THE LEGAL REGIME ON WOMEN PROPERTY RIGHTS IN UGANDA
“A CRITIQUE”

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DECLARATION

I Kamutungire Kenneth declare that, this report entitled “The Development of Married Women Property Rights - A Corporate Appraisal of the Current Regime in Uganda” is entirely my own effort and has not been submitted to any other institution of learning for any award.

Student’s Name: Kamutungire Kenneth

Signature: [Signature] Date: 2/6/2017
APPROVAL

This report entitled "The Legal regime on women property rights in Uganda. A case study of Uganda", has been under my supervision and is ready for submission to the faculty of law.

Supervisor: MR. WANDERA ISMAIL

Signature: .......................................................... Date: 2/08/2017
DEDICATION

This piece of work is a dedication to my parents Mr. and Mrs. Muhire Stephen for their parental guidance and financial support towards my academic career.
ACKNOWLEDGEMENT

I am greatly indebted to my supervisor Mr. Wandera Ismail for his endless and tireless guidance. I appreciate him for his great contribution in the accomplishment of this piece of work. I also recognize the effort of all lecturers in the Faculty of Law, for their knowledgeable and professional contribution towards my academic career.

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Last but not least, I acknowledge the scholarly contribution of the different authors, whose works have been reviewed and relied upon in the successful accomplishment of this study. This is in addition to my respondents who were able to provide me with resourceful information.

God Bless you All.
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ABSTRACT

This study "The legal regimes on women property rights in Uganda a case of Kampala" was specifically designed to examine; the efficacy of the law and policy frameworks on married women in relation to their property rights; find out the gender related biases that challenge the development and enforcement of married women property rights in Uganda; establish the extent to which the married women property rights requirement is being implemented; as well as investigate the impact of married women's property right assertion on family property protection to recommend appropriately. To comprehend this, literature review of the specific variables was carried out and the study was mainly centered on book and documentary evidences as well as primary data sources thus was qualitatively driven.

The study established that the legal regime on married women property rights in Uganda have limited recognition because of the customary law system which usually overrides statutory provisions in particular that funds to finance and pursue such cases are unavailable. That the laws are good but their enforcement is very weak and thus always overridden with patriarchy notions that overpower equality.

The study concludes that married women remain vulnerable in the assertion of property rights because their avenues to economic empowerment are similarly restricted by the very people from whom they ought to claim their rights. Precisely dependability on spouses hinders their assertion on claims over family property.

The study recommends; legal literacy emphasis to reduce land bureaucracies; establishing a monitoring and evaluation directorate based on land reforms; adopting strategies that treat women as major actors not aid recipients; redefining the law on property rights; empower women in all spheres and to not only focus on policy development but improve access to land and credit for married women.
CHAPTER ONE

1.0 General Introduction
This proposal "Development of Married Women Property Rights" will be executed through a corporate appraisal of the current legal and policy frameworks applicable in the Ugandan context with particular focus on Kampala. The study will examine the efficacy of the law and policy frameworks on married women in relation to their property rights; find out the gender related biases that challenge the development and enforcement of married women property rights in Uganda; establish the extent to which the married women property rights requirement is being implemented; as well as investigate the impact of married women's property right assertion on family property protection to recommend appropriately.

1.1 Background to the study
Worldwide, women's property rights arose from the need to enable women to own land. Precisely, land was realized as being a major factor of production and a significant aspect in the acquisition of any other property. In most parts of Africa this right was unknown until colonialism set forth. In Uganda just like elsewhere, prior to colonialism and later on during the British Colonial land policy regime, women's property rights were unheard of especially in respect to transactions in family land, not until recently in 1998.¹

When the British colonialists penetrated Uganda they introduced and left four land policy systems which have since the period 1900 and to date characterized Uganda's land tenure system, namely; the freehold, mailo, leasehold², and the customary³ tenure systems. Customary tenure has continuously been the most predominant⁴ with over 80% of the land in Uganda administered according to local custom whereof each and everyone born, married into or accepted as a

¹ The Land Act (1998 as amended).
² Article 237(3) 1995 constitution of the republic of Uganda.
member of the family gains automatic land rights, although this may vary with changing land management responsibilities.  

The year 1969 made remarkable changes in the system when the post independent government introduced the Public Land Act. All land held under customary tenure then became public land vested in the Land Commission. More reforms are traced in 1975 when Idi Amin’s regime abolished Mailo and free land tenure upon introducing the Land Reform Decree. This transferred all land ownership rights to the state, upon which land was held on a ninety-nine-year lease directly from the state. Further reforms were later on to follow the 1988 study on land tenure in Uganda with a primary focus to promote commercial agriculture. The USAID study recommended and advocated for freehold tenure as a policy that would facilitate the operation of the land market as well as the use of land title as collateral for credit throughout the country.  

In respect to the advocacies that the government of Uganda ensued and land reforms it introduced, different interest groups like women and cultural institutions took advantage of the press to present their own interests. Women, who had for long been marginalized, gained a foundation to lobby for clauses which could inter alia protect their interests in clan and family land. Various debates surrounding measures to strengthen women’s family land rights then went on for a long time to contravene the discriminatory assumption that men have individualized land  

6 The Public Lands Act 1969  
7 McAuslan, (1999).  
8 The Land Reform Decree (1975)  
10 Study was sponsored and undertaken by World Bank (WB) and United States Aid Agency (USAID) jointly with the University of Wisconsin Land Tenure Centre and the Makerere University Institute of Social Research,  
12 Kindi (2010).  
13 Kindi 2010
rights as proposed under patriarchy customary systems where the constitution demanded for equality. It is from this platform that the need to establish equality of individualized land rights between men and women took a new twist to other property rights. Precisely, whereas women were the major developers of the land through agriculture, they yielded little or no benefit at the expense of their husbands with an overly restricted enjoyment of land rights.

Women were able to achieve significant gains with reforms that took effect under the promulgation of the constitution and during the enactment of the Land Act, although these largely remained on paper. Further achievements were witnessed in 2004 and 2009 when the spousal consent clause was introduced, prohibiting all persons from entering into any transaction in respect of family land, except upon prior consent of spouse. The transactions referred to in this case include, but are not limited to sale, lease, transfer, pledge, mortgage or giving away inter vivos. The clause traces its origin from the lost co-ownership clause which was tabled in 1998 and deleted at drafting with subsequent amendments paving way for the consent clause to compromise the original co-ownership clause. This was in respect to the constitutional provision which confers power to individuals to own property either individually or in association with others.

Not only in Uganda, but it presumed that married women property rights are commonly witnessed almost everywhere around the world, and therefore require careful administration. This particularly follows land as varied with other assets. While this is the case, it has been disqualified on specific grounds that the theory of a "one-size-fits-all solution" is inapplicable in

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18 The Land Act, 1998 Cap 227
19 The Land Act (2004 as amended)
20 The Mortgage Act (2009)
21 Ahikire Josephine, Cutting the Coat According to the Cloth: Decentralization and Women’s Agency on Land Rights in Uganda, Center for Basic Research, Kampala Uganda, 2010.
providing appropriate and effective policies in property rights. Solutions and developments in property rights for married women may vary in context for rural and urban women and from country to country since challenges each group faces are different. Because a careful framing and analysis of the social contexts within which women live can have a bearing on how women's property rights can be addressed, solutions must always be designed within the same paradigms. For example the social context within which women live can impact heavily on how they own land under customary tenure implying that the best solutions to family land rights must then be designed within this same paradigm. Indeed according to Obalikol land administration should be a function entailing mobilization of institutional mechanisms and personnel for juridical, regulatory, fiscal and cadastral components development.

This implies that, rather than working against a custom, it is best that policy makers and activists gain initiative to identify a range of culturally appropriate solutions within custom to strengthen, defend and protect women's property rights. Hence for a married woman to have an equal status over the decisions taken in family property and transacting with family land, it is necessary that women are empowered to participate and stand their ground right at the start of any family property transaction.

Around the world, women's land and property rights advocacies are a common phenomenon since the recent past decades. Considerable attention has been received within the United Nations system with Global Platform for Action raised to acknowledge the recognition of women's right to inheritance and ownership of land and property. This was followed by the Habitat Agenda compelling state parties to provide legal security of tenure and equal access to land to all people, women inclusive and to undertake legislative and administrative reforms to ensure full and equal access to economic resources (including the right to inheritance and ownership of land) and other property to women. Henceforth, several resolutions have been passed on women

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23 Ibid.
26 See World Conference on Women in Beijing in 1995
27 See Habitat II Conference in Istanbul in 1996
by the UN since 1997. This reflects that concerns for ownership of land and property by women have stood, despite the solutions adopted.

Following this situation, lively debates around the world ran for more than 2 decades on whether governments should intervene in privatizing land rights especially in Sub-Saharan African. While this is the case, and until now, women in the Sub-Saharan region of Africa continue to be denied property rights, land in particular which they cultivate and upon which they raise their families being the majority small farmers. Hence the urge to promote measures that can empower women to have and to share ownership of the family property, land in particular.

Indeed Tripp is quick to notice that, much of the information on women and land tenure in Africa views 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. To Tripp customary land tenure systems were eroded and transformed in ways that were disadvantageous.

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31 Dorothy N. Kabugo, Muhanyango Joanittah, Bar-chimpe Youssouf, Kyamulabi Madina, Maria Guardia Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy women's rights to access and control of land: A case of Kayunga District, Foundation for Human Rights Initiative (FHRI), March 2011, Pdf available at www.landcoalition.org
32 The Land Amendment Act No. 1 of 2004, Section 38 A.
33 The Land Amendment Act No. 1 of 2004, Section 38 A Sub section (4)
34 Ibid Subsection (5).
to women. Today, the prevailing policy and much of the scholarly wisdom, from perspectives as ideologically diverse as the World Bank, Oxfam, and many feminist development studies scholars, seems to have converged around the view that sees land tenure policy as building on customary systems.\textsuperscript{35}

In Uganda, just like elsewhere in Africa, women's access to family property remains low especially in the case of land and yet this is a crucial aspect in their access to credit. Women in Uganda have not commonly been able to access their property rights. Married women property rights in Uganda just like elsewhere around the world are more commonly exercised in seeking spousal consent, this being a paramount requirement in transactions involving family land decisions.\textsuperscript{36}

Unlike today, and prior to the enactment of the consent clause, it was commonplace for the husband to sell, mortgage, give away or pledge land as security for a loan without informing his wife, the practice of which bred untold misery, domestic violence, prostitution, street children and related vices.\textsuperscript{37} The trend stood because custom held for women not to own land. But over the years, activists have tried to lobby for laws and women rights policies to counter the traditional practice which deprive married women of ownership rights to property. However, this has not practically empowered women to assert their property rights and cases especially of land disputes centered on violation of spousal consent remain common in Uganda. For example, in Kayunga District land cases involving violation of the spouse consent amounted to 50 percent in 2007\textsuperscript{38} in Mukono district a survey carried out by International Justice Mission (IJM) between 2005 and 2007 revealed that out of 115 widows, 41 percent experienced actual property grabbing, while percentage increases to 51 percent if consideration is given to attempts/threats of property grabbing.

