

**WOMEN'S RIGHTS TO DEVELOPMENT UNDER THE LAND LEGAL REGIME IN
UGANDA**

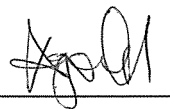
**A Thesis
Presented to the College of Higher Degree and
Research, Kampala International
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**In Partial Fulfilment of the Requirements for the Award of a Degree of
Masters of Laws (LLM) OF KAMPALA INTERNATIONAL UNIVERSITY**

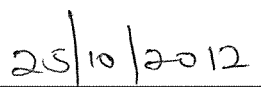
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DECLARATION A

"This thesis is my original work and has not been presented for a Degree or any other academic award in any University or Institution of Learning".



AYEBALE GORRETH



Date

DECLARATION B

This is to acknowledge that this thesis proposal entitled "Women's Rights to Development under the Land Legal Regime in Uganda" is being done under my supervision as University Supervisor.

Signature

Date

.....
GODARD BUSINGYE

DEDICATION

I dedicate this Thesis to my late little brother Henry Bingi in whose courage and faith I still stand strong although he never lived to see the fruits of my hard work. Henry, although you are gone in my soul you will live forever. Just like you promised to always remember me, I will also always love and remember you too.

ACKNOWLEDGEMENT

Above all I thank the Almighty God who has seen me through my hard time while trying to complete this dissertation and the completion of the LLM course as a whole.

Great thanks are extended to my parents Mr And Mrs Bategeka through whose financial, emotional and moral support I have managed to get this far and without whom I would not write and submit this Thesis.

It would amount to malice and great injustice not to recognize the efforts and time spared by my Supervisor Mr Godard Busingye to enable me successfully complete this research. With special regards to him I will always reflect on the way he guided me and reviewed my write-ups providing necessary comments.

Thanks to my bother Donald Bakire who financially supported me in completion of this course.

Finally, special thanks to my family including my brothers and sisters not mentioned above. To my friends especially Wtenyera Richard, Sam Musinga and David Nshakanabo and all those who encouraged me to work harder and not to give up on the course.

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LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
COHRE	Centre on Housing Rights and Evictions
DEVAW	United Nations Declaration on Violence Against Women
DRB	Domestic Relations Bill
FIDA	Ugandan Association of Women Lawyers
GEM	Gender Empowerment Measure
ICCPR	International Convention on Civil and Political Rights
ICDP	International Conference on Population Development
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDLO	International development Law Organization
LEMU	Land and Equity Movement in Uganda
LSSP	Land Sector Strategic Plan
NDP	National Development Plan
NLD	National Land Policy
NRM	National Resistance Movement
PEAP	Uganda Poverty Eradication Action Plan
PELUM	Participatory Ecological Land Use Management
PSIA	Poverty Social Impact Assessment
RTA	Registration of Titles Act
UBOS	Uganda Bureau of Statistics
ULA	Uganda Land Alliance
ULC	Uganda Land Commission
UN	United Nations
UNHS	Uganda National Household Surveys
UNDP	United Nations Development Programme
UWONET	Uganda Women's Network
WHRP	Women and Housing Rights Programme
WLDAF	Women and Law in Development in Africa
WLLA	Women's Land Link Africa

LIST OF AUTHORITIES

International instruments

The Beijing Declaration and Platform for Action (1995)
The Common Wealth Plan of Action on Gender and Development (1994)
The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)
The International Convention on Civil and Political Rights (ICCPR)
The International Covenant on Economic, Social and Cultural Rights (ICESCR)
The United Nations Declaration on Violence Against Women 1993 (DEVAW)

National laws

The Administrator General's Act, Cap.157
The Ankole Agreement 1901
The Buganda Agreement, 1900
The Divorce Act, Cap. 249
The Domestic Relations Bill (2003)
The Constitution of the Republic of Uganda 1995
The Constitutional (Amendment) Act 2005,
The Crown Lands Ordinance, 1903
The Crown Lands (Declaration) Ordinance, Cap. 118
The Land Act (Cap 227) Volume 9 Laws of Uganda (as amended by Act, 2004)
The Land Reform Decree 1975
The Land Sector Strategic Plan (2001)
The Marriage Act (Cap 251) Volume 10 Laws of Uganda
The Marriage and Divorce Bill, 2009
The Marriage Decree of 1972
The Mortgage Act, Act No 8 Of 2009
The National Development Plan (2010)
The National Land Policy National Land Policy (June, 2010)
The Public Trustee Act (Cap 161) Volume 7 Laws of Uganda

The Registration of Titles Act (Cap 230) Volume 9 Laws of Uganda

The Succession Act (Cap 162) Volume 7 Laws of Uganda

The Succession (Amendment) Decree, No. 22 of 1972

The Toro Agreement 1900

The Uganda Gender Policy (1997 Revised in 2007)

Case law

Babiruga V. Karegyesa (unreported)

Ephraim v. Pastory and Another Mwanza PC, Civil Appeal No. 70 of 1989

Fraser Vs. Walker and others [1967] 1 A.C 569 at 580) [1967] 1 A.C 569 at 580

Gibbs Vs. Messer [1891] A.C 248 at 25

Law & Advocacy for Women in Uganda V. Attorney General of Uganda Constitutional
Petitions Nos. 13 /05 /& 05 /06

Magaya v. Magaya, 1998

Mojekwu v. Ejikeme, 2000, 5 NWLR 402

Mojekwu v. Mojekwu, 1997, 7 NWLR 283

ABSTRACT

The research was centred on women and their rights to development under the land legal regime in Uganda. It examined the land law regime in Uganda—statutory law, policies, customary law, and government programmes aiming at promoting respect for women's rights to land. The study was conducted with an expectation of illuminating women's rights to access land in Uganda as provided for in the laws. The study therefore is as a result of observation of the superficial injustice against women in particular the denial of women to own and access land resulting from the application of the loopholes in the statutory laws in place that provide for the rights of ownership of property by women in Uganda as well as customary law that is widespread among Ugandans today.

The research examined the efficacy of the laws providing for women's access to land rights in Uganda through looking at how these laws have been applied in matters concerning land. In conclusion, the issue of whether the current provisions of the law deny women access to land rights and thus affecting development are determined. Recommendations and conclusions were made basing on the findings that reflected on the rest of the search.

Although the 1995 Constitution of the Republic of Uganda and other international Conventions to which Uganda ratified give protection to women against abuse of their rights, enforcement of those statutory provisions is difficult as they conflict on specific provisions towards women.

The level of illiteracy is very high to the extent that women are not aware of the law and policies providing for their rights to access land. On the other hand, discrimination against women has its roots in culture and tradition as established from the research findings. Therefore, without change in the attitudes of men and women with regard to each other's rights, there is no legislation that can achieve genuine gender equality.

CHAPTER ONE

THE PROBLEM AND ITS SCOPE

1.0 Background to the Situation

Women contribute towards land development but their efforts are rarely acknowledged. Considering women as a marginalized group, this study makes a review of the women's rights to development under the land legal regime in Uganda and a review of the historical development of land laws and policies in Uganda.

While lack of security of tenure affects millions of people across the world, women face added risks and deprivations: in Africa and South-Asia especially, women are systematically denied their human rights to access, own, control or inherit land and property.¹ The vast majority of women cannot afford to buy land, and usually can only access land and housing through male relatives, which makes their security of tenure dependent on good marital and family relations. At the same time, millions of women in Asia, Africa and Latin America depend critically on land for a livelihood.²

The evolution of statutory land tenure systems in Uganda is traced in the 1900 Buganda Agreement and other colonial Agreements, namely; Toró Agreement 1900, Ankole Agreement 1901.³

Under the colonial Agreements, the land in Uganda was taken over by the colonial Government which subdivided it between the kings, the notables and the Protectorate Government.⁴ The system of land subdivision left out women because land was divided among the notable and male chiefs. Women became landless on the land they previously were owners before the colonial interventions.

¹ An exception can be found among matrilineal societies of north-eastern India, where only women can own land and traditionally only the youngest daughter can inherit. From: Yarrisa Richmond Lyndgdoh, *Effect of Tribal Land Tenure Systems on Urban Development: Case Study of Shillong, north-east India*, paper presented at Seminar on Tenure Security Policies, Johannesburg, July 1999. In most other matrilineal societies however, it is the male relatives of the women that inherit land.

²Benscho, M. (2004) Women's Rights to Land and Property: Commission on Sustainable Development: Women in Human Settlements Development-Challenges and Opportunities, P.1.

³Kihangire Nicholas (2011) Land Tenure in colonial and Post-colonial Uganda.

⁴ Steven W. Giddings, (2009) The Land Market in Kampala, Uganda and its Effects on Settlement Patterns, p. 13.

This tenure has continued to the present, with 23% of households in Uganda holding land under this system (UNHS, 2006). At present, sales and sub-divisions in response to market transactions are edging out women, since women have limited resource endowments and inheritance practices are patrilineal, favouring the transmission of rights over land across generation through the male lineage (Rugadya, 2007).⁵

Two new systems, namely lease hold and freehold were introduced under the Crown Lands Ordinance, 1903. Under this Ordinance, the Governor was empowered to make grants in leasehold and in freehold over what was called crown land.

It was not until the Crown Lands (Declaration) Ordinance, Cap. 118 (Repealed), was passed in 1922 that the Crown's rights over land, other than unoccupied land, land acquired for public purposes and that covered by the Agreements, was defined.⁶

The other tenure system that existed alongside other tenures was customary tenure. Under customary tenure, land is held in accordance with the customs, traditions and practices of a particular community concerned, and is usually occupied and utilized by a family, clan and community as a whole without a formal title.⁷

The dominant economic structure chosen by the colonial masters was one of small peasant agriculture under the prevailing customary tenure. According to Rugadya (2010), it was considered dangerous by the colonialist to modify customs, as arbitrary imposition of change would cause a total failure of efforts to administer the local indigenous population and in order to appease the local chiefs and get local political allies in the effective administration of the country, the colonial administration introduced policies which could accommodate customary tenure as a non-registered form of land holding, alongside mailo and leasehold tenures, which were introduced as registered forms of land holding.⁸

⁵M. A. Rugadya (2010), Women's Land Rights in Uganda: Status of Implementation of Policy and Law on Women's Land Rights for ECA, ACGS Addis Ababa page 10.

⁶ Kihangire Nicholas (2011) Land Tenure in colonial and Post-colonial Uganda.

⁷ Article 237 (3), Section 3 (1) of the Land Act Cap 227 of 1998.

⁸National Land Policy, Draft 6, 2010.

Two general customary systems are distinguished namely; Communal holdings, which include grazing areas, burial grounds, sensitive eco-systems and hunting grounds under arrangements of common property resources regimes with the management vested in clans. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users and holdings by patriarchs heading households for individuals and family in trust for nuclear and extended members, in which user rights are guaranteed rather than ownership which is vested in male elders as custodians who sanction transactions and determine distribution and use of land (Rugadya 2009).⁹

Today customary tenure has become more individualized. Incidents of land sales under this form of tenure are very high even though in the past, sale was only possible to fellow clan members with sanctioning from the elders, and consultation with the family. Principally, this tenure does allow access to land for all vulnerable groups, even though practices are changing due to the changing socio-economic context

However, it is still governed by norms and practices that are often not sensitive to women's rights at the time of transmission of land rights, whether by clan allotments or by inheritance and succession practices, and do not allow for control of yields off the land by women¹⁰.

The 1995 Constitution recognized, for the first time, customary tenure as a legal tenure alongside the other forms of freehold, leasehold and Mailo. However, the translation of customary rules into modern law has not been straightforward as customary rules have never been written down and they are constantly changing and adapting to new circumstances. The state legal system and the customary system are also based on very different working cultures and the creation of a new set of institutions to administer both has proved challenging, leaving much of the anticipated reforms on paper and not implemented.

⁹ M. A. Rugadya (2009), Land and Gender surveys in Uganda, Associates for Development, Kampala – Uganda.

¹⁰ National Land Policy, Draft 6, 2010.

The granting in leasehold and free hold by the Governor brought about two influences on the customary system of land holding where by a person customarily using land together with others or holding land customarily, could opt out of the customary arrangement and instead apply for a leasehold or freehold title and it became increasingly possible for people to be bought out from their customarily held pieces of land.¹¹ Thus, land held customarily became subject to market forces and individualized dealings. The Public Lands Act, 1969 (Repealed) sanctioned the practice of people selling their customary land to those ready to get title. It thus provided that:

A controlling authority shall not make a grant in freehold or leasehold of public land which, or part of which is occupied by persons holding by customary tenure, without the consent of such persons.¹²

The Land Reform Decree 1975 (repealed) repealed of Sec. 24(2) of the Public Land Act. The 1975 Land Reform Decree Provided for Customary tenure on public land thus:

The system of occupying public land under Customary tenure may continue and no holder of a customary tenure shall be terminated in his holding except under terms and conditions imposed by the (Uganda Land Commission), . . . and accordingly, the Public Lands Act, 1969, shall be construed as if sub section (2) of section 24 thereof has been deleted therefrom.¹³

On the basis of this provision it became possible for someone holding land customarily to be forced out of that land by the Land Board granting a lease to another party.

The Land Reform Decree 1975 watered down the rights of those who held land under the customary system of land holding. The Decree was based on the philosophy that no one should own land absolutely because to do so would put land under the control of those who could not utilize it for economic development and yet those who can have no means of investment.¹⁴

The 1975 Land Reform Decree changed the legal basis for land tenure in Uganda and decreed that all land in Uganda was public land and would be administered by

¹¹Kihangire Nicholas (2011) Land Tenure in colonial and Post-colonial Uganda.

¹² Sec. 24 (2) of the Public Lands Act, 1969.

¹³ Section 3 of the 1975 Land Reform Decree.

¹⁴ Kihangire Nicholas (2011) Land Tenure in colonial and Post-colonial Uganda.

the Uganda Land Commission according to the 1969 Public Lands Act. Freehold and Mailo Tenure were transformed into leaseholds of 99 years for individuals and 199 years for public/religious bodies.¹⁵ This was the situation existing in Uganda until 1995 Constitution and the Land Act 1998 came into operation.

The 1995 Constitution completely reversed the situation created by the 1975 Decree. Articles 237-245 of the 1995 Constitution made the following fundamental changes: All land is now vested in the citizens of Uganda and the State no longer has absolute control of ownership of the land in Uganda.¹⁶ Individuals' rights to land are secured by virtue of occupation in any four tenure systems: of mailo, leasehold, freehold and customary.¹⁷

The Constitution recognizes customary tenure as a way of owning land regulated by customary rules, limited to a particular place or group of people.¹⁸ Customary tenure is associated with various problems amongst which include the fact that; it impedes development because it does not allow the advancement of land markets, through which, those who need land for development can acquire it; and that it discriminates against women, and does not accord them land rights due to patriarchal system which is explained by male dominance.

