute resolution institutions particular roles and responsibilities. There is a hierarchy for the formal dispute resolution institutions so that if a person is unsatisfied with one level, s/he can appeal to the next level for redress.

Institution	Role
<b>Local Council Courts (LC Courts I to III)</b>	<p>There are three levels of Local Council (LC) courts: sub-county (level III), parish (level II) and village (level I). In the LC court system, a case starts at LC I court level, and if one of the parties is not satisfied with the decision at that level, s/he has a right to appeal to LC II court. If still not satisfied with the decision of that court, either party can appeal to LC III court and then on to a Chief Magistrates court.</p> <p>The LC courts can hear land disputes that may arise relating to (1) customary land, (2) criminal trespass (when a person enters private property with the intention of committing a crime), (3) malicious damage to property (where a person intentionally damages another person's property), and (4) theft (where a person takes another person's property without that person's permission and without intention of returning it).</p> <p>The remedies a local council can decree include reconciliation, apology, compensation and caution.</p> <p>LC courts handle property cases where the monetary value is two million Uganda shillings and below.</p> <p>Cases about land can be handled by LC II and LC III courts. LC I courts do not have legal authority to hear and decide on land cases.</p> <p>Local Council courts are not allowed to hear cases that have already been decided by formal courts or cases that are still being heard by a formal court (i.e., any of the Magistrates courts or the High Court).</p>
<b>Magistrates Courts (Grade II and I) and the Chief Magistrates Court</b>	<p>There are three levels of Magistrates courts: Chief Magistrates, Magistrates Grade I and Magistrates Grade II. Decisions from Magistrates courts are subject to review by the High Court. Currently the country is divided into 26 Chief Magisterial areas administered by Chief Magistrates who have general powers of supervision over all Magistrates courts within the area of their jurisdiction.</p> <p>Magistrates courts handle the bulk of civil and criminal cases in Uganda.</p>

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## Handout 11: Formal Dispute Resolution Institutions, *continued*

Institution	Role
<b>High Court</b>	<p>The High Court of Uganda has unlimited original jurisdiction, which means that it can try any case of any value or crime of any magnitude. Appeals from all Magistrates courts go to the High Court. The High Court is headed by the Honorable Principal Judge, who is responsible for the administration of the court and has supervisory powers over Magistrates courts.</p> <p>The High Court has five divisions: Civil, Commercial, Family, Land and Criminal. Most of the business of the High Court is conducted at its headquarters in Kampala, but with the decentralization of the High Court, its services are now available at its circuits at Fort Portal, Gulu, Jinja, Masaka, Mbale, Mbarara, and Nakawa. There are plans to create more locations in the future.</p>
<b>Qadhi Courts</b>	<p>When established, <i>Qadhi</i> courts will have power to hear cases of marriage, divorce, inheritance of property and guardianship. The Constitution allows for these courts, which will serve the Muslim community. There are no formal <i>Qadhi</i> courts in Uganda right now because Parliament has not yet passed the law to operationalize them. However, there are some informal mechanisms through which members of the Muslim faith can seek the help of their religious leaders to mediate in marriage disputes.</p>

## Handout 12

# Role Play: Rose & Joseph (Optional Exercise)

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This is a story about a couple, Rose and Joseph, and how a community rights worker helps them. Rose and Joseph have been married for 10 years, but Joseph has chased Rose from the house because they do not have any children. Rose then meets David, a community rights worker.

To put on the role play, you will need one woman and two men to be the actors. They do not need to say exactly what is written in the script written below, but they should stick to the same story and points about the marriage.

The full role play takes about 20 minutes to complete, but you may shorten or lengthen it as needed.

After the role play, ask the group what they think about the story and each of the different characters. Be sure that everyone has a chance to speak. You may want to ask quieter people in the group a question to encourage them to participate.

Below are more questions you can ask to direct the discussion and create opportunities to educate about what the law says. Short answers and references to information are provided for several of the questions.

### Community Rights Workers

- What is the role of the rights worker? What things can this person do to help Rose and Joseph? What things can this person not do?
- What other problems could the rights worker help with?