\textsuperscript{35} Alii Mari Tripp (2008), Women’s Movements, Customary Law, and Land Rights in Africa: The Case of Uganda. African Studies Quarterly (http://www.africa.ufl.edu/asq/v7n1/v7n1a1.htm
\textsuperscript{36} The Land Amendment Act No. 1 of 2004, Section 38 A. The Mortgage Act (2009)
\textsuperscript{37} Dorothy N. Kabugo, Munyango Joanitah, Bar-chinepe Yousouf, Kyamulabi Medina, Maria Guardia Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy women's rights to access and control of land. A case of Kayunga District, Foundation for Human Rights Initiative (FHRI), March 2011, Pdf available at www.landcoalition.org
\textsuperscript{38} Ibid
Reflecting on this background and setting, the study will seek to critically review the legal and policy frameworks regulating married women property rights in Uganda, Kampala District in particular. Indeed a look through the land reforms and political processes resulting into the enactment of the Constitution of the Republic of Uganda and the Land Act as amended (1998), a review of the history of land tenure system is a good start to enable the understanding of how land rights are assigned. This was designed not only to merely respond to economic forces in increasing agricultural productivity for sustainability of country, but also to address the historical and social imbalances just like elsewhere in Africa.

1.2 Statement of the Problem

It is imperative to state that much as various developments addressing married women property rights have been incorporated in the law and policies of Uganda to secure tenure; promote access to credit and participation of women in family property transaction decisions to ensure an interrupted livelihood for women, this has had little or no effect. For example whereas the consent clause in respect to land transactions appears in the statute books, it has been routinely ignored and at times not effectively implemented. The clause is circumvented by unscrupulous spouses to the detriment of their partners as well as other parties transacting in family land. Financial institutions, innocent purchasers and spouses have particularly fallen victims. Courts are awash with disputes relating to alleged violations of women property rights. For example in 2007 50 percent of the land cases reported in Kayunga District, were related to violation of the consent clause. In particular the clause itself has registered contradictions because of its failures in facilitating the land market, improving credit access, and strengthening women’s land rights among others, as intended under the Land Act. This is

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39 The Land Act 1998 on spousal consent.
41 The Land Sector Analysis (2002).
45 Kabugo et al (2011)
46 Ahikire Josephine, Cutting the Coat According to the Cloth: Decentralization and Women’s Agency on Land Rights in Uganda, Center for Basic Research, Kampala Uganda, 2010.
combined with an absence of information to satisfactorily explain the discrepancy hence the information gap with which fraud in family transactions is escalating. It is therefore necessary to conduct an investigation into the problem to cover the existing gaps.

This study will thus examine the effectiveness of the legal and policy frameworks on married women property rights to provide a secured environment for family property claims. This is in light of establishing the legal gaps therein, for possible ways forward to be recommended for the effective enforcement of married women property rights.

1.3 Objectives of the Study
To meet the above purpose, the study will seek to achieve the following objectives;

1.3.1 General Objective
To examine the legal and policy framework governing married women property rights in Uganda.

1.3.2 Specific objectives
i) To establish the efficacy of the law governing married women's property rights in Uganda.
ii) To find out the gender related biases that challenge the development and enforcement of married women property rights in Uganda.
iii) To establish the extent to which married women property rights requirement is asserted in Uganda.
iv) To investigate how the assertion of married women's property right has affected families.

1.4 Research Questions
i) How effective is the law governing married women's property rights in Uganda?
ii) What are the gender related biases that challenge development and enforcement of married women property rights in Uganda?
iii) To what extent has the married women property rights requirement been asserted in Uganda?
iv) How has the assertion of married women's property right affected families?
1.5 **Scope of the study**

The study will be conducted within the geographical boundaries of Kampala District, the target being an urban population, purposely because an urban dweller is more likely to sell family property and land or pledge the same as collateral compared to his rural counterpart.

This study will seek to review the legal and policy framework on married women property rights in relation to both land transactions and other assets as well as access to financial and economic resources to include not just the Land Act, but will stretch to other laws in force which have a bearing on the development and recognition of married women property rights. For example the laws relating to mortgages, transfer and registration of titles, marriage and divorce and access to credit. Relevant policies will also be reviewed, and this will extend to proposed laws seeking to operationalise certain aspects of the policies, including the Marriage and Divorce Act.

The study will focus on the period 1995 to present. This is because it was during this time that the very first major twist was established that could enable married women to assert a claim on family property as later on seen through the spousal consent clause incorporated in the 1998 Land Act following the promulgation of the Constitution in 1995.

The study will consider married women rights to be the independent variable with family property and transactions on property treated as the dependent variable. The effectiveness of family property and land transactions therefore depends on the level of involvement and approval of the wife in the/of the transaction.

1.6 **Significance of the study**

This study if executed may be of benefit to legislators, policy implementers, academicians, researchers as well as to family property purchasers and credit institutions.

To legislators, the study will provide a guide to deriving effectual laws once legal and policy gaps in the married women property rights have been identified and closed.

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47 The Mortgage Act, Divorce and Marriage Act, Financial Institution Act among others
To policy implementers the study is expected to contribute towards improvement in the enforcement of the legal and policy procedures on married women property rights when appropriate solutions have been drawn for transacting, regulating and controlling family property.

To the academicians, the findings are expected to be an addition to the existing database and literature and thus may be applied for referential purposes.

To the family property purchasers and credit institutions, the study may act as a knowledge guide of how they can minimize and avoid the possibility of fraud while penetrating and accessing family property and land markets.

1.7 Methodology
The research methodology covers the approaches which will be employed to collect the necessary data. This is in addition to the tools and instruments that will be applied to generate the required data.

The study will employ a descriptive case study design which will observe the qualitative study aspect of research as recommended by Amin (2005) that case study provides an in-depth study of the problem within limited time scale and that the notion of combining qualitative and quantitative data in a case study research offers the promise of getting closer to the whole of a case in a way that a single method study could not achieve, hence Kampala District will be applied as case study. This will help in acquiring in-depth examination of the study aspects on family property in respect to the rights held by the wife. Views from respondents who will be interviewed will be captured as well as the views from documents and texts reviewed from secondary data sources.

Data will be obtained by use of a research interview guide by which researcher will directly pose questions to respondents. Interviews will be relied upon purposely because they allow for a wide range of data during interactions while subjectively allowing researcher to introduce own biases in composing a complete picture. Both structured and non-structured interviews will be applied and interviews will be carried out.

Structured interviews are selected due to their ability of enabling researcher to examine the level of understanding of a respondent while its regulation is also easy because of the informative form of assessment that it allows for. Non structured interviews will be of help due to the fact
that the researcher will be able to pose more questions which he may find necessary within the
course of the interview that may have been left out, but found vital.
A sample of 65 respondents will be consulted through snowballing purposely because the main
targets for this study will mainly be spouses who have experienced family property and family
land problems (30) purchasers (20) and credit officers from lending institutions or agencies
which have fallen victims of family land fraud (5) This will be in addition to Local leaders (5)
and land agent (5). Snowballing sampling is thus found convenient for this study because it is a
non-probability sampling technique which will be appropriate in locating a population like that
required, which rather may be difficult to find in addition to providing information- rich key
informants. Hence local leaders and lending institutions will be approached to help in tracing
family property victims, who then will also assist in finding others.

1.8 Arrangement of the Chapters
Chapter one covers the introduction, background of the study, statement of the problem, purpose,
objectives of the study, research questions, scope of the study, significance of the study,
literature review and methodology that will be adopted.

Chapter two provides for the literature review

Chapter three provided the critical analysis of the law relating to women property rights

Chapter four provided the challenges facing women property rights

Chapter five covers the summary, conclusion and recommendations to the perceived gaps.
CHAPTER TWO
LITERATURE REVIEW

2.0 Introduction
The literature provides a practical outset of judgments and opinions presented by different authors and experts on trade and human rights issues as a secondary data source to qualify the findings of this research.

2.1 The conceptual model on married women property rights
The conceptual model on married women property rights demonstrates that the implementation and enforcement of legal and policy frameworks requirements have a bearing on the way family property matters and land transactions are carried out. This relationship is moderated by variables such as legal enforcement which may include law of divorce and separation, the consent clause, law of mortgaging, right to own property individually and in association, land policies, social norms, customary rules. Policy dimension on the other hand may include empowerment, raising awareness, research and advocacies for policy review.

Family property rights may include land transaction rights which may include the right to decisions in acquisition and sale of property, pledging of family property to access loan, mortgaging, contract exchanges, transfer of family land. The moderators here may be research advocates and empowerment groups, legal enforcement and awareness raising groups.

The contention by De Soto⁴⁹ that,

"economic development in the west has been through; an establishment of a formal comprehensive; generally accepted and generally accessible system of property rights documentation; underpinning a wide range of transactions based on records of asset ownership; including development of credit systems and multiple ownership through shareholdings.... The system of which facilitates transactions such as credit use leading to production of additional resources through the policies drawn from documentation";

may not be practical in the third world countries following the contexts between which such applications can be effective as these are different hence disputable and inapplicable for the

developing world. For example in Uganda this is why even after documentation, the spouse consent clause is largely inactive in Uganda and routinely ignored.

