

## Customary rules or the excuses of the greedy?

Many statements which people make about customary rules for owning land are false. People make wrong statements for many reasons – some people may have misunderstood the rules, but sometimes people want the rules to change so they can take more land. Make sure you know which statements are true.

- 1 *“Women do not own land under customary tenure.”*

***This is not true!***

The truth is that ‘owning’ land in customary law meant different things. There were rights to use land; there was the responsibility for managing or administering land; and there was the job of overseeing how land was managed and authorising any sales. These rights and responsibilities were given to different people.

Everyone born on inherited land, whether male or female, always had the right to use land. A married woman would have this right from the land of her husband’s clan – but the right to use land was hers, not her husband’s.

The head of the family was given the responsibility for managing and protecting land, to make sure that all members of the family were able to use land and that the land would be there for the future generations. This responsibility did not mean that he could take the land for himself. The head of the family was usually a married son, but some women were also given this responsibility.

The clan elders had the responsibility for making sure the family heads managed the land well, giving everyone their rights and protecting the land for the future generations of the clan. They were the ones who would have to approve if someone wanted to sell land.

So, the land rights of women and men were largely the same in customary law!

- 2 *“Women have no rights to land, because they did not carry land from their homes when they married.”*

***This is not true!***

When a woman marries, she leaves her parents’ clan and joins her husband’s clan. This means she has full rights to have land to use from her husband’s clan – the land which is allocated to her husband for his household. If the husband dies, she takes over the responsibility to manage and protect this land for their children. Since she remains a member of her deceased husband’s clan, it is the clan elders’ responsibility to protect her rights to the land.

- 3 *“Girls do not own land under customary law”*

***This is not true!***

The responsibility for managing the land for the family was usually given to sons, because girls were expected to leave the clan and join their husband’s clan on their land. However, if a girl did not marry, or if she was divorced, she always had the right to have land to use. If a woman

had children outside marriage, she would be the one to manage the family land for her children. The head of her family had the responsibility to protect her interests.

4 *“Widows do not own land under customary law.”*

***This is not true!***

When a woman’s husband dies, she keeps all the rights over the land which her husband had allocated for her: she keeps the rights both to use the land and to manage it for her family. This is true whether or not she is taken as a wife by one of her late husband’s brothers. The deceased man’s heir, e.g. a son, inherits the right to manage only the land that had remained unallocated.

The widow’s rights to land used to be protected by the brother who took her as his wife. However, this practice is now discouraged because of HIV/AIDS. Customary practice has not yet found a new way to protect widow’s land from trespassers. Every clan now faces the challenge of deciding how it can protect widows from land grabbers.

5 *“Children born out of marriage do not own land under customary law.”*

***This is not true!***

The child of an unmarried girl is a member of the clan of the girl – unless the man who made her pregnant claims the child and pays a penalty. The child then has rights to land from his mother’s family and clan. This means that the child of an unmarried girl has the same rights as the child of a son from the same family, since both are children of the clan, born on inherited land.

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There are many people who are using these false statements out of greed, because they want to grab other people’s land. They think that women, widows and children are too weak to protect their own land, so they need to persuade other people in the clan not to help protect the rights of their clan members. They are breaking the clan law and to hide this, they have to lie about what the customary law says. Be careful! Remember, the greedy may try and

grab land from you or one of your family and sell it and deprive you and the clan of an important asset for future well-being.

The clan needs to stay together to protect the rights of all its members from the greedy. It needs to work together to protect the rights of our wives, our daughters, the unmarried girls, the widows and the children born to unmarried girls. This is to protect the future of our families and our clan.

If you hear about anyone trying to grab someone else’s land, you can help stop it. Report it to your clan head, a member of the paramount chief executive in your area or to LEMU, FIDA, District Land Tribunal or Legal Aid.

This leaflet has been prepared by LEMU. Please let us know if you found it useful and if you want to translate it to a local language in your area. If you have any other comments, or if you would like us to make leaflets on any other topic, please contact us at:  
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