According to PELUM, given such challenges customary tenure leads to marginalization of women's land rights and greatly undermines agricultural production and development.¹⁹

The existing scenario is explained by traditional customs and norms of male dominance that is explained by the patriarchy as an ideology. Mainly opposition to gender equality and women autonomy, linking women's sexuality with family honour, religion orientation towards treating women as subordinate partners and approval to violence against women were identified as multiple dimensions of conventional

¹⁵ 1975 Land decree.

¹⁶ Article 237 (1) of the Constitution of Uganda 1995.

¹⁷ Ibid Article 237 (3).

¹⁸ Section 3 (1) of the Land Act Cap 227 of 1998.

¹⁹ PELUM Uganda is a network of 34 civil society organizations involved in rural development. Since 1995, PELUM Uganda has been working to improve the livelihoods of small-scale farmers and the sustainability of farming communities by fostering ecological land use management.

patriarchal ideology of gender relation.²⁰ The female counterparts parse have a vital role in terms of land development but they are never given an opportunity to prove their competence.

Land is a primary factor of production in both agriculture and other forms of development, from which smallholder farmers get a livelihood through farming and accessing markets for their produce. Land can be used as collateral to access credit to enable many farmers expand their agricultural production.

Women, though key agricultural producers usually lack ownership and control over land, which affects production. Women's limited access to land ownership rights does not only limit agricultural expansion but also retards development generally.²¹

In all land tenure systems women are excluded from owning land, and only retain secondary rights. In the agricultural sector women contribute 83% of the labour force and yet few of them own land. For example, women are not able to access mortgage financing. Women's ownership of housing is very limited as the housing finance sector lacks long-term funding schemes within the domestic banking system, which can assist women, acquire land and houses.²²

1.1 Statement of the Problem

Uganda has a rich legal and regulatory environment hailed for its outstanding recognition of women's rights. Policy and legal frameworks for redressing gender imbalances, harmonizing and streamlining the complex tenure regimes for equitable access to land and security of tenure exist. However, the presence of such impressive frameworks on the gender equality has not curtailed gender disparities. Even though Uganda's economy has been steadily growing in the past 25 years and significant reduction in poverty has been recorded.²³

²⁰ S. A. Watto (2009) Conventional Patriarchal Ideology of Gender Relations: An Inexplicit Predictor of Male Physical Violence, *European Journal of Scientific Research*; Eurojournals Publishing. Page 561.

²¹ Supra page 4 note 16.

²² M. A. Rugadya (2010), Women's Land Rights in Uganda: Status of Implementation of Policy and Law on Women's Land Rights for ECA, ACGS Addis Ababa page 1.

²³ Ibid.

Whereas the 1995 Constitution of the Republic of Uganda and international human rights conventions to which Uganda is a party give protection to women among others against abuse of their rights, enforcement of these statutory provisions is difficult. There is a conflict between the rights under statutory law and culture and traditions deeply rooted in the Ugandan societies. It is common practice under the ideology of patriarchy for property to be owned by men exclusively.

Consequently, there are few women land owners in Uganda, yet the country's backbone depends on women's production. The laws and policies regarding land tend to discourage production and this can be indicated by the degrees in production on cultivation land (UBOS Report, 2010).

There is little if any, attempt to unveil experience that women might have over and above men through understanding women issues. Feminism land and development offer many possible transformations, but it all must start with the material conditions which impact on women's access to land and in turn impact on development.²⁴

The above analysis shows that there exists a relatively positive policy environment for women's empowerment at the national and international levels. Government itself has made a number of commitments. However the translation of this policy environment to benefit the grassroots women has been a challenge. Government needs to do more to align its constitutional commitments to other laws and the development plans of the country. More work needs to be done for women to fully benefit and have the quality of their lives improved.

The study was conducted to show the relevance of land laws and policies to women's access to land and development.

²⁴Ann Bottomley and Hilary Lim (2007), *Feminist Perspectives on Land Law*: Routledge Cavendish.

1.2 Purpose of the Study

The purpose of the study is to review women's rights to development under the land legal regime in Uganda with the intention of analysing whether the land laws and policies in Uganda affect women's rights to development.

1.3 Research Objectives

- i. To examine women's rights to development under the land legal regime in Uganda.
- ii. To identify factors impacting on women's rights to development in Uganda.

1.4 Research Questions

- i. What are women's rights to development under the legal regime in Uganda?
- ii. What are the factors impacting on women's rights to development in Uganda?

1.5 Hypothesis

The land legal regime in Uganda violates women's right to development.

1.6 Scope

1.6.1 Time Scope

The study was conducted within a time period of 9 (Nine) months from January 2012 to September 2012. Within this period, designing and planning was conducted, a research methodology formulated and the thesis proposal developed and defended. Further data was collected analysed and finally put into a final book bound copy. The thesis was defended. The time scope is fixed as a University requirement to have completed and submitted the research within the due date.

1.6.2 Geographical Scope

The study focused on women's land rights in Uganda and in particular customary land ownership rights due to the findings that over 80% of the land in Uganda is

administered according to local custom.²⁵ The problem with the above mentioned percentage is that majority women whose rights to ownership and access are affected live and earn their livelihood on customary land. However this study is not only limited to customary tenure but reference will also be made to other systems of land tenure.

1.6.3 Content Scope

The study focused on land laws and policies, women's land right and land development. The study will analyse women's rights under land ownership focusing their rights to development under the legal regime in Uganda. This was done by reviewing the relevant literature and analysing Acts of Parliament and international law on women's right to access land.

1.6.4 Theoretical Scope

The study was based on the theoretical perspective of women's right to access land by considering the feminist theory that derives from the concept of equality and male dominance in society. The study also focuses on the contribution of land laws and policies towards women's participation in land development.

1.7 Significant of the Study

The study assesses whether the existing laws and policies enhance women's rights to land development and whether they are adequate and practicable and in the event identifies loop holes in the laws and policies that could be hindering women's developmental rights in Uganda. The study analyses other factors that hinder women's right to access land and to own land individually or in association with others leading to under development. The study is therefore to benefit future researchers, legislatures, and judiciary and policy implementers.

²⁵ J. Adoko & J. Akin of the Land Equity Movements in Uganda (LEMU) and R. Knight of International development Law Organization (IDLO) (April 2011), Understanding and Strengthening Women's Land Rights under Customary Tenure in Uganda page. 2.

1.8 Operational Definition of Key Terms

For purposes of the study, the following words are operationally defined land, women's right, laws, policies and development, feminism.

Land

Land is the ground or soil considered with reference to its use, values, conditions etc. It may include real estate, firm land, coal land etc. under the legal definition of land, it is any tract of ground whatever together with all its appurtenances; also a share or interest in land, tenements or any hereditament, both corporeal and incorporeal (intangible).

Land tenure

Land tenure refers to the manner in which land is owned, occupied, used and disposed of within a community. A properly defined and managed land tenure system is essential to ensure balanced and sustainable development.

Laws

Laws are rules of conduct recognized by custom or by formal enactment which a community considers as binding upon its members. Land laws are what have already been presented and have been passed by the parliament.

Policies

A policy is a course or plan of action, especially of administrative action. Policies can also be defined as declared objectives that a government or party seeks to achieve and preserve in the interest of national community. The policy when passed by the parliament can be used to see the short comings in the land acts so that they are corrected.

Feminism

Feminism parse is a self-consciously critical stance towards the existing order with respect to the various ways it affects different women as women. Feminists basically look at the idea of male dominance of all things including natural resources.

Development

Development is a complex issue, with many different and sometimes contentious definitions. A basic perspective equates development with economic growth. The United Nations Development Programme (UNDP) uses a more detailed definition- according to them development is;

to lead long and healthy lives, to be knowledgeable, to have access to the resources needed for a decent standard of living and to be able to participate in the life of the community.

Achieving human development is linked to a third perspective of development which views it as freeing people from obstacles that affect their ability to develop their own lives and communities. Development, therefore, is empowerment: it is about local people taking control of their own lives, expressing their own demands and finding their own solutions to their problems.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2. Introduction

This chapter through review of related literature examines the various factors that impact on women's contribution to land development in Uganda. The chapter also gives a literature proposition on women's right to development under the land legal regime in Uganda. Finally besides discussing the theoretical concept of this study, this chapter highlights other related studies.

2.1. Concepts, ideas and opinions from authors and experts

Land is the most important resource in Uganda because people depend on it for cultivation and therefore their livelihoods. In Uganda, as elsewhere in the world, unequal access to land is one of the most important forms of economic inequality between men and women and has consequences for women as social and political actors.²⁶

Women provide 70-80% of all agricultural labour and 90% of all labour involving food production in Uganda, yet they only own a fraction of land. Women are generally responsible for providing for the household; therefore their access to land for food production is critical to the welfare of the entire household.²⁷

Economically, women produce over 70% of the total agricultural output but ownership, and control over land, their labour, technological innovations and above all the benefits thereof is minimal or non-existent. That is why women are the poorest of the poor (World Bank, 1995). Traditional restrictions to women's rights to own land reduce their ability to negotiate within the household.

The Uganda Plan for Modernisation of Agriculture states that women have limited economic opportunities due to their societal roles and responsibilities, their low

²⁶Agarwal, B (1995), *A field of one's own: Gender and Land Rights in South Asia*. Cambridge, Cambridge University Press.

²⁷ Ibid.

social status, relationships with men, lack of ownership and access to productive resources, low participation in decision making and high workload (PMA, 2000). The allocation of time within the household is an important gender issue in many parts of Uganda. There is evidence in rural areas that women work considerably longer hours than men when domestic work is taken into account (PEAP, 2000).

Women through their triple roles provide a critical though often unacknowledged contribution to economic growth (Stein, 1997). Economically rural women are the poorest. The need for capital is acute for women whose dependence on male relatives leaves them without land of their own or other property to use as collateral for credit in the formal banking system.

Accessing a loan is not easy for women no matter what their marital status holds. There are limited micro finance institutions in rural settings, which marginalize the small holder sector at the grassroots. In order to cope, women have established community based organizations as support systems both economically and socially (Snyder, 2000).

Women who want to get into business need land as collateral to obtain bank loans since women are almost completely dependent on men to access land, women who are childless, single, widowed, disabled, separated /divorced, or with only female children often have little or no resource because they may have no access to land through a male relative.

Land has a wide variety of uses in the organization of livelihoods and is also the basis of social and political power, and therefore at the heart of gender inequalities in the control of resources (Afonja, 2005).²⁸ If the provisions relating to land law and policy in Africa are changed and the changes implemented, it would reduce gender inequalities in access to, control and ownership of land and enable women to leverage their labour investment in land and other reproductive duties in their families (Feminist Africa 12 2009).²⁹

²⁸ According to Afonja (2005), beyond agriculture.

²⁹ Feminist Africa 12 (2009) suggests that.

According to Mugambwa (2002), whereas on one hand the Land Act deal mainly with land ownership, administration and resolution of land disputes, the registration of titles Act mainly considers registration and transfer of titles to land. On the other hand customary law constitutes an important source of land for it basically applies to land held under customary land tenure.³⁰

The risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has direct access to income and productive assets such as land, and not just access mediated through her husband or other male family members³¹.

Governments play an important role by determining how property rights are defined, how they can be enforced, and how they evolve in line with changing economic conditions. This, in turn provides a basis for the level of tenure security enjoyed by individual landowners and their ability and willingness to exchange such rights with others. All this suggests that access to land rights is a social construct. Land is not merely the asset itself, but consensus between people about how the land should be held, used, and exchanged.³²

The Uganda Poverty Eradication Action Plan (PEAP, 2000) identifies powerlessness as one of the dimensions of poverty. The plan outlines the various forms in which powerlessness appears amongst which include: Weak property rights, for example, being unable to stop powerful neighbours from encroaching on one's land, Lack of ability to access social services because of isolation or gender norms such as a girl who wants an education but cannot persuade her family to keep her in school.

The domestic relations review report says that men dominate women and are regarded by society as heads of households, decision-makers and resource owners. This dominance is found in both the public arena and private sphere (UWONET, 2001).

³⁰Cap 227& Cap 230.

³¹ Esther Obaikol (2009), Women's Land Rights and the Law "The Legislative Framework Governing Women's Land Rights in Uganda" pp.3.

³²ibid. pp.4.

The Plan for Modernisation of Agriculture points out that women face barriers to participation in community activities that include refusal by husbands, discrimination, subordinate roles, weak leaders, lack of mobilisation, lack of time and failure to see the benefit of their participation (PMA, 2000).

The Action Aid Uganda Gender Policy states that men and women, regardless of age and class go through unequal power and social relations. These are some of the major causes of poverty in the country. That in Uganda, poverty whether among women or men goes beyond lack of access and control over resources, it is also influenced by beliefs, attitudes and cultural practices that tie the people down and influence their progress and participation in decision making. The policy further states that the unequal social relations accord to girls and women a subordinate and low status in comparison to boys and men and that it is a major constraint towards the overall development of the country.

Lastly the policy states that poverty is brought about and is seen differently in girl/women and boys/men and has a more negative impact on the former than the latter regardless of age and class (Action Aid, 2000).

This concurs with the words of the advocacy officer UWONET;

Women remain in their subordinate status, they do not have access to information, they are not able to push issues forward and lack confidence.

However one needs to be careful because, as Jackson points out, the concept of poverty cannot be taken as a proxy for the subordinate status of women and is no substitute for gender analysis which transcends class divisions and material definitions of deprivation (Jackson, 1996). This does not rule out the fact that there is some relationship between economic development and women empowerment.

Doing something about women is good for economic development or even more narrowly, economic growth (Kabeer, 1996).

It is by empowering women that poverty will be eradicated but it is not necessarily that if we fight poverty, we will do a lot for women (Kharono, 1998).

2.2. Theoretical perspectives

This study is based on the feminist theory. According to Afonja (2005), the basic principle underlying feminist theory is bridging of the gap between male and female dominance by advocating for equality. The gaps amongst others include exclusion of women from decision making process, opposition to gender equality, treatment of women as subordinate partners and denying them access and ownership of property rights amongst which include land.

To achieve their objectives, a shift from traditional customs and norms is reflected through legislative and judicial systems, women emancipation programs and so many other developments. However the question of contention is whether female involvement would contribution towards development of land or not.

According to Feminist Africa 12 (2009), in the process of developing jurisprudence, African legal feminist have drawn inspiration from the contribution of western ideological movements and when they make use of such theories originating in the west, attempts are made to interrogate their context, find differences and similarities with the local contexts and engage with the extent they can be usefully applied.³³ However, caution must be taken to avoid superimposition of such paradigms onto the condition of African women a consequence of which might be disastrous.