To Argarwal the failure of land rights relates to high population densities, land values, tenurial forms as well as the greater degree of landlessness and poverty. Jackson disputes this and acknowledges that property rights may be related to poverty but these are not the same thing. According to Jackson, land rights may prove a bloodier battle with a less widespread support from women. This is despite that the struggle and advocacies for land rights are designed to promote and improve the position of woman in society. The study will examine why, married women have not responded to enforcing their property rights requirement when they experience family property and land challenges.

Ragadya in her study reveals that most African countries have shifted from customary law to a combination of statutory law and customary law, after going through decades of policy reforms. During the colonial period, most of the land in some countries was state-controlled. After gaining independence some retained state control over land for example Mozambique and Tanzania, where the new governments opted for village collectives thereby weakening the power of customary law. However, land rights, especially those inherited in rural areas, continue to be of a customary nature to varying extents across countries. The law is enforced by community elders who tend to have more power than structural governmental systems, even if it is commonly legislated that state and local authorities allocate land use rights.

Uganda is party to many international and regional human rights instruments which provide the policy framework for the rights of men and women in regard to their properties. In 1995, Uganda is said to have promulgated the most gender sensitive constitution (1995) ever in the

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55 Women's e News 2009, P 2
history of the country, providing overall legal framework for the pursuance of women’s rights. Despite extensive coverage of advocacies in the academia and press women’s property and land rights have achieved few legislative successes.

Indeed according to the UNECA report (2010), it is observed that in some African countries like Benin, South Africa, Tanzania, Mozambique, Egypt, Burkina Faso, Ghana the policy environment favours women’s access to land save for other countries like Uganda, Tunisia and Zanzibar. Whereas almost all countries have taken steps to develop policies regarding the economic security of women, access to land remains a challenge to Uganda in particular for this study. Indeed the study sites out South Africa as outstanding in having comprehensive policies on women’s access to land with other countries making some progress. This study finding implies that whereas Uganda has focused on promoting policies that support economic security, land as a major factor of economic security is still undermined. The study will test the possibility of inadequate property rights for married women in light of inaccessibility to land. Whether the failures in the applicability of the married women property rights signifies a low enforcement of the constitutional demands will be explored under the current study in quest of Kawamala and Ovonji view and possibility that land rights may be a unique rights’ category which needs a separate redress than is provided for in the constitutional framework of Uganda.

In contrary to Kawamala comment on few legislative achievements, it is posited, that the law today recognizes the equality of a wife and a husband in owning a home, which according to Mugalula is a complete departure from the historical practice of Uganda where women could hold property in their own right as seen in Kemigisha v. Mable Komuntale & Anor. This

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advancement is owed to the Mortgage Act of 2009 which fueled change in social perceptions on issues pertaining to the mortgaging a matrimonial home and distribution of wealth in the recent occurrences. Indeed according to Mugalula some homes in Uganda are now in joint names of both spouses because of the recognition of equality by society. The reason Mugalula emphasizes that, mortgaging a matrimonial home is not a discrete form of mortgage, but a distinct mortgage created using a matrimonial home. The literature specifically focuses on the matrimonial home and not other properties or assets. The study will undertake to examine why the home is given top priority and the possibility that it is the most valuable asset of the family. Indeed according to Amutojo customarily women only access land either through their husbands or male relatives, but with limited user rights and little decision making power and yet 90% of the women's time is invested in developing what they do not own.

It is reported that world over, the issue of equality in owning and mortgaging a matrimonial home has been a subject of intense discussion with various new jurisprudences emerging. Today as compared to the past, the majority of women are working and contribute the financial requirements of a home. Some women have also contributed to the acquisition of the title to the home. According to Mwaisondola it happens that while carrying out such agreements to share family costs, none of the spouses thinks about the legal position or legal consequences. This is clear in Gissing v. Gissing. The spouses had general expectation that upon decease of one of them, the property would automatically go the other. Circumstances surrounding situations of divorce and bankruptcy were ignored as such possibilities were not discussed at the time of agreement.

This study will analyze whether the law can give an equivalent share to the wife who has made contributions without which the house could not be acquired in case the husband has never verified an intention that the wife should share his property. Especially in the case where the

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62 Opcit Mugalula John (2010)
64 Amutojo (2008)
66 Ibid
67 [1970] 2 ALL ER 780 Per Lord Reid
68 Opcit Mwaisondola George (2007)
husband was already wealthy by the time he met the wife and where the law has provided that “Men and women of 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 its dissolution.” This follows the case of Rwabinumi v. Hope Bahimbisonwe where Court of Appeal had to handle matrimonial rights as trial judge awarded respondent various portions of matrimonial property when she did not produce documentary evidence to her contribution to acquisition of property. Indeed according to Coleman it is expressed that even where a spouse has no ownership rights, certain statutory matrimonial home rights exist in Uganda. The study will analyze this in the context of justice for all subject to the constitutional provision under Article 28 in respect to a civil hearing.

Whereas the proposed study intends to cover married women property rights Dorothy and others have their literature restricted on family land. They assert that, while the spousal consent clause provides for protection of women’s rights in family land and seeks to protect legally married couples, customary marriage is still the major norm particularly in rural Uganda with relatively few couples obtaining statutory marriages. They further assert that, much as customary marriage is not governed under statutory law, it is legally recognized under the Customary Marriage (Registration) Act, although procedures for dissolving this form of marriage is not pronounced in the Marriage Act of 2000 just like the Act does not spell out any rights and duties that accrue to spouses contracting a marriage. However, their study only covers rural married women. The current study will have this same situation tested in the context of urban married women, Kampala District in particular. The study will also explore whether by not mentioning the rights and duties of spouses, the consent clause can provide an effective cover for spouses in contracting marriages.

69 The 1995 Constitution of the Republic of Uganda Article 31(1)
70 Civil Application No. 14/2009 (SC)
71 Lavelle Coleman (2009) Invalidating a Mortgage
72 The Land Act (1998 as amended)
75 Ibid at pg 18.
According to Dorothy and others, the law allows a spouse who does not own family land to lodge a caveat on the certificate of title to indicate or inform the rest of the world that the property comprised therein is subject to the requirement for consent, since it is in occupancy. Thus with Dorothy and others, once caveat is launched, it does not lapse while the spouse’s right to security of occupancy subsists. But while the law provides for caveat’s life span to extend as far the marriage subsists, to Obaiikol the same law ignores the possibilities of strength as a crucial aspect in land tenure security. Hence whether such caveats may be or may not be lifted if caveator lacks the strength and knowledgeable on the legal and policy procedures, physical strength, or is not attached to highly connected politicians as proposed possibilities for breach by Birabwa will be explored to find out the possibility for fraudulent lifting of caveats and whether the spouse under such a circumstance can be successful in reversing any fraudulent actions in protection of purchasers and lending institutions in Kampala District.

According to Mugalula the Torrens System’s title by registration is the indefeasibility it offers to the registered proprietor which provides immunity from attack in case of any adverse claims to the land or interest in respect to registered land as enjoyed by proprietor. The principle of indefeasibility makes the certificate of a registered proprietor, except for fraud on his or her part, paramount over all unregistered claims (S.64). This accordingly implies that a certificate of title or entry therein can only be successfully challenged when actual fraud is proved, if informalities or irregularities are traced in the proceedings or application which could have led to

76 Dorothy N. Kabugo, Munyango Joanitah, Bar-chimpe Yousouf, Kyamlabi Madina, Maria Guardia Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy women’s rights to access and control of land. A case of Kayunga District, Foundation for Human Rights Initiative (FHRI), March 2011, Pdf available at www.landcoalition.org
77 The Land Amendment Act (1998 as amended) Section 39 (7) and (8).
79 Ibid
80 Ibid.
82 Ibid
83 RTA S 94, 64, 176, and 181.
84 Fraser Vs. Walker and others [1967] I A.C 569 at 580.
its issuance, if transferee is guilty of actual fraud as seen in *Kampala Bottlers Ltd. v Damanico (U) Ltd.*

Additionally, to those wishing to purchase family land, purchasers of family land are legally required to inquire or ascertain the circumstances in or the consideration for which that proprietor thereof was registered or see the application of any purchase or consideration for money subject to the Registration of Title Act. Failure to do this may subject purchasers to actual or constructive notice of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding, and the unregistered trust or interest will not be imputed as fraud. Hence if a person purchases an estate which is in occupation of another than the vendor, such a purchaser is bound by all the equities which the parties in such occupation have in the land as held in *Uganda Posts and Telecommunications v Abraham Kitumba Peter.* The study will examine whether the obligations set for purchasers of family land are attainable while the land transactions has been motivated by corruption. This shall be in contradiction of Obaikol argument that, a purchaser in good faith is not affected by a notice of registered interest or trust.

When a purchaser goes ahead to buy land despite awareness that the land is in occupation under the contract of sale, but proceeds with transfer of the title in his name in order to defraud the occupier, amounts to evidence of fraud as held in *Katarikawe v Katwiremu.* In Obaikol's analysis, it is posited that the principles which ordinarily apply to a purchaser in good faith for value may not apply in the case of family land due to the exception provided under S. 39(4) of the Land Act provides. According to this provision the purchaser in good faith has a right to claim from any person with whom he/she entered into the transaction any money paid in respect of the transaction, subject to Section 39(1) to recover his money.

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86 S.C.C.A. No. 22 of 1992 (Unreported)
87 RTA Section 136.
89 S.C.A No. 36 of 1995 (Unreported).
91 [1977] HCB 187
According to the Mortgage Act protections are provided to a mortgagee to ensure the redemption of the mortgage. But if a mortgagor fails to fulfill any obligation in a mortgage\textsuperscript{93} under the Registration of Titles Act, the mortgagee may sue the mortgagor/obligee on the covenant or realize his/her security under the mortgage in any manner as suggested by the Act. Once family land is transferred through powers conferred under the mortgage, if the right of possession is against the mortgagor and the interest is subsequent to that of the Mortgage\textsuperscript{94} the requirement of spousal consent is dispensed\textsuperscript{95} implying that if foreclosure is sought consent is not required as mortgage on any land is now protected by law against loss of rights to foreclosure. The Mortgage Act therefore poses insecurities to the confines of customary land because it has limited the use of customary land as collateral. But the law does not restrict the spouses from making use of their home/land to raise money except where stated to the contrary.