### Property

- Can Rose and Joseph have property that they share together? (Yes. Refer to Constitution, Land Law and Marriage Law.)
- Can Rose have property of her own? (Yes. Refer to Constitution, Land Law and Marriage Law.)
- If Rose and Joseph separate, do you think Rose should have some of the land or animals? Why or why not?
- Suppose that Rose had been selling cooked *matooke* and yams in the market and that she contributed money to buy some of the chickens and a goat. Do you think she should have some of the land or animals? Why or why not?

### Bride Price

- Do you think that Rose's parents will accept her if she returns? Why or why not?
- Do you think that they will be able to pay back the bride price? Do you think that they will want to pay back the bride price?
- Do you think families should have to return the bride price if the marriage ends? Why or why not?
- Do you think the bride price is a good idea? Why or why not?

### Marriage, Separation & Divorce

- What are the different kinds of marriages that the law in Uganda recognizes?
- What is the difference between separation and divorce? (Refer to the section "Separation and Divorce," found earlier in this module.)
- What are the steps to getting a divorce if you have a civil marriage or a church marriage? (Refer to Handout 6.)
- What are the steps to getting a divorce if you have a customary marriage? (Refer to Handout 7.)

- What are the steps to getting a divorce if you have an Islamic marriage? (Refer to Handout 8.)
- Who decides how to divide property when a husband and wife divorce? (Courts or the clan, depending on the type of marriage.)
- Can a man divorce his wife? (Yes)
- Can a woman divorce her husband? (Yes)
- Suppose that Rose and Joseph only need to go to the clan to be granted a divorce.
  - If the clan decides to grant a divorce and gives all the property to Rose, are they ruling according to the law? (No.) Does Joseph have the right to take the case to court? (Yes.)
  - If the clan decides to grant a divorce and gives all the property to Joseph, are they ruling according to the law? (No.) Does Rose have the right to take the case to court? (Yes.)

## General

- What do you think Rose and Joseph will do?

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## Rose and Joseph: Rights in Separation and Divorce

*[Rose is sweeping the house.]*

**Joseph:** *[angry]* Rose, come here!

**Rose:** Yes, my husband.

**Joseph:** Can you sit down there?

*[Rose sits]*

**Joseph:** What are you doing in my home? What have you been doing here?

**Rose:** What is the problem, my husband?

**Joseph:** I want to tell you today that if you don't give me a baby boy, you will leave this house! Is that clear to you?

**Rose:** But...

**Joseph:** Everyone in the bar and in the trading post is talking about me! They say I am a fool!

**Rose:** Joseph, you know how much I want.... Is this my problem?

**Joseph:** *[shouting over Rose]* What are you doing in my house?! Your work is to clean my house, make my meals, and give me a son. Is this what I paid for? I paid your father 10 cows for you to come and give children here. What have you done for me? Get out. This is my home, not yours. I don't want to see you here. Leave—it is my home!

*[chases her out]*

*[Rose runs out]*

**Rose:** *[crying]* What can I do? Where will I go? My parents will not like me if I go back. They do not want me. They will not pay back the cows.

*[David walks by and sees that Rose crying.]*

**David:** What's wrong, madam? Are you okay? I see you are crying. You are crying so much that you did not even notice that I am passing by. What is the problem?

**Rose:** I have so many problems.

**David:** It is okay. You can stop crying. Maybe I can help you. Why don't you sit and tell me what happened? We all have problems and we can help each other sort them out.

**Rose:** I have a very big problem. My husband, Joseph, and I have been married for 10 years, but we have not had any children. He chased me out because I did not give him a son. And now I am here with nothing and nowhere to go. My parents will not want to see me, because they already have their dowry. They will not pay him back the 10 cows. All the time we were married, we had many resources together. We had animals, the house and land. But he chased me out and did not allow me to go with anything.

**David:** Do you know who I am or what a community rights worker is?

**Rose:** No, I do not know you or what you do. I have just seen you around the village.

**David:** My name is David, and I am a community rights worker. That is someone who helps people resolve their conflicts and tells people about the law. I am a human rights counselor. Do you know about human rights?

**Rose:** No.

**David:** When someone comes and wants to take something that belongs to you or to hurt you, they are violating your rights.