For instance in Uganda, attempts to gain co-ownership right for married women were dropped upon establishing that it was not that what women need but effective control of Land they tilled and security of tenure. Thus the amended law carries guaranteed security of occupation of the matrimonial home of the married.³⁴

The Land Act provides for protection of family land by restricting transfer of land by family members. In relation to women, the act is to the effect that a person is not permitted to transfer land without prior consent of the spouse.³⁵

³³Feminist Africa 12 (2009) *Land, Labour and Gendered Livelihoods*: African Gender Institute.

³⁴ (<http://www.gwsafrica.org/teaching-resources/gender-law/african-activism>).

³⁵ Cap 227 under Section 39.

The issue of consent was further highlighted in a presentation by the (Programme Officer 2011; Lands Use, Uganda Land Alliance (ULA) in which it was observed that the Land Act provides for consent for protection of family land.

Rugadya (2007), observes that despite the presence of a firm constitutional base and clearly state legal requirements, "the consent to transactions on land has been routinely ignored and are, in any event, not applicable to widows and divorcees, because the implementers that are in charge of ensuring compliance are not aware or intentionally ignore what they feel does not to adhere to customs. They are not gender sensitive in their understanding of rights over land therefore cannot be expected to enforce".

This view is further affirmed by Judy Adoko, the Coordinator of Land and Equity Movement (LEMU), in an interview with the study team, thus:

The state laws, for example the consent clause, are not being implemented because there is not a state institution or person given the responsibility to do this. Under customary tenure, depending on how strong the clan is – consent is sought before land is sold. It is unlikely that if a woman as a member of a family refuses the sale, that the rest of the family members will respect her position, state law supersedes customary tenure and her refusal should mean no land sales but community leaders believe that men owned the land traditionally so the wife cannot object (Interview on 16th April 2010).

However, regardless of the consent provision, Uganda as country still lags behinds in terms of development. The female counterparts parse have a vital role in terms of land development but they are never given an opportunity to prove their competence. The provisions of consent have not been observed at any point and land has been transferred or even mortgaged for purposes of development but the proceeds of such transaction are never realized simply because the funds meant for development are diverted to non-developmental areas without knowledge of the women.

In addition to the above, there is existence of vulnerability that stems from power imbalances and possible domestic violence within a marital home. Although Uganda's Land Act (1998) establishes restrictions on the transfer of land by a spouse without the written consent of a wife, not all women know of these rights or have the power or access to justice to fight against their husbands' decisions. Should a woman disagree with her husband's desire to sell family land, her husband may use violence or coercion to subdue her.

2.3. Related studies

Much of the literature on women and land tenure in Africa has viewed the introduction of land titling, registration, and the privatization of land under colonialism and after independence as a setback for women, leaving women in a state of even greater insecurity with poorer prospects for accessing land and hence obtaining a livelihood.

Beginning in the early 1970s, the World Bank, which has been a major influence on Africa macroeconomic policies as well as land policy, initially pushed for land reforms with a strong emphasis on individual ownership through registered freehold titled land.

The bank funded a series of land registration and titling projects in the 1980s. Their aim was to promote development by eliminating communal tenure systems through more efficient land use and more secure land ownership.

As the World Bank policies were implemented, a key study in 1994 found that security of title was not sufficient to invest in land and increase production due to other exogenous factors like land abundance, farm size, and access to credit and water. Moreover pastoralists and other seasonal users of land were losing out as land became titled and registered. These findings led to policies that involve the more selective and gradual introduction of titling deregistration.

One strand in the Bank works on issues of gender, growth, and poverty and looks at how women's lack access to inputs and resources like land, as well as their disadvantages bargaining position within the household, result in negative development outcomes. In the contemporary context, some policy makers see legal reforms regarding land as serving little purpose in the absence of women's education and economic independence.

The other approach found in the bank, endorsed by the gender and law in Africa group supports networks of feminist lawyers that have developed a right based discourse that comes out of the "women's rights as human rights" approach.

The views, which fit the orientation of the African women's movements, became especially evident during the preparations for the 1995 Beijing conference. The

conference focused on legal reforms that were increasingly seen as key women's emancipation, and in particular, on constraints imposed by customary laws and practices and problems of implementing anti-discrimination laws.

Feminist lawyers working with these movements have argued that customary law in the present day context has been used to selectively preserve practices that subordinate women. Rather than seeing customary land practices as basis on which to improve women's access to land, they are advocating for rights-based systems that improve women's ability to buy, own, sell, and obtain titles on land.

At the same time, key women's organizations have often played a leading role in forming the broader land alliances. At the regional level in East and Southern Africa, Women and Law in Development in Africa (WILDAF) has been active since the early 1990s on land issues, as has Women and Law in Southern Africa (WLSA) in seven Southern African countries.

The new movements have been galvanized by mounting land pressures in some countries that are placing undue constraints on women, who do not have sufficient access to and control over land. While the focus of the women's movements have been customary land practices, they have also been concerned with the negative effects of the privatization of land and land grabbing as governments have increasingly sought foreign investment through tourism , mining, and other businesses.

Uganda has vibrant women's activists who emerged after 1986, when His Excellency Yoweri K. Museveni and his National Resistance Movement took over the country through Gorilla War. Women activist also targeted the 1998 Land Act which was passed to create a system of tenure, ownership, and administration of land. It was also to improve land service delivery by decentralizing land administration. They made sure that key clauses were included in the Land Act to protect women.

The Act requires the prior written consent of both spouses in transactions involving family holdings. The Act prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land. The Act requires that the Uganda Land Commission should have at least one female out of its five members, one third of the membership of the District Land Boards should be female, and land

committees at the parish level should have at least one woman out of the four members. In addition, at least one-third of the associations are legal entities under the Land Act that may be formed by anyone for the purpose of communal land ownership and management.

Land allocation practices operate as a fundamental constraint to women entrepreneurs, affecting not only their access to credit but also their ability to find business premises. Formal succession laws give women inheritance rights over land, but customary patrilineal practices (and the inability of many women to assert their legal rights) mean that formal legal provisions are rarely adhered to. Only about 15 per cent of land is actively registered in Uganda, and it is rare for women to be registered as owners or for their rights to be noted on the register³⁶. A proposed amendment to the Land Act, contained in the Domestic Relations Bill, would make spouses automatic co-owners of family land. The Land Act gives some protection to spouses, requiring their consent before family land can be sold or mortgaged. Whether the act is enforced is in some doubt, however.

In the period leading up to the passage of the 2004 amendments to the Land Act, women's rights activists and organizations also lobbied without success for the inclusion of a co-ownership clause into the Land Act. They networked under the rubric of the Uganda Women's Network (UWONET) and the Uganda Land Alliance (ULA). It is the struggle over this co-ownership clause that has brought to head the conflict women activists have confronted with customary land practices. Co-ownership of land between spouses and/or family members is controversial in most African countries, especially those undergoing land reforms.

The struggle over the co-ownership clause was a turning point in many ways for the women's movement. Up until this conflict, the women's movement had been enthusiastic about president Museveni and his pro-women's policies.

They had seen his National Resistance Movement, more commonly known as "the movement" as a force for change for Uganda women. As a result of Museveni's

³⁶ A. Ellis, C. Manuel, and C. M. Blackden (2006) Gender and Economic Growth in Uganda, Unleashing the Power of Women: The International Bank for Reconstruction and Development/THE WORLD BANK

failure to back the clause, many in the women's movement became seriously disillusioned with the government's positions regarding women's rights.

The new realization forced women to rethink their strategies and allegiances. It put loyalties of key women politicians to the test and forced them to make difficult choices between support for the women's movement and a political career endorsed by the president and his movement.

Jacqueline (2011) established that the co-ownership amendments were, in a fact, passed by the parliament, but political manoeuvring on the grounds of technicalities left women without the clause. She found that the then member of parliament and ethnics Minister Miria Matembe was about to read the amendments into the microphone for the Hansard when she was interrupted in mid-sentence by someone who said they were finished and that she did not need to read them. Later she was told that because she had not read the clauses into the microphone, they could not be included in the Hansard and hence, into the amendments to the Land Act.

Later when the minister of state for Lands brought the amendments to the Land Act before cabinet, it was the president, by his own omission, who decided to pull out the co-ownership clause. As explained, he foresaw a disaster and advised them to go slow or pass the clause along for consideration with the pending Domestic Relations Bill (DRB). "When I learn that the bill was empowering the newly married women to share the property sharing issue." President Museveni said.

Women activists argued that moving the clause to another bill was unconstitutional because the decision should have been put to the House. It was believed that the president's decision to shift the clause to the DRB was intended to save face so that the government would not appear anti-women. But the effect would be to remove the issue from the agenda altogether.

It is often argued that with the introduction of private property systems, women lost out in these new arrangements because their rights to land through husbands, fathers, or sons diminished in importance. By titling and registering land, colonial

governments eliminated the importance of secondary rights of women to access land and men increased their control over land.³⁷

Legal measures were seen as a way to diminish the importance of clan and communal control over land and instead placed individual men in ownership of land parcels. Women were in this way side-lined, without the necessary legal claims of land. Their ability to inherit land was diminished by male elders who gained in importance as legal land owners. It should be pointed out that the notion of individual rights was not new one.

Informal land sales have a long history in Africa dating at least back to the early colonial period, but the individual rights of indigenous tenure systems were not the equivalent of contemporary notions of private property. For example, the Bakiga in Uganda, Land rights are embedded in concrete local practices, social relations, obligations and responsibilities and they don't have much meaning in the abstract. Land ownership as a concept similarly does not have the same meaning as we might think of when we think of individual property ownership.³⁸

With the privatization of land, women not only lost their legal claims to Land, but they also did not have control over the cash that men did in order to purchase the land. Moreover, they did not own land that would have permitted them to accumulate capital with which to purchase land. They generally did not control the additional labour to work the field, nor the animals and farm tools, nor did they control the income from the sale of crops- all of which made it difficult for them to access capital with which to purchase land of their own. In other instances women's purchase of land was predicted upon the approval and signature of male relative. There was also outright discrimination on the part of land administrators against the sale of land to women.³⁹

³⁷ Gray and Kevane (1999), "Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa" *African Studies Review* 42 (2):15-39.

³⁸ Bosworth, J. L (1995), *Land Tenure Systems in Sub-Saharan Africa*, Faculty of Social Sciences, Oxford University.

³⁹ Lastarria-Cornhiel, S (1997). "Impact of Privatization on Gender and Property Rights in Africa" *World Development* 25(8):1317-1333.

Literature shows that women's rights to land were curtailed by the onset of colonialism, not just through the titling and registration of land but also through dramatically changed patterns of land use and occupancy. The emphasis on cash crop production diminished the importance of women's subsistence production, and sharpened gender segregation in the division of labour in way that disadvantaged women. Land security and increase in land value made it even more difficult for women to access land.⁴⁰

Debate surrounding how to strengthen women's land rights in Uganda has gone on for a long time. Because of the underlying assumption that under patrilineal customary systems of land tenure men have individualized land rights, the women's land rights debate tends to centre on the conception that customary systems are discriminatory against women.⁴¹

In the case of **Babiruga V. Karegyesa**, Karokora J, as he then was argued that customs which provided that land formally cultivated by the mother automatically reverted to the children upon her death were repugnant for they deprived a man as a head of a family of his powers to control the family property. Such inclination would restrict decision relating to land development to being made by men hence under looking women ideas which could be vital in development.⁴²

In her book entitled "The Law of Succession in Uganda, Women Inheritance Law and Practices," Okumu- Wengi gives examples of customary succession laws among the Buganda, Madi, Toro, and the Lugbara and concludes that customary laws of those tribes do not recognize any trust or equitable contribution of a wife to matrimonial property other than chattels. That the family property is presumed to belong to husband and that it is in a rare case that courts or law have applied the doctrine of equality to protect the contributing interest of women to the family property.⁴³

⁴⁰Davison, J (1988), Land and Women's Agricultural Production: The context, Agriculture, Women, and Land: The African experience. J. Davison Boulder, Westview Press.

⁴¹Judy Adoko and Jeremy Akin of the Land and Equity Movement in Uganda (LEMU) and Rachael Knight of the International Development Law Organization (IDLO) (April, 2011) Understanding and Strengthening Women's Land Rights Under Customary Tenure in Uganda, pp1.

⁴² Unreported.

⁴³Okumu – Wengi Jennifer, The Law of Succession in Uganda 1994.

Judicial decisions may annul or limit customary norms. In Nigeria, the Enugu Court of Appeal invalidated norms providing for inheritance by male family members only (**Mojekwu v. Mojekwu, 1997, 7 NWLR 283**) and subjecting inheritance by daughters to their undertaking to remain unmarried and raise their brothers (**Mojekwu v. Ejikeme, 2000, 5 NWLR 402**). On the other hand, the courts of some countries have upheld rigid and discriminatory interpretations of customary law. For instance, the Supreme Court of Zimbabwe upheld a customary norm excluding women from intestate succession, naming as the heir the second male child instead of the eldest female child. (**Magaya v. Magaya, 1998**)

Okumu-Wengi (1990) in her paper entitled "Women's Property Rights in Dissolution of a Marriage," further discusses the right of a woman to property in cases of divorce and widowhood. She makes a critical analysis of the laws that affects the rights of women in their status as divorced or widowed, social factors that infringe the right of women to property like customary practices and statutory laws has been cited.

Okumu-Wengi (1990) further makes reference to the social economic position of Uganda women and summarizes that the fundamental problems faced by Uganda women that after the introduction of a colonial cash economy, men dominated the economy and got an advantage of education which was customary given to boys and not girls. She also addresses herself to the position of property ownership under various customary practices and concluded that women in Uganda do not own land under customary law, and even other chattels they own are under the direct control of their husbands. The paper doesn't exhaust property rights of women under circumstances like before marriage, in marriage and therefore a need for research to cover these areas.⁴⁴

In an unpublished seminar paper entitled, "The Rights of Widows under the Law of Inheritance", the law of inheritance is further examined and apart from emphasizing the 1972 succession act as amended by the decree, as improved the position of women in inheritance cases, the presenter further expresses fear that the decree

⁴⁴Okumu – Wengi Jennifer a Working paper presented 1990.

came at an earlier time when the people of Uganda would not comply with due to customary inheritances practices that had gone deep in their society.⁴⁵

Judicial decisions have also played an important role in determining women's land rights, particularly by invalidating discriminatory norms on constitutional grounds. A landmark case is **Ephrahim v. Pastory and Another**, decided by the High Court of the United Republic of Tanzania. There, a Haya woman who had inherited land from her father sold it outside the clan. A male clan member brought an action to declare the sale void, as women could not sell land under Haya customary law (as codified in the Declaration of Customary Law of 1963). The Tanzanian High Court invalidated the norm on the basis of the principle of non-discrimination (affirmed in the amended Tanzanian Constitution and in international human rights treaties ratified by the United Republic of Tanzania). The court stated therefore that Haya women could sell land on the same conditions as Haya men, and held the disputed land sale valid.⁴⁶

To ensure appropriate solutions, policy makers and women's rights activists must endeavour to understand customary land laws correctly. As described above, land rights for all categories of women are already provided for under customary tenure laws. Once customary laws strengthening women's land rights and underlining men's responsibilities to protect and defend women's and children's land rights are adopted by consensus by customary leaders and written down, then customary laws can no longer be manipulated by land grabbers to legitimize their bad faith actions

In Uganda where customary laws are not yet documented, policymakers and women activists should promote efforts to have them written down. This is already proposed in the new National Land Policy (NLP).⁴⁷

⁴⁵TibaruhaLucein. Rights of Widows under Inheritance Law

⁴⁶Mwanza PC, Civil Appeal No. 70 of 1989.