On the other hand various gender-related biases affect the promotion of married women property rights. In a study conducted by Amutojo in Uganda, land is a basic resource to labour critical for the survival of rural communities. But women are central to the rural economy and therefore not only to the survival of their families but the entire rural community. But the patrilineal structures and rigid customary institutions and cultural beliefs continue to deprive women of property ownership rights. This is accompanied by a complete lack of proper government institutional mechanisms that can guarantee protection and realization of this right.\textsuperscript{96}

According to the 2005 international micro credit theme, micro credits if effectively channeled are a powerful tool for poverty reduction.\textsuperscript{97} Indeed 2005 was an international year of micro credit, with a so far growing attention to rural areas to date. Despite this, the program design has not been appropriately designed to suit African countries. Outreach for those in most need remains limited, the rural women in particular. They have the least enjoyment of land tenure security.

\textsuperscript{93}The Mortgage Act (2009) Section 2.
\textsuperscript{94}Ibid Section 3
\textsuperscript{95}The Land Act, Section 39 (3).
\textsuperscript{96}Amwojo Lorna (2009), Gender Dimensions in Women Property Rights: A Case Study of Uganda, A paper presented at the world Conference in Norway on Rural Sociology.
rights and often rely only on customary land rights which utmost tends to favour the male members of the kin. 98

This assertion mirrors micro credit access as a significant aspect for the development of married women property rights both as an economic empowerment process and property acquisition measure. This implies that, those unable to access it may not only fail to acquire property in singular but as well find difficulties in enjoying their property rights.

While the above situation stands, women constitute the biggest percentage of the rural population in Africa 99 yet the least attractive group for investors. Precisely, women have a combination of several risk factors that discourage investors. Their economic activities are so limited to the informal sector with low income yield and yet their control over household resources and decision making power is overly restricted. Indeed Mugalula's report clearly emphasizes that one of the most serious obstacles to increasing agricultural productive in Africa is women's insecure access to land tenure and credit. Where inadequate land rights not only threaten food insecurity, but also reduce the ability to invest in land and accessing financial resources. Indeed unclear ownership rights, disqualifies women from accessing loans and credits in addition to gaining membership in big agricultural organizations. 100

The above assertion implies that while women cannot do much to acquire land nor improve productivity of land, men squarely gain an upper hand making it more impossible for married women's property rights to be practically enforced. Emphasizing rights where ownership is restricted remains questionable. Otherwise these may remain trite unless inclusion of women in economic life with sustainable grounds for development is created. However the literature falls short of urban women, this will be tested in the context of Kampala District.

While the above holds, Mugalula asserts that bank finance is by the far the most important source of capital for small businesses in Uganda where families are using their jointly owned
house as a main source of security, the provision of which security, requires the consent of both spouses. Indeed according to Catalyst when a bank is owed money by a customer, their natural inclination is to recover it or to find some method of guaranteeing its repayment. Given the fact that most peoples' greatest economic asset is the matrimonial home, banks more often than not seek a charge over that home in order to guarantee that debt. The conundrum or paradox here is that that home is often owned jointly by the debtor's spouse or partners and they will have to consent to any mortgage if the banks security is to be effective as seen in Barclays Bank v Obrien and Anor. In respect to this literature, a bank must be able to have confidence that the wife or husband's signature of the necessary guarantee and charge is binding, otherwise banks should not be lending money on the security pledge of a jointly owned house if one of the signatures is missing. This study will examine whether banks have undertaken to ensure that both spouses (and that rightful persons) sign on the documents.

It is further revealed under the UNECA report that in Uganda there is no systematized, frequent data collection on access to land or credit with indicators frequently based on raw data from research groups. On the contrary however, the same report envisages that that both formal and informal sector data is available implying that the need for loans and credits has been recognized as an essential tool for improving gender equality. Indeed report further reflects that women clients represent over half of the number of the loans and credits taken with women's access to credit improving rapidly in the past years. In 2002/2003, women represented 55 per cent of all the loan and credit clientele but that the distribution of loans remains a geographical challenge since most Micro Finance Institutions (MFIs) are located in urban centers and yet the majority of women occupy rural areas.

In respect to this literature the study will undertake to investigate the possible difficulties of development of married women property rights in the absence of systematically established facts that underpin the situation. The literature also reflects micro credit access by the majority of

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101 Opici Mugahala (2010)
102 Ibid
women, the study will thus examine the effectiveness and significance of micro credit in asserting married women rights and claims over property.

Another study by World Bank reveals that in matters regarding land administration the commitments on paper do not meet reality and that most countries in Africa have to date not been able to achieve the international commitments in the field of women's social, economic and political empowerment matters. On the other hand however a much faster improvement is reported in the field of education as compared to access to economic resources. The study assumes that amidst the failure to meet commitments, makes situation more difficult to develop and enforce married women's property rights. The current study will examine whether the low access to economic resources does not discourage women from claiming their rights where the man as head of family remains the major resource contributor.

While the above challenges exist, married women property rights have to some extent been revealed as worth fought for. Indeed Ob Als 108 asserts that, the restrictions for dealing in family land without consent of a spouse in occupation are asserted in Section 39 (as amended by Section 20 of the Land Act of 2004) and no person sells, exchanges, transfers, pledges, mortgages or leases any family land; enter into contract for sale, exchange, transfer, pledging, mortgage or lease of family or give away any family land inter vivos or enter into any other transaction, except under consent of spouse. On the contrary however, the law is not being implemented and family land transactions continue without the consent clause recognized. For example in a report by Dorothy and others, 109 most women do not report violations of the clause because they are not empowered to ensure that the clause is implemented, but may only do so after the they have experienced the problem more than once. The study will analyze whether failure to enforce the

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107 Ibid
clause is simply due to ignorance of the law by the women, or whether the gap is also in part due
to avoidance of the same by;

(i) vendor who is also obliged to seek approval,
(ii) the purchaser or credit institution who/which is supposed to find out whether land is
in occupancy or whether it has a registered interest or trust before transacting in
family land.

According to Dorothy and others,\textsuperscript{110} rarely is the spouse consent clause followed in family land
transactions due to lack of awareness and ignorance of the law. This is in addition to cultural
norms and beliefs which limit the extent of enforcement by breeding demoralization and low
esteem in women which inhibits them from seeking recourse for these transgressions. The study
will explore if in Kampala District failure to seek enforcement of clause is due to low esteem and
demoralization of women to establish the source of these factors and why they have not been
overcome despite the empowerment clause.

Additionally, the nature of corruption which curtails access to justice especially for the poor who
have hitherto lost confidence in the leaders who connive with vendors of family land for
commissions, has deterred the applicability of the consent clause. Moreover the high file
handling fees which are unaffordable for the rural people. Due to commission received officials
do not follow up cases or secretly meet with defendants to defeat the woman’s interest.\textsuperscript{111}

Dorothy and others,\textsuperscript{112} argue that the amendment provided for spouse consent in the Land Act
does not undertake to define who a spouse is. However, they borrow a definition from Black’s
Law Dictionary which defines a spouse as one’s husband or wife by lawful marriage. In
Uganda, there are four types of recognized marriages by law which include the church and civil
marriage,\textsuperscript{113} the Muslim marriage, Hindu as well as customary marriage. While this is the case,
the spousal consent has been limited from the protection of unmarried persons and cohabitants

\textsuperscript{110} Ibid
\textsuperscript{111} Ibid
\textsuperscript{112} Dorothy N. Kabugo, Munyango Joanitah, Bar-chimpes Yousoof, Kyamulabi Madina, Maria Guardia Assessing
the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy women’s rights to
access and control of land. A case of Kayunga District, Foundation for Human Rights Initiative (FHRI), March
2011, Pdf available at www.landcoalition.org
\textsuperscript{113} Marriage Act (2000), Cap 250
irrespective of the number of years the parties have spent together and the amount of contribution made in acquiring family land. But interest in family land was later on incorporated under Section 38 (A) to provide a broader definition of family land as well as security of occupancy which also falls short of giving a spouse the right to co-ownership of family land. In pretext of this paper, the study will explore why co-ownership of family land is not upheld, while spouse made a contribution during acquisition. This is under the guise that whether legally married or not, or whether separated the contribution depicts one’s interest in property or else deprival of access is in breach of the right to own property, contrary to the constitution.

The gap will be explored in light of the issues that are/may be raised by spouse at law to challenge purchasers, credit institutions and law implementers such as contributions in form of housework, where the law calls for equality in distributing property during a dissolution of marriage as seen in Edita Nakiyingi v Merekicadeki.

Indeed according to Torkelsson and Tassew, assertion that the legal context has the potential to affect asset ownership if formal laws of marriage and inheritance have been weakly defined and enforced, and while families are mainly governed by social norms and customary law. For example a research by Birabwa reveals that in Mukono, no collective action is taken to advocate for women’s land rights as women do not prioritize their land rights as long as they have the assurance that land belongs to the whole family. The Land Title is then written in the spouse’s name. This is despite the fact that land can be a powerful tool for their development and access to credit, than social norms. Whether it is simply social norms or personality is a matter of concern for this study. The study will explore the ability of spouse to pursue cases against consent clause violation in pretext that they are in occupancy and land is sold without their consent.

114 Land Act (as amended)
116 Article 26
118 Ibid.
consent and why other spouse is able to meddle in the land market to transact in family land while no written consent is presented.

While it is needful to assert married women property rights, this has been met with various hardships. Ragadya et al\textsuperscript{121} posit that the question of property rights is a very sensitive one particularly so because it involves relinquishing powers and privileges for the holders. This implies that introducing women’s property and land rights is equally sensitive. Indeed according to Tripp\textsuperscript{122} women's attempts to assert their rights in ways that challenge customary land tenure systems in Uganda, is perceived as an attempt to disrupt gender relations and society more generally. To Rugadya et al\textsuperscript{123} property rights evolve over time depending on economic and political factors and thus regimes have to adjust to potential impacts on growth, poverty reduction, social peace and good governance.\textsuperscript{124} To the trio, property involves a modern capitalist conception with property being absolute and property simply as a right of the means of restricting access, use and control. But the property regime has introduced complexes for the traditional land tenure systems which are based on relationships between persons other than rights over things.