**Rose:** Now how are you going to help me?

**David:** You are not the first to have this happen to you. We've been helping women and men and families with problems like this by talking with them and advising them. To every problem that comes, there is a solution.

I think I could help you if I could learn more about your problem. Maybe I could go with you and we could talk with your husband together. Would you be free to go to the house and talk with him, or would he beat you when I leave?

**Rose:** He is very aggressive, but I don't think he will do anything if you are there. Are you a government officer or police?

**David:** No. I am not an LC or a government officer or policeman. But I work with them to help resolve people's problems. I am a volunteer.

*[David and Rose walk back to the house.]*

**Joseph:** You! What are you doing back here?! Who is this man you bring into my house?!

**Rose:** My husband, you abuse me. Let's listen.

**Joseph:** *[shouting]* I told you that you could not come here unless you have a baby boy. You go with your man! Get out!

**David:** Please, please. I don't have a problem. You don't have anything to fear from me. I am not a policeman or anything like that. I just have a few things I wanted to share with you and your wife. I was just going home and I met her on the way. She was crying and I asked myself, "What could be the matter?" It is a human thing to do to help each other. She is your wife, and married couples sometimes have troubles.

**Joseph:** That stupid woman I just sent from my home. How can I stay with a woman for 10 years and not have a son?

**David:** Is this man not your husband?

**Rose:** He is my husband. For the last 10 years we have been married. He introduced himself to my home and parents. I even have a certificate saying we are married.

**Joseph:** How can I be married to this woman? She has done nothing and given me no son. She is useless to the clan. She is useless to me. You both leave my home.

**Rose:** I've worked in his home for the last 10 years. We've acquired two plots.

**Joseph:** *[shouting]* What have you been doing in my house? Nothing! The land, I inherited it from my grandfather. You go and work some other land. The animals you see here are mine. I bought them myself. Everything here is mine, not hers.

**David:** *[calmly]* I want to give you some small advice.

**Joseph:** The best you can do for me is to keep her away.

**David:** I want to just tell you that I work with a human rights group. We help with problems like these family problems you are having. We come in to help sort out problems if people are willing to have our help. But even if you are not willing, I would still like to tell you what the law says and where she can go next. Something has to be done.

**Joseph:** Okay. Now you stay and tell me what the law says. If you tell me that the law allows her to go ahead and leave my home and she goes forever, I will be happy.

**David:** Now if you got married to her, were you legally married?

**Joseph:** I married her. I paid my cows.

**David:** So that is a customary marriage. This means your clan can decide whether to grant a separation or divorce and what will happen to any property. Still, the clan's decision must treat the man and the woman equally according to the law. But Rose has also said that you have a certificate, so maybe you also had a civil marriage or a church marriage. If that is the case, you would need to go to a Magistrates court.

**Joseph:** What I know is that I paid my 10 cows for her, and she is my property. I own her. If I want to chase her out, she goes. That is what I know.

**Rose:** But how? I have been here. I got these animals with you.

**Joseph:** How can any of these be yours? I bought you.

**David:** Let me give you more information, so you can use the correct procedures. If you want a divorce, you have to go apply to the court and explain why you want to divorce her.

**Joseph:** Oh, that is good. I will go do that.

**David:** The law is not for her alone. It is for everyone.

If you have a good reason, you can divorce her. If the court grants you a divorce, you must divide the property into two. You will have a share and she will have a share. That is likely what the court will decide.

**Joseph:** Now I understand you. I will tell you what I can do. I will give her the land I acquired with her, so she can go live on that land and leave me alone. Is that okay with you?

**David:** I am not the magistrate. I cannot decide that. That is decided by the magistrate after you give the reasons you want to divorce. But I would advise you to take some time together to sort out your problems before you do anything. We will come back together and talk more about what each of you decides. I want to advise you that if you are not able to resolve this issue between yourselves, Rose can go present her case to the magistrate on her own.

Let us meet again tomorrow when you have each had more time to think. But until then, Rose should be able to stay in the house or with friends where everyone can be safe and calm. I will see you tomorrow.

**Rose and Joseph:** Thank you. See you tomorrow.

*END*





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