⁴⁷ Supra pp. 6

CHAPTER THREE

METHODOLOGY

3. Introduction

This Chapter examines the methodology adopted for the study. A historical account of these laws is also considered. An attempt is made to analyse the blaze within the said areas of the law and to consider the manner in which they discriminate against women. Further the chapter addresses the effect of customary practices on the ability of women to own and access land and whether such practices possess the status of the law.

3.1. Research Design

The interpretive philosophy that puts an emphasis on studying situations in details and understanding the reality behind them was adopted. The reality should be socially construed because individuals may place different interpretations to the situations in which they find themselves. This research philosophy requires collection of qualitative data. The approach mainly attached to interpretive research philosophy is the inductive approach. The inductive approach puts emphasis on meanings that humans attach to social events (Saunders et al., 2009).

In addition to the above, the study further involved the archival research strategy. This involves the use of administrative records and documents as the primary source of data whereby reference may be made both to recent and historical document (Saunders et al., 2009).

The study involved a literary study by means of information acquired from existing scholars and analysis of international law and to a limited extent, case law. The chief research tools like the internet and books and periodicals.

The methodology adopted for this study was a combination of desk research, primary research (through quantitative and qualitative techniques and methods of data collection) to enable triangulation of findings.

3.2. Data Gathering Procedures

Data was collected from the field using both primary and secondary techniques of data collection.

3.2.1. Primary Data Collection

The research involved the use of qualitative technique of data collection such as interviews, observation and focus group discussions. This enhanced the credibility and consistency of the data collected.

3.2.2. Secondary Data collection

The research was concluded by use of secondary data from library archives and websites including textbooks, journals, reports, and company publications. In using secondary data, the research identified works by other researchers working on the similar research topic as this one. The major reasons for using secondary data was to compare findings from the primary data used in the research with findings from similar research already published in order to high light the significance of this research.

3.3. Research Instrument

The study will go through literary study by means of information acquired from existing scholars and analysis of laws and policies and to a limited extent, case law. The chief research tools like the internet and books and periodicals.

3.4. Validity and Reliability of the Instrument

According to Kakinda-Mbaaga (2000), validity of an instrument is the degree to which it measures what it is intended to measure, and does so correctly. There are several ways of validating an instrument, including face or content validation and concurrent

validation. Collection of primary data was conducted to measure validity of secondary data collected.

There are high chances that the response is valid since I will have direct interaction with the respondent but there is possibility that they may withdrawal from answering the entire question.

3.5. Ethical Consideration

Ethics refer to the appropriateness of behaviour in relation to the rights of those who become the subject of the research work or are affected by it (Saunders et al., 2009). The general ethical issues that will be taken into account include maintaining privacy and avoiding deceiving participants on the purpose of the research and how data is intended to be collected, maintaining confidentiality of data provided by individuals, considering reactions of participants to the way in which the researcher intends to collect data including discomfort, pain and harm. If confidentiality is promised while gaining access, then the research will take an obligation to ensure that the data collected remains confidential.

3.6. Limitations of the Study

Lack of enough resources such as finance, and computers to record relevant data might lead to delay and insufficient data collection.

The researcher may face difficulty in formulating mechanisms or scales for measuring the research variables.

CHAPTER FOUR

IMPACT OF LAND LAWS AND POLICIES ON WOMEN'S CONTRIBUTION TO DEVELOPMENT

4.1. Policy Consideration on Women's Land Rights to Development

Women organisations specifically committed to overcoming the subordinate status of women have been established and other organisations have committed themselves to promoting women's empowerment and mainstreaming gender into their programmes.

A number of women organizations were started or became more active in Uganda. These include organizations such as Action for Development, Federation of Uganda Women Lawyers, among others.

In 1986, The Ministry of Women in Development was started by Government to advance the issues of the marginalised. It began as the Ministry of Women in Development and was changed to the Ministry of Gender and Community Development and now it is the Ministry of Gender Labour and Social Development. One of the issues that can be highlighted here is that since its change from the Ministry of Women in Development, the Ministry has been going through several institutional changes and now Gender is only a department and not a Ministry. This has reduced its visibility as the national machinery for bridging the gender gap between men and women.

Though this has been one of the most underfunded ministries, it has made a number of strides in providing and building the national machinery for the advancement of women and gender equality. Two of the major outputs of this Ministry have been the National Gender Policy and National Action Plan for the Advancement of Women.

The policy recognizes gender relations as a development concept in identifying and understanding the social roles and relations of women and men of all ages and how these impact on development. It stipulates that sustainable development necessitates maximum and equal participation of all social groupings in economic, political and social cultural development (National Gender Policy 1999).

4.1.1. The National Development Plan (2010)

The National Development Plan (2010) is the broad national framework, which actualizes the goal for national development and provides direction on public resources allocation based on gender mainstreaming principles articulated in the Uganda Gender Policy 2007.

The National Development Plan, 2010, acknowledges that the overall level of gender responsiveness remains low because of inadequate capacity amongst government ministries, departments, agencies as well as local governments to apply gender analysis skills in planning and implementation of programs. Additionally, there is limited gender awareness among communities and bureaucratic resistance to gender mainstreaming among decision makers (NDP, 2010:21).

In paragraph 64, the NDP acknowledges the persistence of gender disparities, which constrain development, despite the Gender Policy, 2007 and the Constitution of Uganda, 1995, guaranteeing equal rights to females and males, and the various international commitments to which Uganda is a signatory (NDP, 2010).

Section 5.1.2(x) of the NDP 2010, points out that many landless potential farmers, especially women, cannot easily access land because of costs, cultural norms and threats imposed by overlapping land rights. In paragraph 106 of the NDP, 2010, it is asserted that certain elements of traditions, culture and religion have limited economic growth and structural transformation. In paragraph 107, discrimination against women through traditional rules and practices that explicitly exclude them or give preference to men, is recognized as a key constraint to women's empowerment and economic progress. It is further acknowledged:

...these rules and practices hinder women's participation in important decisions such as resource use, thus women have been marginalised in access to ownership and control over land....

Further, in paragraph 415, it is accepted that the systems of land ownership complicate access for those who may wish to use land as a factor of production, as the majority of Ugandans do not hold title to their land. It acknowledges that 70% of women are employed in agriculture, yet only 20% own registered land.

In paragraph 338, the NDP attributes the unequal ownership of housing to

disparities in incomes of men and women, with men owning most of the houses except for family houses classified as matrimonial property as decreed by the Land Act 1998 (Cap. 277) to be jointly owned by spouses. It also acknowledges women's powerlessness over land use decision-making due to lack of ownership as well as low levels of awareness over rights accorded in law.

However, the NDP fails to provide a strategy on how this disparity will be addressed although it rightly recognises the requirements for spousal consent to transactions over family land and land from which the family derives subsistence. In paragraph 417, the NDP assumes erroneously, that the Land Act 1998 (Cap. 227) provides for female inheritance rights. Additionally, the NDP 2010 fails to specify action-oriented undertakings for addressing the situation of women's land access and ownership.

4.1.2. The Uganda Gender Policy (1997 Revised in 2007)

The first Gender Policy for Uganda was formulated in 1997 and was revised in 2007. It is the framework for redressing gender imbalances and a gender-responsive outlook to guide all development practitioners while allocating resources and implementing national development programs. It emphasizes the mainstreaming of gender concerns and addresses the necessity of equal participation of women and men in economic, political, civic and social development. It deals with gender disparity in access to and control over economically significant resources and benefits, promotes the recognition and value of women's roles and contributions as agents of change and beneficiaries of the development process.

However, Rugadya (2007: 19) argues that achieving the intent of this policy is often curtailed by the low level of gender responsiveness, because of inadequate capacity among sectors and local government planners and implementers to apply gender analysis skills to the policymaking process. In addition, there is limited gender awareness among communities, bureaucratic resistance to gender mainstreaming among decision makers, and weak support among others. As a result, the poor and vulnerable remain subject to abuse.

4.1.3. The Land Sector Strategic Plan (LSSP, 2001-2011)

The Land Sector Strategic Plan (LSSP), is the framework for the implementation of land reforms contained in the 1995 Constitution and the Land Act 1998 (Cap. 227).

Specifically on women's rights, it is acknowledged that:

...the gender structure of land rights in Uganda varies across the country but in general is highly unequal, with women's rights generally limited to access while men are more likely to have ownership rights, and women's rights being less secured than those of men. Evidence shows that, particularly for rural women, this inequality of access to the key productive asset is a fundamental determinant of poverty and social disadvantage. Without secure rights to land, women's ability and incentives to participate in income-expanding economic activity are reduced (Ministry of Lands, Water and Environment, 2000: 6).

The LSSP lays out a number of strategies emphasizing the protection of vulnerable groups – women, children, the disabled – to increase security of access to and ownership of land through certification, ease of access to justice in land cases and increased awareness of land rights.

However, by the date of implementation of the LSSP (2011), a large number of the commitments it made on women's land rights remained unfulfilled. Moreover, this was criticized by Rugadya (2007:16) for failing to stretch beyond the provisions of the Land Act 1998 that relate to consent to transactions on land, to the more substantive principles embedded in the Constitution that deal with equal opportunities and equity concerns, and are instrumental to withstanding the threats and shocks of tenure insecurity that significantly affect women.

4.1.4. The National Land Policy

This draft policy has been under formulation since 2001. It acknowledges that in Uganda women are generally unable to own or inherit land due to restrictive practices under customary land tenure or are not economically endowed to purchase land rights in the market. The policy thus aims to harmonize and streamline the complex tenure regimes in Uganda for equitable access to land and security of tenure. This is driven by the principle recognition that; "access to land by all must reflect concern with equity and justice irrespective of gender; whether through the market or through any system of inheritance, customary or statutory".

The draft policy therefore commits to reform customary law, to modify the rules of

transmission of land rights under customary land tenure, to guarantee gender equality and equity; and to ensure that the decisions of traditional land management institutions uphold constitutional rights and obligations with regard to gender equality. In this policy, the Government of Uganda specifically commits to protect the rights of access to, inheritance and ownership of land for women and children, and to address the existing gender inequality and ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage, and at succession, without discrimination.

Under the National Land Policy, it is recognised that the restrictive practices under customary tenure have continued to hinder women from owning and inheriting land. The policy also recognises that fact that though the land act caters for legal wives to some extent, it does not assign responsibility for protecting the widows, divorcees, women in co-habitation and children.⁴⁸

This draft policy conforms to the principles of the Gender Policy (2007) and the National Development Plan (2010) and affirms special measures to mainstream gender into development planning and in all decision-making structures and processes relating to access and use of land to improve the status of women. It further commits to domesticate all international conventions, which outlaw discrimination against women and children and enforce all the principles therein. Additionally, it affirms support for the formation of the Equal Opportunities Commission as a specialized institution to advocate for and implement strategies in the National Land Policy. The draft policy also recognizes and solicits the support of religious leaders and cultural leaders to accept and implement measures designed to protect the rights of women and children.

Whereas, the policy draft appears to adequately uphold the gender-sensitive principles in the Constitution and gender main-streaming concerns in the Gender Policy requires, by tackling persist disparities in transmission of land rights through equity and equality at succession, in and after marriage, and upon at divorce, it is

⁴⁸ Evaluation of National Land Reform (October 2009): Policies from a Gender sensitive perspective in Uganda, (Submitted to; Centre on Housing Rights and Evictions (COHRE), Women and Housing Rights Programme (WHRP), Women's Land Link Africa (WLLA).

unable to lay strategy for securing women's rights through economic avenues. However, the primary challenge for this draft policy will be the systematic revision of legalisation to attain the principles it articulates, the extent of prioritization of women's rights in implementation plans and the share of resource allocation that is committed to realisation of women's land rights in the public investment plans and resource rationalisation plans.

4.1.5. Reform of Tenure Administration

Uganda has gone further than most African countries to devolve land administration to the local level, while at the same time giving rise to one of the most active women's movement challenging customary land tenure practices.

Women have adopted a varied of strategies to claim land but because women's ties to land are mediated by their relationship to men in patrilineal societies, women's attempts to assert their rights in ways that challenge customary land tenure systems is often perceived as an attempt to disrupt gender relations, and society more generally. This explains why so much is at stake in these battles over women's rights to land, and why women's gains in this area have been so slow.

This shows how bases of customary ownership have been eroded since the time of colonialism, making women's access to land significantly more unwarrantable as the protections traditionally ensured by the clan system have been peeled away. In recent years, local leaders have felt mounting pressures to protect the clan system, and in so doing have placed even greater constraints on women's access to land. In particular, men and groups of men, organized through their lineage, have sought to renegotiate and redefine the formal relationships that in the past supported women's access to land.⁴⁹

However, the clan system they are seeking to preserve is no longer one that affords women land rights, both rural and urban. Women have also adopted individual

⁴⁹ Gary, L and M Kevance (1999), "Diminished Access, Diverted Exclusion: Women and land Tenure in Sub-Saharan Africa" *African Studies Review* 42 (2):15-39.

strategies of purchasing land and taking their land disputes to court. Purchasing land has in effect, become a way of avoiding the traditional authorities.

4.2. Legal Framework on Women's Land Rights and Development

Law, according to Gita Gopal of World Bank,⁵⁰ can only be a catalyst to expedite a process of change, but its actual ability to bring about change, especially in the household arena, is limited: "developing countries are strewn with epitaphs of irrelevant Laws that proposed norms that were unacceptable to those affected by the Law", rather than introducing "complex foreign institutional a regulatory models".

Gopal advocated for a more gradual institution building approach. Legal reforms, she argues, have undermined local systems of adjudication and create rigidity in customary laws that prevent them from being modified and used flexibly. This has the net effect of leaving women unprotected in both the formal legal system and the informal customary system. For Gopal, unwritten customary systems offer women more options than legal reforms.

Customary adjudication is not based on rules and laws in the same way that formal legal system as are structured. Customary services are fluid because they are socially embedded and are based on evolving local social and political relations. But this can potentially help or hurt women, and at a time when the clan leader siege and land scarcity is great, women have no guarantees that their just claims will be given their full consideration.