On the contrary, Sebina\textsuperscript{125} acknowledges the functioning of the property regime as one that has improved and balanced rights within the household particularly the strengthening of rights for women which has potentially powerful impacts on incentive and productivity since women have limited rights to consent on disposal of certain land assets, with a presumptive share of 25% of the deceased husbands' land and usually no rights to a share on household assets in the event of divorce. The study will establish whether instead of strengthening women, the married women property rights law has created shocks by substituting the socially accepted rights with a struggle for money and property priorities and whether this has created in any collisions in the property and land markets in Kampala District.

\textsuperscript{121} Margaret Rugadya, Esther Obuikol and Herbert Kamusiime, Gender and the Land Reform Process in Uganda: Assessing the Gains and Losses for Women in Uganda. 2004.
\textsuperscript{122} Op cit Tripp (2008)
\textsuperscript{123} Margaret Rugadya, Esther Obuikol and Herbert Kamusiime, Gender and the Land Reform Process in Uganda: Assessing the Gains and Losses for Women in Uganda. 2004.
\textsuperscript{124} Ibid.
\textsuperscript{125} Abby Sebina-Zziwa, Land Policy in East Africa: Keynote address on Property Rights in Eastern Africa, 2002 Kampala, Uganda
In a report by UNIFEM,\(^{126}\) it is portrayed that, without the security of a family home, income and produce of their fields, women and their dependants may be pushed to the margins of society, further exacerbating their struggle to achieve health and well-being for their families and themselves. Indeed according to Doss and Others\(^{127}\) it is envisaged that control over assets can be critical to increasing productivity, especially in agriculture, and to enable people to move out of poverty. This assertion is derived from linkages of asset holdings to various outcome measures, in which households are used as the unit of analysis.\(^{128}\) But households are not static, they are formed and dissolved, in part as a result of economic circumstances.\(^{129}\) Bird\(^{130}\) also posits that while asset ownership is an important source of resources, others are excluded from asset inheritance increasing vulnerability to poverty. Hence understanding gender patterns in asset inheritance is critical to understanding women’s vulnerability and opportunities. In light of this paper, an examination will be made to find out whether in Kampala dissolving of household has emerged from capitalizing ownership of land as motivated by the consent clause to gain stake, and whether this has enabled women to remain peaceful in their homes or whether they have instead been more deprived. The study will also examine whether the married women’s property rights law and policies have effectively acted as a solution to addressing women’s vulnerable situation and whether by doing so, women have successfully penetrated the property and family land markets without spouse hindrances.

Government’s continued failure to enact and enforce equal succession laws in compliance with international human rights law deprives women of the economic means to sustain themselves and their families and prevents them from reaching their full capacity as contributing members of


\(^{127}\) Cheryl Doss, Mai Truong, Gorrettie Nabanoga and Justine Namaalwa, Women, marriage and asset inheritance in Uganda, Chronic Poverty Research Centre, Yale University – New Haven and Makerere University- Kampala, Working Paper April 2011 No. 184 available at www.chronicpoverty.org

\(^{128}\) Cheryl Doss, Mai Truong, Gorrettie Nabanoga and Justine Namaalwa, Women, marriage and asset inheritance in Uganda, Chronic Poverty Research Centre, Yale University – New Haven and Makerere University- Kampala, Working Paper April 2011 No. 184 available at www.chronicpoverty.org

\(^{129}\) Ibid.

Ugandan society. This argument is in the same line with customary law demands overriding constitutional demands especially in rural setups. The law grants a man the right to the fruits of a wife’s labor, the system encourages men to marry multiple women in order to profit from the labor of all of them. While this remains the case, to be a widow in Uganda is to be an outcast.

Too often, when a woman loses her husband, she is also cast out of her family, forced from her home, stripped of all her property, and separated from her own children. The Inequality in inheritance is supported by both statutory law and the informal use of customary and Islamic laws in Uganda, despite the fact that the people of Uganda embraced the ideal of gender equality. The inheritance regime lies at the heart of women’s subordination.

According to Adoko, the management policy role of customary land has become mixed up with actual individual rights to land ownership. The Management role has created confusion, misconception, distortion as well as abuse of family land rights especially during land market access. Trustees have turned as owners in the process of disenfranchising weaker family members.

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134 1995 Constitution of the Republic of Uganda, Arts. 21(1)-(2).


In the same aspect Bennett and others\textsuperscript{138} posit that, when women’s property rights are not secure, they become more vulnerable when they are widowed. In particular, when the marital property is seen as belonging to the man, the woman may have weak rights to it after her husband dies. For this Dorothy and others,\textsuperscript{139} recognize that family land sold without consent has resulted into poverty and suffering when spouses are not left with an alternative source of income. This being the case, authorities have under particular occasions come up to directly help the vulnerable groups to re-assume their interest in the property owned.\textsuperscript{140} Whether this as a consequence does not aggrieve the purchasers in good faith by depriving them from accessing their property acquisition will be explored. This study will also undertake to examine whether enforcement of consent clause has a bearing on the distortions in the land rights security under the land market in Kampala District.

The consent clause has led to land grabbing. To Birabwa\textsuperscript{141} the consent clause regime has led to land grabbing and the root cause of why most of the victims of land grabbing are mainly women, is because activists and policymakers overlook the importance of strength in land rights security. With no physical strengths, wealth, high political connections and knowledge on laws and procedures, the likelihood of land loss is high for the weak, especially in the current context of the rising land value, growing land scarcity and increasing competition for land. Whether overlooking the physical strength factor, amidst the rising value of land and competition for land deters implementation of the spousal consent clause for balanced rights achievement in Kampala District will be explored under the current study.

According to Ragadya and others, the law is continuously evolving in the right direction but short of a paradigm shift, gender will directly threaten exclusive property rights of individual women and is a direct infringement on of men’s ownership rights. It challenges the deeply vested


\textsuperscript{139} Dorothy N. Kabugo, Munyango Joanithah, Bar-chimpe Yousouf, Kyamulabi Madina, Maria Guardia Assessing the implementation of the spousal consent clause of the Land Act 1998, and upscaling advocacy women’s rights to access and control of land. A case of Kayunga District, Foundation for Human Rights Initiative (FHRI), March 2011, Pdff available at www.landcoalition.org


clan-based interests in preserving the traditional patterns of ownership of land. The resistance
to such changes is inevitable and unless if adequately prepared for. Indeed following the
patrilineal kinship systems and customs, women have not been able to own and control land in
most African cultures especially in the rural set ups where customary laws are still very
powerful. While this is the case, it should not be forgotten that rights are costly because
enforcing a right is expensive especially where there is a need for uniform and fair
enforcement. The study will explore this in light of the ability of married woman to pursue
their property rights especially where they need finances to facilitate and pursue cases.

The literature above will help to qualify the necessity of improving the married women property
rights laws and policies in family transactions. The frameworks provide for the improvement of
women's property rights but hugely out of application, despite that its applicability may promote
women's social and economic status through improved access to credit. It is required that the
course for improvement on the application and enforcement be followed up if the property and
land markets are to receive adequate protection. Indeed statutory laws have in some aspects been
formulated in attempt to avoid conflict with customary laws. But in some situations this may also
lead to consequences of women failing to claim their rights either due to fear of contradicting
with social and cultural beliefs or simply because the system does not satisfactorily address their
situation in addition to unclear paths to proceed where statutory law is remains an uneasy
interpretation.

143 Ibid
144 UNECA (2010)
145 Amutojo (2008)
146 Ibid
CHAPTER THREE:
A CRITICAL ANALYSIS OF THE LAWS RELATING TO WOMEN PROPERTY RIGHTS IN UGANDA.

3.0 Introduction
In practice, although there are several laws enacted to facilitate married women property rights in Uganda their implementation remains hugely hindered by traditions and deeply entrenched patriarchal attitudes and practices which cause insecurities in regard to property rights. Whereof property rights means;

"property rights means social conventions backed up by the power of the state or the community (at various levels) that allow individuals or groups to lay a claim to a benefit or income stream that the state will agree to protect through the assignment of duty to others who may covet, or somehow interfere with, the benefit stream".  

3.1 International Law on Married Women Property Rights

The introduction of women's rights constitutes among other rights the married women's property rights. The law promoting women rights in Uganda is generally derived from international conventions and treaties to which Uganda is a party and is obliged to commit as pointedly emphasized in its Constitution. Among the conventions and treaties that give rise to married women property rights to which Uganda is party are hereunder argued in detail.

3.1.1 The United Declaration on Human Rights (1948) (UDHR)
The United Declaration on Human Rights is a charter adopted in 1948 upon which the international system for the protection and promotion of human rights has been founded. The Charter explicitly mentions property rights to belong to human rights to include sex as one of the grounds upon which states may not discriminate just like other major international human rights instruments.

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147 Carter (2009), Uganda Gender Laws Gain Support, Uganda Law and Reform Commission. Thursday November 2009
148 Ibid
149 The UDHR Article 17 (1) and (2)
150 Article 2
While this is the case, there is a tendency of states like Uganda to treat civil and political rights as if they are the only ones that matter at the expense of economic rights, married women property rights in particular for this study. Yet this right, along with others is crucial for the personal development of married women. Equal property rights are important for married women because they are fundamental to their economic security, social and legal status and their survival just like all other human beings.

3.1.2 The Convention on the Elimination of all Forms of Discrimination against Women (1979) (CEDAW)\textsuperscript{152}

The Convention on the Elimination of all Forms of Discrimination against Women is women specific and obliges state parties to take all appropriate measures subject to Article 5 to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Indeed convention requires state parties to observe the role played by women in the economic welfare of their families.\textsuperscript{153} It obliges states to ensure that women have access to equal treatment in land and agrarian reform as well as in land settlement plans.\textsuperscript{154} In respect to the fulfillment of the aforementioned obligations, the convention urges governments to ensure that they adopt appropriate measures, sanctions and legislation where appropriate to modify and nullify existing laws, customs, regulations and practices that amount to discrimination against women.\textsuperscript{155}

The convention stresses for adequate living conditions of women, housing in particular\textsuperscript{156} which is of particular importance in rapidly growing urban centers like that of Kampala in respect to this study. Indeed Articles\textsuperscript{157} 1 and 3\textsuperscript{158} should be interpreted as warranting all features of women's property rights including the right to land, credit and adequate housing.

\textsuperscript{152} United Nations Economic Commission for Africa. Africa centre for Gender and Social Development. Women and Access to land and credit. 2007. P 4
\textsuperscript{153} Article 13
\textsuperscript{154} Article 14 (g)
\textsuperscript{155} Article 2b.
\textsuperscript{156} Article 14 (h)
\textsuperscript{157} CEDAW provision on non discrimination
Women's access to credit is specifically emphasized under Articles 13 and 14. Subject to Article 14(g) of (CEDAW), the convention quite cautiously upholds the right of women to have credit and loans, marketing facilities, suitable technology and for equal treatment in land and agrarian reform as well as in land resettlement programs. However, the convention does not clearly and firmly guarantee women's property rights as it falls short of clearly explaining what is meant by women's equal access to land, this being the most significant aspect in credit and loan access. While this remains unexplained, and following the complex reality of land use and ownership rights especially in a developing nation like Uganda, married women property rights may squarely continue to be hampered.

3.1.3 The International Covenant on Civil and Political Rights (ICCPR) 1966

The right for equal recognition of everyone before the law is a direct implication of the empowerment of women to enter into contract, own property, pledge property as security. In this same regard any married woman in Uganda should be able to have access and entitlement to family land and property in accessing credit and loan from financial institutions, just like her husband, without restrictions based on discrimination, Uganda being a party to the covenant.

The constitution was the first step in the on going reforms that have significantly strengthened protection for women's rights under the formal framework; the Uganda constitution prohibits discrimination based on gender and accords men and women the same status and rights, under Article 21 for the right of every person to own property, under Article 26 it guarantees women equal rights with men, Article 33 provides for special help or protection for mothers and women because of previous historical discrimination against men.

On the requirement to treat men and women equally in regard to marriage, the committee states that polygamy is an inadmissible discrimination against women, as it is incompatible with the principle of equality of treatment. It also emphasizes that States must ensure that the matrimonial

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158 CEDAW provision obliging State Parties to take all appropriate measures to ensure that women enjoy equal rights with men
159 CEDAW (1979)
160 CEDAW Article 14(g)
regime contains equal rights and obligations for both spouses, among others with regard to the ownership or administration of property, “Whether common property or property in the sole ownership of either spouse.” In addition, the decisions with regard to property distribution, the committee holds that upon dissolution of marriage, property distribution should be equal for both husband and wife with women entitled to equal inheritance rights to those of men where dissolution of marriage is caused by the death of the spouses.

3.1.4 The African Charter on Human and People’s Rights (ACHPR) 1981

The African Charter as a regional instrument, derives from the international codes and standards and was established in 1981 and reassembled to suit the regional expectations and context. The African Charter on Human and People’s Rights (ACHPR) prohibits discrimination on the basis of sex under Article 2 with further assertion traced under Article 18 (3) which provides for state parties to ensure elimination of any discrimination against women and also to ensure the protection of the rights of women as stipulated in international declarations and conventions. Uganda like most African countries is a party to the charter. However, in its’ practice there remain variances between ratification and failure in obligations. This shows that there has not been proper domestication of this instrument in Uganda as no specific law has been designed to promote and guarantee equal access to property ownership for women as different from Kenya which has a specific law (The Women’s Property Rights Act) hence a challenge when assertion of such a right has to be picked and compiled from various constituents of different legislations.

3.2 Domestic Legislation on Married Women Property Rights

Uganda as a member state of the UN has international legal commitments which require government to ensure gender equality and equity in law. In respect to the international treaties and covenants it has ratified, the country is required to take steps including not only legal reforms but adopting policies that positively support equality of both men and women for example through information sharing, public awareness, education and training. The effectiveness of the laws and policies governing gender related issues as well domestic violence are examined below;

161 www.achpr.org/
162 The African Charter on Human and People's Rights (ACHPR) 1981 Article 18(3)
3.2.1 The Constitution of the Republic of Uganda 1995

In the 1995 Constitution of the Republic of Uganda Chapter 4 Article 20 (1) on the fundamental human rights and freedoms it is stipulated that, fundamental rights and freedoms of the individual are inherent and not granted by the State. And clause (2) holds that, the rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons. Women being part of the individuals/ groups are entitled to the enjoyment of these freedoms just like any other individual or group.

The right to own property by both men and women and the equality principle has its legal basis in the Constitution of the Republic of Uganda under\footnote{Articles 26(1) and 34(1). of the Constitution of the Republic of Uganda 1995} But whereas laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution, in reality this right or entitlement is given disproportionately in measures since the same laws and institutional mechanisms apply.

Subject to Article 26\footnote{clause (1) of the Constitution of the Republic of Uganda 1995}, of the constitution, every person has a right to own property individually or in association with others, and it prohibits compulsory deprivation of; property; interest in property; or right over property of any description to any persons, except where the following conditions are satisfied the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health. Article 26\footnote{clause 2 (a) (i) of the Constitution of the Republic of Uganda 1995} accords prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property. This law gives each and every person to include women, an equal entitlement to dispose and own property either individually or as a group and if deprived of such possession, adequate compensation should be provided.

Indeed Article 33 accords all women with full and equal dignity of the person with men where state is constitutionally obliged to provide facilities and promote opportunities necessary in enabling the realization of the full potential and advancement of women in enhancing the welfare of women. Women are provided the right to equal treatment with men, which right stretches
from equal opportunities in political, economic to social activities subject to Article 21\textsuperscript{166} without discrimination. And without prejudice to Article 32\textsuperscript{167}, women have a right to affirmative action for the purpose of redressing the imbalances created by history and customs. To this effect the State has a duty to protect women and their rights, taking into account their unique status and nature of maternal functions in society. This is precise under Article 123\textsuperscript{168}. The Constitution mandates the president or any person authorized by him/her to make treaties conventions, agreements or other arrangements with international bodies or organizations.

The purpose of this law is to protect all persons from any form of segregation that may arise from differences in political opinions, educational levels, ethnicity, gender, colour or otherwise. Implying that all persons despite their status are equal before the law and thus none should be given preferential treatment or benefit upon the other. Thus under Articles 26, 31, 33 and 34 equality between men and women is stressed in the acquisition and holding of land. Indeed according to Obaikol Esther\textsuperscript{169} the provision of equality has been strengthened by the principles governing affirmative action in respect to marginal groups which have hitherto been discriminated against.

The Constitution also guarantees that land in Uganda belongs to the citizens and is owned in accordance with the four tenure systems that are recognized\textsuperscript{170}: a) customary, freehold c) Mailo and d) leasehold. The law however states that citizens that own land under customary tenure may acquire certificates of ownership and may convert it to freehold ownership by registration when the Constitution came into force, the lawful or bonafide occupants of mailo, freehold, and leasehold land were to enjoy security of occupancy on the land. Parliament was charged to enact a law thereafter to regulate the relationship between the lawful or bonafide occupants and the registered owners of the land.

\textsuperscript{166} the Constitution of the Republic of Uganda 1995
\textsuperscript{167} the Constitution of the Republic of Uganda 1995
\textsuperscript{168} the Constitution of the Republic of Uganda 1995
\textsuperscript{169} Obaikol Esther (2009), Women’s Land Rights and the Law in Uganda.
\textsuperscript{170} The Constitution of the Republic of Uganda (1995), Cap 15 Article 237 (a) (b) (c) (d).
3.2.2 The Land Act 2010 (as Amended)

In 1998 the Land Act was legalized but other amendments followed suit in the Land Act 2010. The Land Act 1998 provides the legal framework through which the fundamental rights of women are to be protected as a mechanism to redress gender disparity to access and control over economically significant resources and benefits. Indeed according to Obaikol,\(^{171}\) it is a deliberate effort under the laws relating to land to ensure the implementation of the constitutional provisions and the National Gender Policy relating to gender equality as far as rights to land ownership and access is concerned. Section 2\(^{172}\) reinstates the constitutional provision on tenural reform giving women equal access to land use and acquisition. But with limited cash income and restricted employment, the access remains insignificant especially to married women following their liquid financial contribution behind the rails of customary principles.

In 2010 Parliament enacted the Land Act that provides procedures for operationalizing the clauses in the Constitution of Uganda. The law permits the separation of ownership of land from the ownership of developments on land made by a lawful or bonafide occupant. It enables the holder or owner of the land to enter into any transaction including but not limited to selling, leasing, mortgaging or pledging, sub-dividing, creating rights and interests for other people and creating trusts of the land. However, the amendments generated heated debates and controversies across societies in Uganda because of their implications on the use of land for mortgaging as well as a development resource.

The Land Act in\(^{173}\) requires that before any transaction can be carried out on land on which a family resides or from which it derives sustenance, the spouse, dependent children of majority age and the land Committee in case of children under the age of majority should be consulted. The Section explicitly prohibits all transactions in respect of land where a person normally resides with a spouse, and from which they derive sustenance, as well as of the land on which reside dependent children or orphans below majority age with a claim on the land, without consent of these dependents or in the case of minors, the consent of the land administrators.

\(^{171}\) Op cit Obaikol Esther (2009)
\(^{172}\) The Land Act 2010 (as Amended)
\(^{173}\) Section 40
The Section is protective in the sense that no person should contract to sell/transfer land on which that person/family ordinarily resides or derives their livelihood without the written consent of the spouse. Children of majority age are also granted the benefit to have a say in such dealings. The intention of such a dealing is to have a positive welfare impact in providing secure tenure and thus economic security to household members. This was not the case in the past during land dispositions.

The Land Act gives some protection to spouses, requiring their consent before family land can be sold or mortgaged. The Land Act 174 states that; Any decision taken in respect of land held under customary tenure, whether in respect of land held individually or communally, shall be in accordance with the custom, traditions and practices of the community concerned; except that a decision which denies women or children or persons with disability access to ownership, occupation or use of any land... shall be null and void. Whether the act is enforced is in some doubt where formal succession laws give women inheritance rights over land, but customary patrilineal practices and the inability of many women to assert their legal rights lead to rare adherence of the formal legal provisions. Indeed according to Kanyongolo, 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. Only about 15 percent 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 register.