The legal framework for women's land rights is laid down in the Uganda Constitution 1995 (as amended in 2005), the Land Act 1998 (Cap. 227) and a host of family laws relating to marriage, divorce and succession. A number of these are currently under review.

⁵⁰ Gita Gopal of World Bank.

4.2.1. International Context

Efforts have been made at international level to improve the lives of women. This has been through adoption of international instruments and programmes of action aimed at committing governments to empower women in their countries. Among these is the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), which was adopted by the United Nations (UN) general assembly as the International Bill of Women Rights in 1979 and came into force in 1981. CEDAW states that;

The full and complete development of the country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.

It builds on the principal of inadmissibility of discrimination and equality in dignity and rights and that everyone is entitled to all rights and freedoms without distinction of any kind including distinction based on sex.

The other international instrument is the International Convention on Civil and Political Rights (ICCPR) 1976 ratified by Uganda in 1995. The principle is to promote the right to self-determination (which includes freely determine the political status and freely pursue one's economic, social and cultural development). Other rights guaranteed under this convention include the equal right of men and women to enjoyment of all civil and political rights, the right to life, prohibiting slavery, prohibiting of forced labour, the right for equality before courts of law and many other rights.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976 was ratified by Uganda in 1987. Rights guaranteed under this convention include the right to self-determination, the equal right of men and women to the enjoyment of all economic, social and cultural rights the right to work, the right to form and join trade unions, protection of children and young persons from economic and social exploitation, the right to education and the right to take part in one's cultural life.

Uganda also actively participated in the proceedings on International Conference on Population Development (ICDP) in 1994 whose agreed action points were, among

others: empowering women and providing them with more choices through expanded access to education and health services, skill development and employment, and through their full involvement in policy- and decision – making processes at all levels, making family planning universally available by 2015 as a broadened approach to reproductive health and rights.

Others are: The Beijing Declaration and Platform for Action (1995), The Common Wealth Plan of Action on Gender and Development (1994), The United Nations Declaration on Violence Against Women (DEVAW, 1993).

In 1995, the fourth World Conference on women took place in Beijing and produced an outcome document popularly known as the Beijing Declaration and Platform for Action. It set out its goals as gender equality, development and peace and constituted an agenda for the empowerment of women thus;

"The objective of the Platform for Action is in full conformity with the purposes and principles of the charter of the United Nations and international law and that is the empowerment of women. The full realization of all human rights and fundamental freedoms of all women is essential for the empowerment of women." ⁵¹

The Government of Uganda acknowledges the importance of such international standards and codes as relevant for benchmarking good practices for promoting good governance and sustainable use of land and land-based resources (NDP, 2010). Uganda like many other African countries has committed itself to implement the international instruments and programmes of action.

4.2.2. National Legislation

4.2.3. The Constitution of the Republic of Uganda,

The Uganda Constitution is outstanding in its recognition of women's rights, beginning with the national objectives and directives principles of the State, which guide State organs and agencies in applying and interpreting the 1995 Constitution, or any other law and implementing policy decisions.

Article 2 of the Constitution of the Republic of Uganda provides that;⁵²

⁵¹Beijing+5 Outcome document-UN.

⁵² Article 2 of the Constitution of the Republic of Uganda.

- a) The constitution is the supreme law of Uganda and shall have binding force on all authority and persons throughout Uganda.
- b) If any other law or any custom is consistent with any of the provisions of the constitution, the constitution shall prevail and that other law or custom shall, to the extent of the inconsistency be void.

Under democratic principle II, the relevant constitutional directives are:

the state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance; all the people of Uganda shall have the access to leadership positions at all levels, subject to the Constitution.

Under principle VI for gender balance and fair representation of marginalised groups, the constitution asserts that,

The state shall ensure gender balance and fair representation of all marginalised groups on all constitutional and other bodies;

Under principle XV for the recognition of women in society, the Constitution states that,

The state shall recognize the significant role the women play in society.

The entire Chapter 4 of the Uganda Constitution devotes itself to the promotion and protection of fundamental human rights. With regard to equality and freedom from discrimination Article 21 (1)–(5) lays the foundation, beginning with a decisive recognition that,

All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

Article 20 (2) further asserts that,

Without prejudice to clause(1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability

In Article 20 (5) outlaws and nullifies discriminatory treatment taken to be inconsistent with the any provisions of the Constitution (Constitution of the Republic of Uganda, 1995: 7-8).

Article 26 protects the fundamental right of every person to own property individually or in association with others and not to be deprived without compensation, thus 26 (1)

Every person has a right to own property either individually or in association with others.

Article 26(2) provides that;

No person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied-

- (a) The taking of possession or acquisition is necessary for public use or in the
- (b) Interest of defence, public safety, public order, public morality or public health; and
- (c) The compulsory taking of possession or acquisition of property is made under a law which makes provision for-
 - (i) Prompt payment of fair and adequate compensation. prior to the taking of possession or acquisition of the property; and
 - (ii) A right of access to a court of law by any person who has an interest or right over the property.

Article 31 on rights of the family, provides that;

- (1) Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.
- (2) Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children.
- (3) Marriage shall be entered into with the free consent of the man and woman intending to marry.

Article 32 (1- 6) tackles affirmative action in favour of marginalised groups as follows;

(1) The State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

Article 33 (1-6) specifically singles out the rights of women;

(1) women shall be accorded full and equal dignity of the person with men” and in.

(2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement.

(3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

With regard to empowerment, 33(4) is emphatic that;

Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities.

In readdressing the marginalisation of women, the Constitution, further asserts in article 33(5)

Women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom

The rights of women are completed with article 33 (6), which prohibit laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status.

The specificity and emphasis with which the Constitution tackles women’s rights in Uganda has led scholars and practitioners to term it “the most elaborate constitutional dispensation on the rights of women in sub-Saharan Africa” (Rugadya, 2007:14). However, greater challenges have been experienced in the translation of these provisions into law and their administrative enforcement in an environment

where, the implementers and enforcers are not sensitive to these rights and obligations.

The Constitution under Articles, 243, 238 – 240 establishes the land management institutions, thus the Uganda Land Commission, District Land Tribunals and the District Land Boards. It also prescribes the functions for each of these institutions and gives Parliament power to enact legislation for their operations and jurisdiction.

It is interesting to note that neither the Constitution nor the Land Act give a requirement for the composition of the Land Tribunal to ensure women's representation as it did for the land administration institutions, though in practice, women were appointed as chairpersons and members to the District Land Tribunals on affirmative basis of 1/3 representation (Rugadya, 2007:22).

4.2.4. The Land Act, Cap. 227

The Land Act reinstates the constitutional Provision in its Article 237 that all land in Uganda vests in the citizens of Uganda who own it according to the four tenure systems.⁵³ This is a very gender neutral statement. Theoretically, it is assumed that this tenure reform gives equal chances to both women and men to buy land from their own resources but very few women in fact own land. Limited cash income and their restricted employment opportunities outside the home make land purchase unaffordable for most rural women. To date, a small number of women own land and even fewer can exercise effective control over it. Yet the voice of the disinherited female peasant has, until recently, gone largely unheard, not only by policy makers, but also by grassroots groups and women's organizations and activists despite this powerful constitutional declaration.

A person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land⁵⁴. An individual, male or female, or a family may apply to the family or clan to

⁵³ Section 2.

⁵⁴ S.4 (1) of the Land Act.

transfer to him/her/it, his/her/its portion of land and may cause that portion to be surveyed and transferred to the applicant and registered.⁵⁵

For purposes of holding land under customary tenure, a family is a legal person represented by the head of the family. In this provision, the law is silent on the definition of 'head of family'. In patriarchal societies like most in Uganda, made worse by religion, headship of the family is entrenched in the man either as husband, brother or elder son.

Under customary law daughters generally do not have inheritance rights to family land. Majority people including the elite believe that girl children may marry and so use the land belonging to the families of their husbands.⁵⁶

Section 27, safeguards the rights of women, children and persons with disability on customary tenure, and specifically voids any customary rule or practice that denies women, children or disabled persons access to ownership or use of land, thus;

any decision taken in respect of land under customary tenure, whether in respect of land held communally or individually, shall be in accordance with customs, traditions and practices...except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land or imposes conditions which violate article 33, 34 and 35 of the constitution...shall be null and void.

Security of Occupancy of Family Land is asserted in a new section 38A (as amended by L (A) 04): which confers the right of security of a spouse to occupy and use the family home during the subsistence of a marriage. However the said provision does not address the issue of ownership of the family home. It thus provides that:

- (1) Every spouse shall enjoy security of occupancy on family land.
- (2) The security of occupancy means a right to have access to and live on family land.

⁵⁵ Section 22(1) Section.

⁵⁶ Obaikol, E, (2009), Women's Land Rights and the Law "The Legislative Framework Governing Women's Land Rights in Uganda.

Often times Cohabitees have considered themselves spouses. In law, only those who have undergone any of the legal forms of marriage are spouses and the following discussion applies to such only.

Section 39 imposes restrictions on transactions for transfer of family land by family members. Section 39(1) prohibits sell, exchange, transfer, pledge, mortgage or lease of any land or to enter into contract for sale, exchange, transfer, pledge or lease any land” or give away land: (i) on which the person ordinarily resides with his or her spouse and from which they derive their substances except with prior written consent of the spouse (ii) on which the person ordinarily resides with his or her children below the age of majority except with prior written consent of the committee (area land committee) (iii) on which ordinarily reside orphans below majority age with interest in inheritance of the land except with prior written consent of the committee.

Rugadya (2007), observes that despite the presence of a firm constitutional base and clearly state legal requirements, “the consent to transactions on land has been routinely ignored and are, in any event, not applicable to widows and divorcees, because the implementers that are in charge of ensuring compliance are not aware or intentionally ignore what they feel does not adhere to customs. They are not gender sensitive in their understanding of rights over land therefore cannot be expected to enforce”. This view is further affirmed by Judy Adoko, the Coordinator of Land and Equity Movement (LEMU), in an interview with the study team, thus:

The state laws, for example the consent clause, are not being implemented because there is not a state institution or person given the responsibility to do this. Under customary tenure, depending on how strong the clan is – consent is sought before land is sold. It is unlikely that if a woman as a member of a family refuses the sale, that the rest of the family members will respect her position, state law supersedes customary tenure and her refusal should mean no land sales but community leaders believe that men owned the land traditionally so the wife cannot object (Interview on 16th April 2010).

Although the provisions of the Land Act 1998 are progressive with regard to women’s rights, they fall short of granting co-ownership of land by spouse and require reform of other relevant laws in order to gain full effect, as well as coherence with other family laws that deal with property rights in marriage and at the dissolution of marriage.

4.2.5. The Registration of Titles Act, Cap. 230

The provisions of the Land Act regarding family land contravene S. 59 of the Registration of Titles Act, which provides that: "No certificate of title issued upon an application to bring land under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate and of the entry of the certificate in the register book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is the proprietor."

A proprietor is defined by the same Act to mean the owner whether in possession, remainder, and reversion or otherwise of land or of a lease or mortgage whose name appears or is entered as the proprietor of the land or lease or mortgage in the register book. It also includes a donee of a power to appoint or dispose of that land, lease or mortgage (S. 1(I) RTA). The donee here must have a power of attorney, which gives him/her the authority to do all things expressed in that power of attorney as if he/she were the owner.

In all proceedings in which the legality or propriety of ownership of land which is under the operation of the RTA is in dispute, the first principle enunciated in the provisions of Sections 56, 60 and 184 of the RTA is that a certificate of title is conclusive evidence of the particulars in it and that the person named therein as being the owner of interest is actually such owner. Save for certain exceptions, which are spelt out, the production of the certificate of title "shall be held in court to be an absolute bar and stopped to any action against the person named therein as the grantee, owner, proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding" (emphasis added).

The basic and essential feature of the Torrens System of title by registration is that the title of the registered proprietor is indefeasible. This expression of indefeasibility though not defined is to be gathered from S. 59, 64, 176 and 181 of the RTA and refers to the immunity from attack by adverse claims to the land or interest in

respect of which he is registered, which the proprietor enjoys **Fraser Vs. Walker and others**⁵⁷.

The object of the system was to save persons dealing with the registered proprietors from the trouble and expense of going behind to register in order to investigate the history of the author's title and to satisfy themselves of its validity. That end is accomplished by providing that anyone who purchases is bona fide and for value, from a registered proprietor and enters his deed of transfer or mortgage on the register shall thereby acquire an indefeasible right. The purchaser's title remains indefeasible notwithstanding the infirmity of his author's title **Gibbs Vs. Messer**⁵⁸.

The provisions of the RTA apply only to registered land and give the proprietor exclusive rights to transact in his/her property as he/she may wish. S.2 of the RTA further provides that: "No Act or rule so far as is inconsistent with this Act shall apply to land whether freehold or leasehold which is under the operation of this Act except where it is expressly enacted to the contrary (S. 2(1) RTA)."

This proviso implies that in case of registered land, the RTA is the supreme law and therefore, its provisions supersede the provisions of any other law. Of course it is reinforced by Article 26 of the constitution which guarantees the rights of an individual to own land in his/her own capacity.

The RTA was passed for the main purpose of enabling titleholders to deal with the land any way they see fit. Right from the beginning, registration was bound to exclude most women from acquiring titles, since they generally only had use rights. Also, the tenure reform process only considered the rights of people who had land, not the landless or those who had only use rights (secondary and derived rights to land) who comprise mostly women.

Despite the flurry of activities by civil society organizations that led to the tabling of the section co-ownership of land by spouses for married women in Uganda, it was besieged by predicament of the Registration of Titles Act (RTA). It was also argued that, it would be unconstitutional in the face of article 26 (2) which protects the right of every person not to be deprived of property without fair and adequate

⁵⁷ [1967] 1 A.C 569 at 580.

⁵⁸[1891] A.C 248 at 254.

compensation, to date co-ownership of land by spouses is still absent in Uganda's statute books.

For all subsisting ownership certificates, the first principle enunciated in Sections 56, 60 and 184 of the RTA is that a certificate of title is conclusive evidence of the particulars in it and that the person named therein as being the owner of interest is actually such owner. Save for certain exceptions, which are spelt out, the production of the certificate of title "shall be held in court to be an absolute bar and stopped to any action against the person named therein as the grantee, owner, proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding"

Additionally, the full effect of reforms in the Land Act 1998, with regard to women is further narrowed because of the limitations on application imposed by the Registration of Titles Act, which for example in section 136, sets asides consent to transactions with regard to a third party purchaser in good faith, from whom property or land cannot be recovered or restituted for absence of notice from spouse, who may not be aware that the land is being sold by their partner (Rugadya, 2007).

4.2.6. Women in Land Administration in the Land Act, 1998 (Cap. 227)

Cap 227 sets out a number of institutions concerned with the management of land tenure and settlement of land disputes in Uganda. The Uganda Land Commission is charged with managing land vested in or acquired by the State according to the 1995 Constitution. It has power to purchase land or other interests in land, erect or demolish buildings, sell or lease land held by it, survey government-owned land and carry out other activities as necessary.⁵⁹

The commission also manages the land fund established to purchase the land of absentee mailo landowners in one specific part of Uganda and to assist

⁵⁹Constitution of the Republic of Uganda 1995, Article 239.

disadvantaged people throughout Uganda to buy land (Mugambwa, 2006: 33). Section 47(4) of the Land Act 1998, requires the membership of the Uganda Land Commission to have at least one out of its five members be female.

The 1995 Constitution provides for the establishment of a land board for every district in Uganda (Constitution of the Republic of Uganda 1995, Articles 240 - 241). Cap, 227 specifies their membership, qualification and experience as well as their general functions. The Boards are deemed to own all land within a district, which does not belong to anyone else and are given the sole power to sell, lease or otherwise deal with such land. The Boards are also charged with facilitating the registration and transfer of issuance of land in their district, surveying and valuing the land and issuing certificates related to it. The District Land Boards are independent of both the Uganda Land Commission and the local district council. Section 57(3) of the Land Act 1998 requires one third of the membership of District Land Boards to be female where the minimum number of members is five.

Area Land Committees are provided for in each parish, gazetted urban area and city division (Land Act 1998, sections 57 – 60). The main function of each committee is to determine, verify and mark the boundaries of customary land within the locality when an application for a certificate of customary ownership is made. The committee is expected to carry out its tasks in collaboration with traditional institutions and to advise members of the district land board on the applicable customary law in the area. Section 65(2) requires Area Land Committees to have at least one female out of four members drawn from the locality and with some knowledge of local land matters. Section 16(4)(b) requires Communal Land Management Association set up for the management of common property resources under customary tenure, have at least one third female members in their management committees.

Despite all the efforts above, the Land Sector Strategic Plan,(2002: 4) notes that many people still regard land as a man's issue notwithstanding the legislative changes that have introduced minimum quotas for women's representation on various land sector decision-making bodies in order to guarantee women's interests.

4.2.7. Women in Land Disputes Management in the Land Act 1998 (Cap 227)

Land Administration is an important factor in the constitution and enjoyment of property rights as it converts tenure regimes into resource management, challenges and strategies.

The principle of good governance as applied to the stewardship of land resources has led to the growth of participatory stakeholder designed and driven structures and infrastructure operating on the basis of transparency and cost effectiveness.

Land administration is a function, which entails the mobilization of institutional mechanisms and personnel for juridical, regulatory, fiscal and cadastral components development. The review below highlights the significant achievements of law and policy toward land administration in Uganda.

The Land Act 1998 provides for the creation of a Land Tribunal in every district in Uganda. Section 75 provides that each tribunal shall consist of a chairperson, who must be a lawyer and two other members who are not required to possess formal qualifications but should have knowledge and experience of land matters. All are appointed for five-year terms. The tribunals shall have the same power as Grade 1 Magistrates Courts and shall be the final body of appeal on land disputes within the district. Subsequent appeals against the decision of a District Land Tribunal should be made to the High Court. It is interesting to note that the law did not give a gender requirement for the composition of the Land Tribunal as it did for the land administration institutions, though in practice, tribunals were constituted with at least one woman out of the three members, in compliance with the constitutional requirement for affirmative action.

The Land Act 1998 specifically recognised the role of customary law in dispute settlement and mediation in relation to land held under customary law. In section 89, the Act states that at the commencement of a case, or at any time during a hearing, if the land tribunal is of the view that, because of the nature of the dispute, it ought to be dealt with by traditional mediation, it may advise the parties to attempt to resolve the dispute through this mechanism. The tribunal may adjourn its proceedings for up to three months in such circumstances to give the parties time to

try to reach agreement. Both parties are free to resume formal proceedings if either is not satisfied with the outcome of this process.

The Act also makes provision for the appointment of mediators, on an ad hoc basis, in section 90. A mediator is not required to hold any formal "professional qualifications and his or her main role is envisaged as attempting to narrow any difference between the two parties" (Quote from Minister of Land during the parliamentary debate on the Act, Hansard, 28 June 1998: 4352; cited in Mugambwa, 2006: 46). The Act specifies that the services of a mediator may be used in negotiations between landowners and tenants who are seeking to either gain occupancy rights or conduct a transaction relating to the land in question.

It is important to note that, in practice many of the above provisions have never been implemented. There are very few, Land Committees in existence. The District Land Boards, where they exist, are extremely weak and the District Land Offices, which were supposed to support their work, are grossly under-resourced. Although some Land Tribunals were created, there were never enough to cover the entire country and so those that did exist, soon built up a massive backlog of cases.

The administration of the tribunals was subsequently shifted from the Ministry of Lands to the Ministry of Justice and their work was formally suspended in November 2006. The handling of land cases has effectively been handed back to the magistrate's courts. Many of the reforms envisaged by the Land Act 1998, such as the surveying of land and the issuing of Certificates of Customary Ownership have not taken place and a lack of resources has meant that the Land Fund has never actually become operational. This has led to the emergence of a huge gap between how land rights are theoretically dealt with in Uganda and how the system actually functions in practice.

4.2.8. Marriage Laws and Women's Land Rights

In Church or Christian Marriages under the Marriage Act of 1903, unless the parties have agreed before the marriage, whatever property one owns before the marriage remains his or her property. All properties acquired during the marriage are jointly

owned unless the parties make other plans. However, parties may acquire properties independent of each other during the marriage. Both husband and wife can make a will for properties not jointly owned and leave any or all of such property to the other or any other person. Civil Marriage, which, also falls under the 1903 Marriage Act, has similar principles in relation to property rights.

Under the Marriage Decree of 1972, Customary Marriage, is governed by customary norms and practices, property acquired during the marriage is presumed to belong to the husband, if the marriage fails, the wife goes away with nothing. In Islamic Marriage, property of a woman's choice, as she so desires is given to the wife i.e. "Mahari", belongs to her since it was a gift before the marriage. Upon dissolution of the marriage, the wife retains the "Mahari". The law is silent on the way property acquired during the marriage is to be dealt with. In Hindu Marriage, the law is silent on property acquired by spouses before and during marriage.

However, a number of unions that are neither formalised under statutory law nor acknowledged by customary practice exist, thus cohabitation. Such relations are in a precarious legal situation regarding property and land, at their dissolution, unless evidence is provided to the contrary, chances for women in such relations of losing land or failing to make claim whether financial, or otherwise, as such a relation does not entitle either party to any land rights. Because the cohabitee has no locus standi in court, there have been no cases brought before the courts dealing with the status of cohabitants. A cohabitee is deemed a mere "visitor." A cohabitee can only claim land rights if at the time the land was bought it was registered in the names of both her partner and herself.⁶⁰

Laws related to marriage and divorce, have been under review for the last 20 years, with the Uganda Law Reform Commission attempting to consolidate them under the Domestic Relations Bill (2003). The history of this Bill has been long and bumpy, as often the different religious dogmas clash on marriage, divorce, and fails to balance with culture. Religious institutions have controversy under section 32, which requires a party to an Islamic or customary marriage intending to marry a subsequent wife,

⁶⁰Rugadya, Margaret(2009), Land and Gender surveys in Uganda, Associates for Development, Kampala – Uganda.

to make application to the district registrar of marriages and show that he is economically capable of maintaining his wives and children. Additionally, he is required to show a separate matrimonial home for the subsequent wife, except in circumstances, where all the other wives agree to share a home. Additionally, the Bill also outlawed bride price and prohibited widow inheritance.

Failure to fit all dogmas into one bill, led to a split into two Bills; one dealing exclusively with Islamic Marriages and based on the principles of Islam and the second, the Marriage and Divorce Bill, which consolidates all laws relating to Church, Civil, Customary, Bahai and Hindu marriages. This bill maintains the prohibition of widow inheritance, incest and spells out that persons related biologically or through adoption or marriage should not marry each other. It introduces the recognition of cohabitation as a form marriage with rights at its cessation, which can be asserted by a court of law based on contribution made by each party in the marriage.

The Marriage and Divorce Bill, 2009 also provides for ownership of matrimonial property in polygamous marriages, by stating that property acquired by the man after he marries a second wife, shall be owned in common with his first and the subsequent wives. The latter however, only share the man's portion of the matrimonial property and prohibits disposal of matrimonial property without consent of all spouses. The grounds for divorce are any of the following for men and women, adultery, cruelty, sexual perversion, desertion for two years or change of religion without consent of spouse, homosexuality, impotence or incest. However, one can only petition for divorce after the marriage has lasted at least two years.

The Divorce Act (Cap. 249) refers to property rights at divorce, in which a woman's contribution in marriage is taken into consideration. Financial contributions and contributions through housework are considered by the court in determining the reward at divorce especially if back by evidence of a substantial contribution. Such consideration, however, is a matter of case law as there is no written law that recognizes a wife's contribution.

Divorce in customary marriage is governed by the customs, traditions and practices except for those that are repugnant to natural justice and dignity of women as stated in article 33, and 34 of the Constitution, which mean that upon divorce, there

may be the “refund” of the bride price. Women, therefore, are often at the mercy of their community members. Too often, the only option that a woman may have is to remain in the marriage in order to guarantee her rights in the land.

4.2.9. Succession Laws and Women’s Land Rights

The Constitution in Article 31 mandates Parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children. The Succession Act and the Succession (Amendment) Decree, No. 22 of 1972 provides that;

If a man dies intestate, all of his property (except his residential holding) is distributed as follows:

- (i) Lineal descendants receive 75%, shared equally.
- (ii) Wives receive 15% of the estate, shared equally.
- (iii) Defendant relative(s) receive 9%, shared equally.
- (iv) Customary heir receives 1%. (Sec. 28(1) (a))

If the deceased has no lineal descendants, the wife’s share rises to 50% and the dependent relatives to 49%. If no lineal descendants, and either a wife or a dependant relatives, the wife/dependant relatives receive 99%.

In case of testacy, a valid Will or Testament guides the distribution of the deceased’s property. Where the deceased had dependants, they must be provided for. When not provided for, court has the power to make an order for payment out of the estate of the deceased for maintenance of the dependants. This maintenance only extends until the surviving spouse remarries and in the case of a daughter in the event of her marriage. Jointly owned assets go automatically to the surviving partner at death. This is because property owned jointly has unity of title, time and possession. It cannot, be divided so that the beneficiaries of the deceased can have a share. The testator cannot give away such property by will because he/she cannot clearly ascertain his/her share of that property.

However, property held in common, which means that although you hold it together, each party knows how much of that property belongs to him or her. This property is divisible and upon death, the beneficiaries of the deceased person can take over the share of the deceased. The deceased can also distribute only his share by will.

The Administrator General's Act (Cap 140) establishes the office of the Administrator General as a public trustee under the Public Trustee Act (Cap 141) to manage estates of intestate persons in order to protect the beneficiaries of the deceased. Executors or Administrators have power to dispose of any property forming part of the estate they are administering, either wholly or in part, in such manner as they may think fit (with the exception of the residential holding in the case of the Administrator).

There is no requirement under both Acts that the Executor or Administrator must act in the interest of the estate or the beneficiaries. The powers provided under that Act are therefore too broad and leave room for abuse by Executors or Administrators, as there is no obligation to account to the beneficiaries of the estates, for assets and income under their jurisdiction.

The succession laws recognize a women's right to inherit from their husbands and fathers. In some respects, the succession laws are progressive in that they do not distinguish between daughters and sons among the lineal descendants and dependent relative categories. Yet, directly and indirectly, women's inheritance rights in the succession laws are not equal with those of men because customs supersede statutory law. This was elaborated in the cases of **Law & Advocacy for Women in Uganda V. Attorney General of Uganda Constitutional, Petitions Nos. 13 /05 /& 05 /06** in which court held that Section 2 (n) (i) and (ii), 14,15, 26, 27, 29, 43, 44 of the Succession Act and Rules 1, 7, 8, and 9 of the Second Schedule of the same Act are inconsistent with and contravene Articles 21 (1) (2) (3) 31.

The act regulates matters pertaining to cases of the testamentary of intestate succession. Section 3 of the Succession Act (Cap 162) provides that: "No person shall by marriage, acquire any interest in the property of the person whom she/he marries, nor become incapable of doing any act in respect of his/her own property which he/she could have done if unmarried."

This provision means that any property individually owned during a subsisting marriage is owned by either spouse and is not in any way subject to the control or determination by the other spouse. Property remains individual and each spouse has exclusive rights. The ability to determine what crops to grow, what investments to develop and how to determine the expenditure of the proceeds only happens when women have ownership and control over the land.

Different dynamics come into play in practice, in certain Women's Land Rights and the Law in Uganda. For instances women control the entire production process and not the expenditure of the accruing resources while in other cases, the decision of on farm investments only extends to production for household food security.

4.2.10. The Mortgage Act⁶¹

Section 5 of the Mortgage Act provides for mortgaging of matrimonial home and is to the effect that;

(1) Notwithstanding section 39 of the Land Act, a mortgage of a matrimonial home, including mortgage on customary land of a matrimonial home is valid if—

(a) any document or form used in applying for the mortgage is signed by or there is evidence from the document that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home;

(b) any document or form used to grant the mortgage is signed by or there is evidence that it has been assented to by the mortgagor and the spouse or spouses of the mortgagor living in that matrimonial home.

(2) For the purposes of sub section (1)—

(a) an intending mortgagee shall take reasonable steps to ascertain whether an intending mortgagor is married and whether or not the property to be mortgaged is a matrimonial home;

(3) The mortgagee shall be deemed to have discharged the duty under subsection (2), if the mortgagee obtains a marriage certificate issued in accordance with the

⁶¹ Act 8 of 2009

laws of Uganda, and in the absence of it, a statutory declaration from the spouse or spouses of the mortgagor as proof of marriage.

Section 6 provides consent to mortgage of matrimonial home.

(1) Where a matrimonial home is the subject of an application for a mortgage, a mortgagee shall satisfy himself or herself that the consent of a spouse referred to in section 5 is an informed and genuine consent and that duty is deemed to have been complied with if—

(a) the mortgagee has—

(i) explained to the spouse or spouses of an applicant for a mortgage in the presence of an independent person, the terms and conditions of the mortgage which is being applied for; or

(ii) in writing, advised the applicant for a mortgage that he or she should ensure that his or her spouse or spouses receive independent advice on the terms and conditions of the mortgage which is being applied for;

Because of the difficulties with the consent clause, the Bankers in Uganda have supported the co-ownership of land by spouses as the best mode of land holding that frees up the market to transactions. In this case, the rights holders are clearly known and are duly registered and therefore, fraud will be greatly reduced. The cost of the transaction will also grossly reduce because of reduction in time spent verifying the derived interests in a given parcel. These proposals were pushed forward in the amendments to the mortgage Bill. It was however agreed that these reforms should emerge from amendment of the parent law, the Land Act, which starts with ensuring that these rights of women are enshrined in the National Land Policy.