S.4 (1)175 provides that 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 land. An individual, male or female, or a family may apply to the family or clan to 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 subject to Section 22(1)176. The holder of a certificate of customary ownership may convert his/her holding to freehold as per Section 9177. Indeed for purposes of holding land under customary tenure, a family is a legal person represented by the head of the

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174 Section 28  
175 the Land Act  
176 the Land Act  
177 the Land Act
family. But the law remains silent on defining who the head of family is. But in Uganda like in any other African society the patriarchal nature of society predicts that the head of the family is a male.

Sec 22 (3) (b) and (c)\textsuperscript{178} also provides that any person / family can apply to the Association individual ownership where land communally owned is held by an association. Whereas there is no restriction on either gender owning land, the head of the household represents the household in holding the land, and thus, the recognition of the family unit as a legal person. According to Kanyongolo, for women, patriarchy worsens the situation, since male heads of households constitute the exclusive locus of landholding when individual tenure is introduced.

Sec 16 (4)(b) of the Act also is discriminative in nature. It provides for Communal Land Associations and that the Officers of the Association shall be not more than 9 and not less than 3 persons and at least a third of which shall be women. It remains unfortunate that gender neutral laws under Section 4 and 22 will only apply in settings that are still very much gendered. But Uganda can nevertheless like other countries be underestimated for its effort to address women’s property rights through the entrenchment of human rights norms in its Constitution.

Land management and administration; Under the Land Act, the Uganda Land Commission is assigned the responsibility for the management of government land. The same Act also provides for the establishment of District Land Boards, whose members should be appointed by the District councils as elected at the local government level and upon advice of the District Executive Committees and with approval of the Minister for Lands.

The District Land Boards have the mandate to among other things; Hold and allocate land which is not owned by any person or authority; facilitate land registration and transfer; take over the role of lessor in the case of land leases previously granted by urban authorities.

Compensatory measures are traced in Section 40 and 28 of the Land Act, but how this may be undertaken especially where banks and males have the commercial interests in land and where

\textsuperscript{178}\textit{the Land Act}
Customary tenure holdings are in place (Section 6-8) is an issue of and remains an issue of contradiction with redress measures not clearly stated.

The Land Fund is one of the policies in place subject to Section 42 of the Land Act. The act provides for the establishment of a land fund with primary roles of supporting customary tenants to acquire certificates of occupancy and to fund payment of compensation to landowners whose rights are diminished by virtue of the issue of these certificates. Dedicated land tribunals are also established at sub county and district levels under Section 75-89 members of which are appointed by the lord Chief Justice.

3.2.3 The Mortgage Act

A mortgage, under Section 2(b) of the Mortgage Act, 2009 is defined to include “any, charge or lien over land or any estate or interest in land in Uganda for securing the payment of an existing or future or a contingent debt or other money or money’s worth or the performance of an obligation and includes a second or subsequent mortgage, a third party mortgage and a sub mortgage.”

There are several legal aspects of a mortgage, through which a mortgagor can safely protect his or her interests in the mortgaged property.

In Uganda, the law relating to mortgages is the Mortgage Act 2009 and the Registration of Titles Act Cap 230. Most mortgages executed are in form of money lent out by financial institutions mostly banks to individuals who are willing to have their assets pledged to the bank for a loan. In circumstances of this nature, if the (bank) is willing to lend money to an individual, it will conduct a search on the land register to confirm existence and if satisfied, a legal mortgage shall be created by drafting a mortgage deed or agreement and registering the same as an encumbrance on the land.179

The consent clause requirement not ignored for married applicant. In circumstances where the collateral security intended to be pledged for instance customary land popularly known as (kibanja), a sale agreement, will or consent from the spouse, if an individual is married,

will be sought to ascertain ownership and for purposes of creating an equitable mortgage on the land.\textsuperscript{180} This implies that the two parties have to be signatory to the agreement of pledging the property as collateral.

Additionally, the mortgage deed when signed imposes an obligation between the parties to respect the terms and conditions agreed therein. Under this, the fundamental implication in a mortgage deed is that a person borrowing has an obligation to repay back the money given in form of loan repayments with interest as stipulated within the agreed time frame. If the borrower fails to comply with this clause, the mortgagee has a right to exercise a right to sale, foreclose or commence a suit against the borrower in the courts of law so as to recover the money lent.\textsuperscript{181} This implies that before a lending institution takes up to realize the value in the security pledged, the bank has to inspect and evaluate such security to find whether the value of such security is equitable to the loan being applied for.

The Mortgage Act merely provides for remedies available to the mortgage upon breach of contract by the mortgagor. It does not provide for the rights and obligations of each party under a security agreement such as rights to prepayment, discharge or a statement of account. In addition the Act also lacks provisions for disclosure by both parties. The absence of these important provisions has left the Act wanting both in substance and procedure. Secured transactions generally deal with guaranteeing and giving of security either for a debt, credit or property. The essence of the security is to secure the performance of an obligation, usually repayment of a debt arising from money borrowed or property bought, hired or leased. The overall purpose of the security is to improve the chances of getting through,\textsuperscript{182}

(a) Coercion: the threat by the lender that he or she will enforce the security to ensure repayment.

(b) Enforcing the security; usually by selling the security and using the proceedings for repayment or by foreclosure or taking possession; or

(c) Preference: the holder of a security interest can prevent the seizure of the property by a bailiff to satisfy another creditor. If the debtor is made insolvent, the secured creditor is in a much better position than unsecured creditors.

\textsuperscript{180} Ibid
\textsuperscript{181} Ibid
\textsuperscript{182} Ibid.
The purpose of the law on secured transactions and mortgages is to regulate the formation, management and discharge of securities.

Subject to Section 5 and 6\textsuperscript{183} is to the effect of mortgaging a matrimonial home. Mortgaging a matrimonial home may only be valid if only the document used in applying for the mortgage is consent of the mortgagor and spouse(s) occupying that matrimonial home. Or else, the document presented for creation of a mortgage should be should be signed and assented by mortgagor and spouse(s). (Whereof, a matrimonial home\textsuperscript{184} implies a building or part of a building in which a husband, wife and children ordinarily reside together). The law only secures transactions but does not explicitly recognize wife as owner.

It is the duty of an intending mortgagee (lender) to assess and measure out the status of an intending mortgagor to confirm his/her marital status as way of ascertaining the acceptability of the property to be mortgaged under this Act.\textsuperscript{185} However, an intending mortgagor is also expected to exercise the power of disclosure of his/her marital and property status.\textsuperscript{186} This implies that if such property does not seek the consent of the other spouse(s) then it should not be property of the matrimonial home. Thus if matrimonial home is to be pledged then the consent need be informed and genuine and the duty be an implied one\textsuperscript{187} and the spouse(s) need to have signed and witnessed document to the effect of receiving independent advise and understood as well as accepted to the terms and conditions that apply.\textsuperscript{188} Without fulfilment of the conditions stated then a mortgage is not a binding one.

3.2.4 Customary Law

In Uganda statutory law is applied alongside customary and religious laws. Customary remains part and parcel of the existing formal legal framework and is clearly enshrined in the Constitution. Customs and values of ethnic groups in Uganda have been included in the law thereby gaining a legal foundation. This being as it may, customary law has been blamed for

\textsuperscript{183} The Mortgage Act 2009 Section 5 (1) (a) (b)
\textsuperscript{184} The Mortgage Act 2009 Section 2
\textsuperscript{185} Mortgage Act 2009 Section 5 (2) (a)
\textsuperscript{186} Ibid Section 5 (2) (a)
\textsuperscript{187} Section 6 (1)
\textsuperscript{188} Section 6 (1) (b)
discriminating against women and used to a larger extent to deny women access to resources, such as land and other assets.

While this is the case, the Constitution of 1995 provides for equal rights between men and women and prohibits discrimination\(^{189}\) and thus holds laws and customs that violate the constitutional guarantees on equality to be void discriminatory statutory, customary and religious laws remain in force. The provision against discrimination is purposely to accord equal or same treatment to all despite status or beliefs. But despite the provisions of this law, discriminatory practices still prevail in Uganda as assessed from the legal forces governing gender related issues especially for rural areas. This assertion however only briefly alludes to the rights of the very backward section of women.

Indeed customary law and practices remain discriminative in nature, just like statutory law itself. In Uganda discriminatory statutory laws include the Succession Act under\(^{190}\), the Marriage and Divorce Act and Land Act itself. Under customary law daughters generally do not have inheritance rights to family land as many families including the elite hope that their daughters will marry and so use the land belonging to the family of their husbands.\(^{191}\) It is assumed that women always get married, and that their husbands always give them land when they need it. The likelihood of daughters inheriting land is only where families have no sons. This trend though is observed to be changing at a very slow pace but in a glimpse of hope for the women, although with escalating land use challenges.

Undeniably the right to own land remains very controversial and inheritance of such is mainly through the males. The statutory law on succession in Uganda mainly caters for patrilineal extension which is unfair to the women. Indeed apart from a few the majority of women in Uganda do not own land. But the law guarantees a wife with a share in her husband’s estate whether he died testate or not, just like a widow has a right to the matrimonial home until she remarries or dies.

\(^{189}\) The Constitution of Uganda Article 21 (3) 
\(^{190}\) Section 27 
\(^{191}\) Opeit Obaikol (2009)
But this is a mere right of occupancy and widow only holds trust for the legal heir who in most cases is the male child. This position marginalizes women and stops them from inheriting property.

Marriage and divorce: Although under statutory law, the minimum legal age of marriage is 18 years for both men and women, according to customary law marriages are frequently arranged for minors, especially in rural areas. Polygamy is authorized under customary and Islamic law and women in polygamous relationships have no protection in the event of dissolution of the union. In some ethnic groups, custom also provides for men to “inherit” the widows of their deceased brothers (levirat).

This shows the inconsistencies and contradictions in the existing laws. Grounds of discrimination are seen to prevail, when men are seen as customary heirs, such disparities breed conflicts and use of violence and also when girls are married off at an early age as below as 15 years while boys are given a chance to further be nurtured as children.

3.2.6 The Succession Act Cap 139

The Succession Act was established to develop strategies and deliberate action on the part of government to ensure that women’s property rights are addressed and that, women as a minority group can benefit from family property and land with continuous sensitization and legal awareness creation. According to the Succession Act, property is apportioned among the deceased’s family members according to fixed proportions and widows stand to inherit 15%, Children 75%, and dependants 9% and 1% to the heir. If there is more than one wife, the property is shared. Under Section 27 of the Succession Act, girls cannot inherit their father’s property. FIDA-U and other women’s rights organizations successfully petitioned the Constitutional Court to declare this provision unconstitutional, however, the Attorney General has yet to reform the Succession Act to address this issue.

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193 Section 27(1) (a)
3.2.7 The Registration of Titles Act (Cap 230)

provides for entitlement of joint proprietors to land when two or more persons are registered in common to undivided shares of or in any land, then those persons shall in the absence of any evidence to the contrary be presumed to hold that land in equal shares. This implies that one legal owner cannot pledge such security entirely on his own but there has to be a mutual consent between the two or more rightful owners that such property or land be pledged as security for acquisition of a loan. But land continues to be pledged in Uganda without consent of the wives as shall be discussed under the findings in chapter four.

3.2.8 Conclusion

In Uganda, like elsewhere in developing states, property ownership is anchored in patriarchy where the law has either reinforced or made permanent social injustices especially in the realms of married women property rights. Indeed the analysis of the laws above shows that the legal rules have somewhat protected, yet given rise to gender inequalities when the structure and administration of laws subordinates women.

An inclusive enabling system of rights, obligations and enforcements surrounding the rights to property has been understood to refer to the amalgamation of the international, regional and national codes and standards which pertain to human rights in general and property rights in particular. There is a need for countries to ensure harmonization between international, regional and national law. This calls for ratification as well as domestication of the laws.
4.0 Introduction
Chapter three gives a critique of the available legislation on married women property rights in Uganda. The same chapter provides the circumstances that give rise to the assertion of married women property rights, the advantages and disadvantages of asserting married women property rights in the protection of interest in property and the applicability of the law governing married women property rights.

4.1 Challenges facing women property rights
The basic statutory laws which brought in new changes on systems of family property ownership in customary holdings are specifically the Land Act, Mortgage Act, and the Succession Act as well as family consent clause which have a direct impact on the law on secured transactions generally. Other laws include the Registration of Titles Act, the Financial Institutions Act.

The progress made by the protocol is laudable; however, the challenge of resolving the entangled system of statutory, religious and customary laws with regard to property rights, marriage and inheritance will continue to be a challenge in Africa. Solutions demand dynamic persistent and multiple intervention strategies at the policy level, as well as strong community activism at the local level.

Contradicting customary practices with constitution; Pertaining to customary law on land and property ownership, in Uganda today, women have a considerable legally accepted, but practically untenable rights to land. In Uganda, a woman’s position on land in society is inferior, reflecting the nature of power and authority that she has over land either in the matrimonial estate or the natal state. Customarily, a woman’s right to inherit land is viewed in terms of her responsibility to nurture children of the deceased. Custom denies her an independent right to own and inherit land; preference is given to children over their mothers, in event of death of the male household head. In the natal estate, sons take precedence over daughters when a father is
determining who the beneficiaries should be, how much each of the beneficiary should get, and when a beneficiary should receive a share. Succession to land and other property by either the children (for the matrimonial estate) or the brothers (for the natal estate) does not guarantee the security of a woman’s right to land\textsuperscript{195}.

This implies that women’s land rights are limited both by the inequitable legal structure and by traditional practice, thus making it difficult for them to secure a mortgage transaction in the bank. This promotes inequalities in development in terms of gender and yet the Constitution provides for supporting of economic development.\textsuperscript{196}

Customarily, land that was a communal asset was passed on among the male, at least in as far as its control was concerned. At the family level, in spite of the differences in the tenure systems, the relations pertaining therefore are defined by custom. Control over individual family members is exercised by the head of the household through his control over family land. Family land is described as that land which has been handed over by several generations through the male lineage. As a result of this customary practice the sons deem their right to family land as automatic while daughters are not eligible. Hitherto, there is growing conflict generated by the son’s demand for a share, even when the father is not prepared to distribute it.

The introduction of private ownership merely changed the form of control to individual male ownership from communal ownership, implying the change did not affect the position of the males over women who remained in the subordinate role of using the land. Although farming is the major source of income for households, this does not translate into actual benefits for women because control of incomes from land is differentiated on the basis of the value of crops farmed.\textsuperscript{197}

Succession is affected by either a written or oral will. In the latter case an ageing father invites clan’s elders to physically witness the distribution of his land/property to his children and on his death the clan elders are supposed to witness the implementation of his wishes. In event of the


\textsuperscript{196} The Constitution of the Republic of Uganda (1995) Part XI (i) and (ii)

absence of the above two this means that the clan elders are empowered to distribute the deceased's land, using the customarily recognized criteria. However, as far as parents are concerned, daughters have largely transient rights, since upon marriage it is taken for granted that their status changes as they move to reside in the homes of their husbands. This is because that is where their adult contribution in terms of labour is made. This implies that the nature of married women's property rights in patrilineal societies is dependent on relationship with a male.

4.2 Pros and Cons of Asserting Married Women Property Right

Without the law, the custom of male inheritance results in the vast majority of women being excluded from land ownership, though there are no laws preventing women from owning land in Uganda. World Bank (2006) whilst women do most of the agricultural work, it is estimated that they own only 7 percent of agricultural land. To counter this trend and curb the widespread dispossession of wives and widows, activists campaign for reforms to Uganda's property laws to provide for spouses to be deemed co-owners of "family property, land in particular that is to say that, Land on which the married couple lives and depends. For example some cultures like in Eastern Uganda do not allow women to inherit land especially when a husband dies or when the father dies, because they believe that women are only meant for marriage and with due time they will get married to their husbands thus cannot inherit land.

According to Tekle, T. (2002), 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. This is true because even women who want to get into business need land as collateral to obtain bank loans which makes them completely dependent on men to access land and for the case of those that are childless, single, widowed, disabled, separated/divorced, or with only female children often have little or no recourse because they may have no access to land through a male relative.

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 coupled with
the inability of many women to assert their legal rights, mean that formal legal provisions are
rarely adhered to. Only about 15 percent 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 register.200

There are many obstacles to access to justice. Ugandan women do not have adequate access to
claim justice in particular as a result of inadequate information on their rights and laws
protecting them, social pressure, cost of procedure and lack of training of law enforcement
personnel trained on women’s rights.

Women entrepreneurs face particular difficulties with taxes and customs. Recent evidence
suggests that businesses headed by women are forced to pay significantly more bribes and are
harassed more than businesses headed by men. Denninger confirms this as tracing its origin from
the low education achievement of women and the fact that they also have fewer formal business
skills than men, they find it harder to deal with tax issues, and time-poor women find it difficult
to comply with complex tax registration requirements.201 In this similar regard, and in the context
of this study therefore it can be said that married women engagement in business yields them
little benefits making it harder for them to contribute much fiscally to the family property
acquisitions compared to their male counterparts. This further only confirms males as heads of
families with a greater bearing on family property.

Indeed a 1995 research by202 that, 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.

Land and Property Rights in Situations of Conflict and Reconstruction.

201 Deininger, (2009). p 87

202 Stiftung notes 2011
4.4 Conclusion
The above discussion although is about married women property rights in general, most effort has been allotted to land this being the major source of livelihood and development in Uganda, a predominantly agricultural country.

There is still a variance between statutory and customary law in that the customary law makes ownership of land by women difficult, almost unattainable, unlike statutory law on land ownership. But in Uganda women provide 80 percent of labour in agriculture and over 90 percent in food production and processing, but they own only 7% of the land.
CHAPTER FIVE:
RECOMMENDATIONS AND CONCLUSION

5.1 Introduction
This chapter provides a summary, conclusion and recommendations of the study findings as drawn from the previous chapter.

5.2 Recommendations
There is need to ensure that the process of empowering married women to gain access to family property goes beyond legal reforms governing land and property but that;

More emphasis be put on legal literacy and on reducing the bureaucracy of land administration. Mechanisms need to be put in place to include women in the land reform discussions, ensuring adequate land allocation to women as well as developing of effective credit schemes for married women to use land titles.

There is need to establish a Monitoring and Evaluation Directorate basing on land reforms and gender-disaggregated data should be collected in a systematic manner for a better interpretation of progress on married women’s access to land and family property in general. In this research is imperative to identify the needs and gaps.

There is dire need to develop strategies that encourage treating women as essential actors of formal economies, as well as to make the formal sector sensitive to gender gaps in particular the banking sector and land administration sector these being the center pyramid for women’s growth and development.

The law on property rights should be redefined in the protection of women with need for friendly legal assistance and transactions in the transfer of land as a property if married women are to be protected. Information transfer is necessary to reduce vulnerability of women.

There is need to empower women in all spheres. A holistic perspective to gender needs to be undertaken to empower women economically, socially and politically. Economically, women are
mainly engaged in the informal sector special credit schemes need to be created that attract direct investment.

Focusing on policy development at state level is not necessarily sufficient in promoting the development of married women property rights as this only focusing on improving their access to land and credit in most cases. While equality norms, statutory norms and customary ownership issues remain separate, the risk will always remain in the equal access to resources if not mainstreamed into other major policies. There is need to ensure that there is a fair and sound land distribution system in Uganda with innovative ideas adopted to merge equality norms, statutory norms and customary ownership issues.

5.4 Recommendations for Future Research

The study recommends further research on clear policy pronouncements of the legislative, regulatory and institutional frameworks that government ownership of property in families for individualized ownership.

5.5 Conclusions

The study concludes that, with limited recognition of women’s rights, married women remain most vulnerable and dependent on their families with great responsibilities but very few opportunities. Thus while microcredit schemes are available to offer greater avenues for development, a strong national high-level commitment is needed with a policy mindset that views women as property providers not just developers.

Where there is a right, there is a remedy which remedy is the responsibility of government. There is need therefore for legislators to develop a classical legal regime on married women property rights which provides for written remedies in respect to the laws and policies adopted. That once breached then a clear policy or law can be applied to help women asserting their property rights on the other hand. For example government’s commitment needs to be affirmed to handle women property rights hand in hand with stakeholder initiatives to ensure women security of tenure. This is because in respect to land various tenure systems apply. In respect to the numerous tenure systems applicable in Uganda, there is need for individualization of land for security tenure to be legislated and policy provision to be made that can safeguard the interests of the most vulnerable in society.
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