Taking into consideration the fact that over 80% of land in Uganda is held under customary tenure, and therefore, most of the people requiring the protection of the law are situated on this tenure, the amendment of the mortgage act removed insecurities/ barriers fronted by most financial institutions in mortgaging customary land. The provisions of the Mortgage Act⁸ 2009 provide for the use of customary land as collateral thus enabling development but most women might have no

knowledge of obtaining loans for purpose of development using land as collateral. More so majority women do not own the land they cultivate but only use as proxy

There is also a danger of the male counterpart receiving mortgaging family land under the disguise of developmental investment and receiving their spouse's consent under such pretext and later misusing the funds.

CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1. SUMMARY OF FINDINGS

Theoretically, the Land Act provides for the protection of women's land rights through the seeking of consent by a spouse transacting in family land⁶² but to date there has been no clear demonstration of the effectiveness of this provision in protecting the rights of women. The men still transact in land with impunity. They are known to forge marriage certificates in a bid to transact without the knowledge of their spouses. Women's lack of knowledge of the law prevents them from demanding for their rights, particularly where cultural factors have reinforced male managerial and financial control over female property and the weaknesses embedded within this clause make the plight of the woman even direr.

In 2010, Uganda adopted the 5 year National Development Plan (NDP), as the policy direction and resource distribution agenda. This plan articulates the elements of traditions, culture and religion that have limited economic growth and structural transformation affecting women in the use of land as a resource. It asserts that despite all effort to address gender disparities, they do still exist mainly because of the inadequate competencies at both the national and local government levels to address them. It acknowledges that the overall level of gender responsiveness remains low because of inadequate capacity amongst government ministries, departments, agencies as well as local governments to apply gender analysis skills in planning and implementation of programs. Additionally, there is limited gender awareness among communities and bureaucratic resistance to gender mainstreaming among decision makers.

NDP 2010, points out that many landless potential farmers, especially women, cannot easily access land because of costs, cultural norms and threats imposed by overlapping land rights. It also acknowledges women's powerlessness over land use decision-making due to lack of ownership as well as low levels of awareness over

⁶² Section 39 (as amended by section 20 of L (A) 04).

rights accorded in law. However, it fails to provide a strategy on how this disparity will be addressed through specify action-oriented undertakings for addressing the situation of women's land access and ownership.

Draft 5 of the National Land Policy (June, 2010) acknowledges that Uganda is hailed for having some of the best policy, constitutional and legal frameworks relating to gender, and particularly to women's land rights. Despite having ratified several international instruments on human rights, gender equality and protection of women's land rights, there is a distinct gap between what is in law on paper and what is in practice, mainly because standards and values ascribed to are not respected or enforced. This is confirmed in an interview with Mabuya Mubarak, Ministry of Gender, Labour and Social Development, who voices the fact that:

So far, the most powerful clause for women's land rights is the "consent of spouse" in terms of transactions on land where the family derives subsistence. This clause however only talks about a spouse in the context of the law (a legally married spouse) yet majority of women are in unions whose legality is not recognized hence being left out

This study finds that although traditions, customs and practices, which discriminate women in matters of access, use and ownership of land, have been outlawed by both the Constitution and the Land Act, however, practice on the ground does not acknowledge these changes.

Culture and custom, for example, continue to support inheritance of land rights to men and women's rights continue to be tenuous, as they are usually only enjoyed at the mercy of their male relatives. In general, customary practices in some areas of the country continue to override statutory law over recognition and enforcement of women's land rights as confirmed by Judy Adoko of the Land and Equity Movement in the interview below:

There are two laws in place, the state and customary laws. The state provides for consent of spouses when family land is sold. Customary tenure provides for all members of the family to give consent when all land family land is sold. The clan is to give an oversight to ensure this happens. The law on sharing of properties on divorce or death was declared by the Courts to be discriminatory but there is no other new law to replace these laws

Uganda's legal and regulatory system for land and property rights is pluralist. That is, both the statutory and customary laws operate at the same time. The formal legal framework for property rights for girls in Uganda is based on the 1995 Constitution,

the 1998 Land Act, the 2004 Amendment to the Land Act and the Family and Succession laws.

The Constitution of Uganda (1995) is the supreme law which vests all land in Uganda in the citizens in one of four tenure systems: customary, freehold, mailo and leasehold. The Constitution also sets out broad principles for both women and children; equal rights for women, no discrimination based on custom and special protection for women and orphans. In addition to that, there are no laws against women owning land in Uganda for purposes of development.

Cap 227 provides a legal framework for governing land tenure, land administration and the settlement of land disputes. It decentralises land administration and management, strengthens security of tenure within the pluralist tenure system and redress historical imbalances in relation to land ownership.

Cap 227 contains some protections for the land rights of women and children with limited consent requirement from spouses and children before final transfer of rights to the land for instance sale, exchange, mortgage, lease, inter vivos gift). This consent is only required for land on which the family resides and any plots attached to the residence that is used for sustenance by the consenting spouse. This provision is only of limited usefulness to protecting women and children's rights to land, as it routinely ignored and in any event, non-applicable to widows cohabitantes and divorcees who the majority of women affected by unequal distribution of land.

Women in Uganda enjoy a third representation on elective positions at national and local government levels. However, at the household level decisions on matters of reproductive health, domestic incomes, and major purchases, are still dominated by men. Uganda's gender score of 0.591 on the Gender Empowerment Measure (GEM) provides a good performance in terms of women representation on key decision-making institutions and bodies resulting from the government's affirmative action for women. However, women's full participation in key decisions is yet to be realized mainly because of regressive traditional rules and practices.

Women's control over her own and husband's earnings was investigated in the Uganda Demographic and Health Survey (UBOS, 2006) shows that six in ten married women whose husbands receive cash earnings reported that their

husbands/partners were the main decision makers on the use of their cash earnings. 49% of men and (34%) of women reported that decision making is jointly done between the husband and the wife. Husbands control 44.9% of perennial crops as opposed to 9.4% by wives, while annual crops of low value are controlled by wives at 45% compared to the husbands 5.8%.

Wives have control over land that holds low income perennial crops at 28.8%, compared with the husbands' control of 6.9% (UNHS, 2006). From women producers point of view, the fact that male non-producer are the controlling authority, both at the family and national levels points to a major obstacle to empowerment (Rugadya, 2007). There is a high growth rate of unskilled labour of 3.7% per annum, with high levels of unemployment. 50% of employed women work in the lowest paying sectors compared to 33% of men. In the agricultural sector 83% of the labour force is from women and yet few of them own land.

Considering ownership, control and access to economic resources, women are still edged out of land resources, despite the existence of a wealth of laws, policies, regulations and standards in favour of gender equality. With negative culture and customs on one side, low incomes exacerbate their efforts to acquire or access land. In a gender and land survey by Rugadya (2009), female respondents felt that it is not good for a woman to own a house, unless if it is built away from where the person is married or else a woman is labelled a prostitute. Men respondents argued that "women are also a property, so they cannot hold or inherit land", whereas others reported that "women are difficult to manage when they own land and that if you allow your woman to own land, and then you forget about your marriage". Yet others were in unison that it is an "abomination" for a woman to own a house.

In such an environment, most women cannot independently make decisions on matters of owning houses and land thus resort to covert ways, of acquiring and owning without full approval of their spouses. Access to mortgage financing by women is very low at 4% of mortgages on registered land by spouses and 16% of mortgages for registered titles by women. The housing finance sector lacks long-term funding schemes within the domestic banking system, which can assist women, acquire land and houses.

Uganda has a rich legal and regulatory environment hailed for its outstanding recognition of women's rights. Succession laws recognize a women's right to inherit from their husbands and fathers, though directly and indirectly, women's inheritance rights in the succession laws are not equal with those of men.

This consent close guarantees a wife's access rights to family land as long as the marriage subsists but does not guarantee control or ownership which have been found to be fundamental in the economic and social empowerment of women and their households. Most control exercised by women on land is over use rather than control and ownership. This subordination of women socially and economically renders them less competitive than they should be under the current economic structuring of society.⁶³

The existence on the co-ownership clause stems from the fact that current legislation, given customary practices, provides limited possibilities for women to own land. In patrilineal societies, which are most prevalent in Uganda, women generally do not inherit land from their husbands or fathers. Their fathers often do not bequeath land to their daughters because daughters marry outside the clan, and will therefore take the land with them to another clan.

Husbands often do not bequeath land to their wives for the same reason: they need to ensure that the land remains in the clan because they worry that the widow might sell the land to non-clan members. In some societies in Uganda, if the husband dies, the wife and children are inherited by the husband's brother or another family member so that he may provide for them. This practice is dying out; raising fears if a widow remarries outside the clan, the clan land she has acquired is lost.

Thus under customary law, which prevails in Uganda, a woman may have jointly acquired land with her husband and may have spent her entire adult life cultivating the land, but she cannot claim ownership of property. If the husband dies, the land generally goes to the sons, but may also be left to the daughters. Nevertheless, he may still leave the wife with no land and therefore no source of subsistence.

⁶³ Ibid pp.13

For purposes of subsection (2), the spouse shall in every case have a right to use family land and give or withhold his or her consent to any transaction referred to in section 39, which may affect his or her rights.

The attempts that are being undertaken for women's participation in decision making yielded limited results. Action Aid 2000 review indicated that women had not adequately participated in the decision-making processes and the few who did, had to do so amidst difficulty. Action Aid did not adequately militate against the forces that affect the effective participation of women on such forums.

5.2. Conclusion

The status of the African women is determined by a number of factors. And running through these factors are the forces of culture, custom and other social influences. Thus in the matters of succession, domicile, marriage, divorce and child custody, etc., African women are subject to a lot of discrimination and marginalization. Each of these is treated below.⁶⁴

In many cities of developing countries, more than half of the urban population lives in slums and informal settlements, in sub-standard housing, without basic services and without the enjoyment of their human rights to land and adequate housing. Women headed households form a high proportion of the population in many of such settlements.

Due to colonial influences, individualization of land tenure, land market pressure and other factors, many customary laws and practices have eroded over time; the forms of solidarity that used to exist and that protected women from exclusion, have now disappeared in many areas. Even where statutory national laws recognize women's rights to land, housing and property, "traditional" values prevail amongst judges, police officers, local councillors and land officials. They often interpret statutory laws in what at present are understood to be "customary ways", as a result of which women are deprived of the rights they should enjoy under statutory law.

⁶⁴ E O.A. Fatula, O.S. Oyelade & A.A. Adedejiast, ISSUES IN AFRICAN FAMILY LAW: NIGERIA IN PERSPECTIVE African Journal of Peace & Human Rights [Vol. 17:2], Page 320

While in communal land tenure systems, women had significant indirect access and rights to use communal resources through their roles as household managers, they were further excluded when land tenure was individualized and invariably adjudicated and registered in the name of "heads of households" or men. Without legal protection, women are at risk of suddenly becoming landless, as has happened in the many cases where the husband sells the family land.

While lack of security of tenure affects millions of people across the world, women face added risks and deprivations: in Africa and South-Asia especially, women are systematically denied their human rights to access, own, control or inherit land and property.⁶⁵

The vast majority of women cannot afford to buy land, and usually can only access land and housing through male relatives, which makes their security of tenure dependent on good marital and family relations. At the same time, millions of women in Asia, Africa and Latin America depend critically on land for a livelihood.

Women headed households and single women have little access to credit and other resources, often because of lack of collateral and/or the assumption that they will be unable to meet financial obligations in the absence of a male partner.

There is increasing evidence that, especially in poor households, women spend more on basic family needs, while men spend a significant part on personal goods, such as alcohol, tobacco etc.⁶⁶

Furthermore, particularly in Africa, women are food security, as it is women who do most work on the land, process the harvest and feed their families. When a man sells the family land and leaves for the city, women and children are often also left landless.

When communities are forcibly evicted and moved to places with no sources of livelihood, men tend to migrate and leave women to fend for the family.⁶⁷

⁶⁵Benschop, M. (2004) *Women's Rights to Land and Property: Commission on Sustainable Development: Women in Human Settlements Development-Challenges and Opportunities*

⁶⁶ 3 Annual Report 2001, Uganda Land Alliance.

⁶⁷ Agarwal, Are We Not Peasants Too? Land Rights and Women's Claims in India, Population Council, 2002, p. 4.

Laws and policies, even if recognizing women's equal rights to land and property, are still very difficult to implement. Regulations and guidelines for implementation of laws and policies are often very technical and in many cases have not yet been written from a gender perspective. As a result, forms for registration of land for example, often simply lack the space to indicate joint registration of both spouses. And the land officials having to work with these forms often lack any gender awareness.

Among men and women alike, there still is a lack of gender and human rights awareness, of the serious repercussions that the denial of women's rights continue to have and of the possible strategies towards actual implementation of these rights on the ground. In addition, many women do not have information, confidence, experience and resources to obtain what they are legally entitled to.

Much as the policy makers and other elite women believe that the laws have liberated them⁶⁸, the rural illiterate women have not benefited from the policies that are in place. The rural communities are still largely dependent on customary practices which look at men as sole owners of property particularly land. Women in the rural setting still feel impeded by the cultural and economic setting from owning property in their right.

Land is held under four land tenure systems; freehold, leasehold, mailo and customary land. Women are mostly excluded from owning land, but retain and are guaranteed secondary user rights despite the fact that Uganda has policies and plans which are in line with women's land rights.

Facially there are no laws against women owning land. However, customary practices favour male inheritance of land, which is the main method for land acquisition, thus women's land rights tend to be limited to access, while men enjoy ownership.

Despite having ratified several international instruments on human rights, gender equality and protection of women's land rights, there is a distinct gap between what

⁶⁸ Girls can now also benefit on family land as per the land Act which was not the case before.

is in law on paper and what is in practice, mainly because standards and values ascribed to are not respected or enforced.

This study finds that although traditions, customs and practices, which discriminate women in matters of access, use and ownership of land, have been outlawed by both the Constitution and the Land Act, however, practice on the ground does not acknowledge these changes.

Despite legal and policy attempts to enhance women's rights to developments, such attempts have been frustrated by avoidable circumstances. For instance the Land Act provides for the protection of women's land rights through the seeking of consent by a spouse transacting in family land but to date there has been no clear demonstration of the effectiveness of this provision in protecting the rights of women. The men still transact in land with impunity. They are known to forge marriage certificates in a bid to transact without the knowledge of their spouses.

Women's lack of knowledge of the law prevents them from demanding for their rights, particularly where cultural factors have reinforced male managerial and financial control over female property and the weaknesses embedded within this clause make the plight of the woman even direr.

5.3 RECOMMENDATIONS

It is clear that while Uganda is acclaimed to be at the forefront on women empowerment in Africa, there is limited documentation of the models and processes on the subject that have developed over time. This situation has made it difficult for gender related advocacy to convince policy makers who only understand issues from a statistical and economic perspective and do not see the relationship between the rights of women and poverty reduction in the country. Thus there is need for documentation.

Whereas the policy and legal framework for women's rights is relatively well developed in Uganda cases of strategic litigation have demonstrated that a well-written constitution may not be sufficient to deliver equitable rights over land for women, even when the legal system is in favour of reforms and the principles are

adhered to by courts, enforcement of decision requires a much wider participation involving different arms of government, public agencies and actors.

It is important to note that the land reforms have gaps in addressing women's issues and attaining gender equality. Women's concerns are not fully addressed. Apart from the consent clause, the men still dominate the decision making in the family. Consent only applies to land that the family derives livelihood. It does not properly define what type of land this is. Besides, consent does not translate into ownership. It puts the woman more into the observer status not decision making. It has been discovered that women still lag behind as compared to men in as far as land ownership is concerned.⁶⁹

With regard to the above discussion, it is worth noting that understanding women issues attempts to unveil experience that women might have over and above men.

If the provisions of Sections 38 A& 39 of the Land Act are to apply, there must be an amendment of the RTA specifically S.64 (2) in order for those provisions to gain the force of law with regard to registered land. However, the RTA should not be construed as limiting or abridging the provisions of any law for the time being in force in Uganda relating specially to the property of married women (S. 2(2)).

The property referred to here is property that is owned by married women and not all property that they may have interest in by virtue of marriage for which family land forms a big part in most of Uganda.

The provisions in the RTA relating to the disability of married women to transact presupposes that the common law rule whereby married women could not contract and hold land separately still applies in Uganda⁷⁰. However, the current practice in land registration is that married women can separately hold land in their own right (Art. 26) and therefore renders the said provisions redundant.

The amendment to the RTA will ensure that the provisions of the Land Act applying to family land, which is registered, are enforceable. S. 39(7) of the Land Act as

⁶⁹ Evaluation of National Land Reform (October 2009): Policies from a Gender sensitive perspective in Uganda, (Submitted to; Centre on Housing Rights and Evictions (COHRE), Women and Housing Rights Programme (WHRP), Women's Land Link Africa (WLLA) pp. 9,10

⁷⁰ the Married Properties Act 1882 of England

amended provides that a spouse, not being the owner of the land (family land), may lodge a caveat on the certificate of title, certificate of occupancy or certificate of customary ownership of the person who is the owner of the land to indicate that the property is subject to the requirement of consent. This caveat is subject to the caveator's right to security of occupancy. Thus its lifespan only extends as far as the marriage subsists. In the event of separation, divorce or death, the caveat lapses.

However, despite the existence of these Institutions, the public appears to be slowly losing confidence in the land administration system. There has been public outcry on delays in processing of land titles, crowded land offices, payment of bribes and the increase in land wrangles and evictions and encroachment on Government land. The land administration institutions attribute these challenges to the lack of a national land policy to govern the management of Government/public and private land, understaffing and inadequate funding.⁷¹

There is need to enhance women's control over land through the legal and policy framework. This is not only based on the important role they play in agricultural production but also because control of land is essential for women to live with dignity. Having women's names on certificates of title to land not only protects them from relatives and in-laws who would grab the land, a common practice in Uganda, but also enable them to have access to credit. Financial institutions in Uganda do not give credit without security, and land as evidenced by a certificate of title is one of the most recognized and accepted forms of security.

As the most productive worker on the land, there is no justification for their invisibility. Rights of control and/or disposal should accompany their user rights. Lack of this explains and confirms the structural causes of women's poverty, which is reinforced by cultural attitudes and practices that perpetuate injustice and discrimination.

Whereas on the face of it the law seemingly accords protections to women, in practice these provisions do not on many occasions turn to reality. The need to advance the cause for co-ownership cannot be ignored any further as the world

⁷¹ Value for Money Audit Report on the Functionality of Land Management Institutions in Uganda, (March 2011) pp 1,

becomes more individualized and integrated through effects of globalization, commercial pressures on land and land scarcity due to high population growth rates. The issue of guaranteeing security of tenure for women, not only in terms of access rights which is a practical need, but in terms of control and ownership (strategic needs) is paramount if equality of rights, resources and voice is to be achieved.

Persistent cultural and customary attitudes also work against implementation of women's rights to development. Without gender aware officials on bodies dealing with land allocation, inheritance and dispute settlement, a male bias among these officials will continue to stand in the way to women's enjoyment of their rights. Moreover, inclusion of women in decision-making and policy formulation processes, especially among vulnerable groups such as slum dwellers, ethnic minorities etc. are crucial.

Specific recommendations for increasing women's access to land and site development include the following:

More emphasis should be put on enabling women to assert their existing land rights when land is registered for the first time (under the Ministry of Water, Land and Environment's Systematic Demarcation Project, for example). If co-ownership is culturally unacceptable, one option would be for women to register a caveat on the title to protect their interest.

The Registration of Titles Act should be reformed to create new modes of registration that protect a spouse's interest in the matrimonial home.

The concept of giving a spouse a statutory life interest in the matrimonial home should be explored. This would chime with customary law provision for widows, unlike the automatic co-ownership proposal, which appears to conflict with cultural norms.

Regulations should be developed to give more specificity to the duties of lenders and purchasers to obtain the consent of spouses to dispositions of family land.

Women lack information about their legal rights and access to mechanisms to enforce them. Reliance on the Local Council Court system to resolve commercial disputes puts women at a particular disadvantage because of traditional attitudes

and the application of customary law. Specific recommendations for increasing women's access to justice include the following:

Women should be represented on the Commercial Court Users' Committee. The Justice, Law and Order Sector Gender Working Group should take an active role in developing the government's commercial justice reform agenda.*

Legal aid and paralegal projects should be enhanced to provide accessible advice for women operating businesses.

Building on the civic education work undertaken through the Commercial Justice Reform Programme and by NGOs, further efforts should be made to give women practical guidance about their rights and how to enforce them.

Uganda needs to enact legislation that would address key social issues that affect gender relations and women's position in society and the home. Enacting laws to implement Uganda's constitutional commitment to gender equality is important for growth.

REFERENCES

- Adoko, J. & Akin J. (2011), Land Equity Movements in Uganda (LEMU) and Knight, R. (2011) International development Law Organization (IDLO) Understanding and Strengthening Women's Land Rights under Customary Tenure in Uganda,
- Afonja, S. (2005) *Gender and Feminism in African Development*,
- Aganwal, B. (1995), A field of one's own: Gender and Land Rights in South Asia. Cambridge, Cambridge University Press,
- Agarwal, B. (2002), Are We Not Peasants Too? Land Rights and Women's Claims in India, Population Council,
- Bakkabulindi, F. E.K. (2010), literature review chapter of a research proposal. Unpublished,
- Bottomley, A. & Lim H. (2007), *Feminist Perspectives on Land Law*. Rutledge Cavendish,
- Bosworth, J. L (1995), Land Tenure Systems in Sub-Saharan Africa, Faculty of Social Sciences, Oxford University,
- Davison, J (1988), Land and Women's Agricultural Production: The context, Agriculture, Women, and Land: The African experience. J. Davison Boulder, Westview Press,
- Ellis, A, Manuel, C and Blackden C. M, (2006) Gender and Economic Growth in Uganda, *Unleashing the Power of Women*: The International Bank for Reconstruction and Development/THE WORLD BANK
- Fatula, E O.A. Oyelade, O. S. & Adedejiast, A. A. ISSUES IN AFRICAN FAMILY LAW: NIGERIA IN PERSPECTIVE African Journal of Peace & Human Rights [Vol. 17:2], Page 320,
- Feminist Africa 12 (2009) *Land, Labour and Gendered Livelihoods*: African Gender Institute,
- Gary, L and M Kevance (1999), "Diminished Access, Diverted Exclusion: Women and land Tenure in Sub-Saharan Africa" African Studies Review 42 (2):15-39,

Giddings, S. W. (2009) The Land Market in Kampala, Uganda and its Effects on Settlement Patterns,

Gray and Kevane (1999), "Diminished Access, Diverted Exclusion: Women and Land Tenure in Sub-Saharan Africa" *African Studies Review* 42 (2):15-39,

Jackson, C. (1996). *Rescuing Gender from the Poverty Trap*. World Development.

Jankowicz, A.D. (1995) *Business Research Projects* 2nd ed. London: Chapman & Hall,

Kabeer, N. (1994), *Revised realities: Gender Hierarchies in Development thought* (London, New York: Version),

Kharono, C., *Feminist challenges to the Land Question in Uganda, Options for meaningful Action*. A paper presented at the AGI seminar series UCT, 21st May, 1998.

Kihangire, N. (2011) *Land Tenure in colonial and Post-colonial Uganda*,

Lastarria-Cornhiel, S. (1997). "Impact of Privatization on Gender and Property Rights in Africa" *World Development* 25(8):1317-1333,

Marjolein, B. (2004) *Women's Rights to Land and Property: Commission on Sustainable Development: Women in Human Settlements Development-Challenges and Opportunities*,

Mugambwa, J. T. (2002) *Principles of Land Law in Uganda*,

Nabacwa M. S. (2001), *Policies and Practices Towards Women's Empowerment: Policy advocacy by Gender focused NGOs and the realities of grassroots women in Uganda*,

Obaikol, E. (2009), *Women's Land Rights and the Law "The Legislative Framework Governing Women's Land Rights in Uganda"*,

Okumu – Wengi, J. (1994), *The Law of Succession in Uganda 1994*,

Robson, C. (2003) *Real World Research: A Resource for Social Scientist and Practitioner-Researchers*, 2nd Edition, Oxford Blackwell,

Rugadya M. A. (2010), Women's Land Rights in Uganda: Status of Implementation of Policy and Law on Women's Land Rights for ECA, ACGS Addis Ababa,

Rugadya, M. A. (2009), Land and Gender surveys in Uganda, Associates for Development, Kampala – Uganda,

Rugadya, M. A. (2007), Gender in Uganda's National Land Policy: Issues, Theories and Policy Responses: Implications for Poverty Social Impact Assessment in Uganda, Presentation for the Poverty Social Impact Assessment (PSIA) Training, Ministry of Finance,

Saunders. M., Lewis, P. and Thornhill, A. (2003) 3rd Edition, (2007) 4th Edition and (2009) 5th Edition. *Research Methods for Business Students* Financial Times Prentice Hall,

Snyder, M. (1995) Transforming Development, IT publications,

Stein J. (1997), Empowerment and Women's health ZED Books Ltd,

The Public Lands Act, 1969 Evaluation of National Land Reform (October 2009): Policies from a Gender sensitive perspective in Uganda, (Submitted to; Centre on Housing Rights and Evictions (COHRE), Women and Housing Rights Programme (WHRP), Women's Land Link Africa (WLLA),

The new International Webster Comprehensive Dictionary of the English Language: Delux Encyclopaedic Edition,

Tibaruha Lucien. Rights of Widows under Inheritance Law,

Value for Money Audit Report on the Functionality of Land Management Institutions in Uganda, (March 2011),

Watto, S. A. (2009) Conventional Patriarchal Ideology of Gender Relations: An Inexplicit Predictor of Male Physical Violence, *European Journal of Scientific Research*; Eurojournals Publishing.

Web sites

<http://www.businessdictionary.com/definition/impact.html#ixzz1sSr9UxBd>,

<http://www.businessdictionary.com/definition/policy.html#ixzz1sTnKfz3e>,

<http://www.gwsafrica.org/teaching-resources/gender-law/african-activism>,

<http://oxforddictionaries.com/definition/development>,

<http://www.volunteeringoptions.org/VolunteeringDevelopment/WhatisDevelopment/tabid/78/Default.aspx>,

<http://www.unhabitat.org/tenure>.

APPENDIX

APPENDIX I: CLEARANCE FROM ETHICS COMMITTEE

Date _____

Candidate's Data

Name _____

Registration Number _____

Course _____

Title of Study _____

Ethical Review Checklist

The study will review and consider the following:

Physical Safety of Human Subjects

Psychological Safety

Emotional Security

Privacy

Written Request for Author of Standardized Instrument

Coding of Questionnaires/Anonymity/Confidentiality

Permission to Conduct the Study

Informed Consent

Citations/Authors Recognized

Results of Ethical Review will be:

Approved

Conditional (to provide the Ethics Committee with corrections)

Disapproved/ Resubmit Proposal

Ethics Committee (Name and Signature)

Chairperson _____

Members _____

APPENDIX II: PROPOSED BUDGET

Particulars	Quantity	Amount
Stationary	Paper 10 Reams Ink 1 Cartridge Binding materials 10	100,000/=
		35,000/=
		250,000/=
Research Assistants	2 @ 100,000	200,000/=
Transport costs		100,000/=
Data Analysis		400,000/=
	Total	1,085,000

APPENDIX III: TIME FRAME

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1. Conceptual Phase												
2. Chapter 1												
3. Design & Planning Phase												
4. Chapter 2-3												
5. Dissertation Proposal												
6. Data Collection Empirical Phase												
7. Analytic Phase Chapter 4-5												
8. Journal Article												
9. Thesis Phase												
10. Viva Voce												
11. Revision												
12. Final Book Bound Copy												
13. Clearance												
14. Graduation												

APPENDIX IV: RESEARCHER'S CURRICULUM VITAE (CV)

PERSONAL DETAILS

Names: Aye bale Gorreth
Address: M.B. Gimara Advocates
P.O. Box 28611
Kampala, Uganda
Telephone: Mobile- 0788819900, 0756175855
E-mail: gorethyg@yahoo.com, gorethyg@mbgadvocates.com.

ACADEMIC QUALIFICATIONS

February 2010-January 2011

Master of Arts with International Management, University of Sunderland UK

September 2008 – August 2009

Postgraduate Diploma in Legal practice (Bar Course) at Law Development Centre, Uganda

August 2004- May 2008

Bachelors of Laws (LLB), Makerere University, Uganda

2002 – 2003

Uganda Advanced Certificate of Education (A' Level), St Joseph's Girls Nsambya School.

1998 – 2001

Uganda Certificate of Education (O'Level), St Joseph's Girls Nsambya School.

WORK EXPERIENCE

September 2011-Present

Legal Associate at M. B Gimara Advocates

October –present

Teaching Assistant at Kampala international University

November 2009 – January 2010

Volunteer lawyer at Legal Aid Project of the Uganda Law Society

April 2009 – June 2009

Clerkship (Internee ship) at Administrator General's department under Ministry of Justice and Constitutional Affairs

OTHER RELEVANT DATA

1. Good command of the English language both spoken and written.
2. Hardworking, social and determined to achieve success.
3. Good communication at all levels and with all categories of people.