LAND EVICTIONS AND HUMAN RIGHTS IN UGANDA, A CASE STUDY OF THE CENTRAL REGION.

BY

NAKKAZI SHUMI
LLB/33647/111/DU

A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A BACHELOR'S DEGREE IN LAWS OF KAMPALA INTERNATIONAL UNIVERSITY

JULY, 2015
DECLARATION

I, NAKKAZI SHUMI do hereby declare that the work presented in this report arises out of my own research; I certify that it has never been submitted or examined in any university as an academic requirement for any award.

Sign

[Signature]

Date

[Date]

NAKKAZI SHUMI
This research report has been submitted with the approval of Mrs. NYACHWO MARY as the university supervisor.

Signed

(Supervisor)

Date of Approval

05/09/2015
DEDICATION

I dedicate my research report to my late dad who worked hard to see me through although he died without seeing me finish this course, my mum and friends like Godfrey Kyeyune, Sande Alex and also my sister Nakalule Rehema but I can’t forget Mr Ssembasa Vicent who has helped me through. May God bless them All!
ACKNOWLEDGEMENT

First and foremost I would deeply love to acknowledge my beloved parents and sisters for their overwhelming and grateful help that they have endorsed in me through out my curricular activities.

I am deeply indebted to my supervisor MRS. NYACHWO MARY for her overwhelming support and supervision in the compilation of this research.

Lastly but not least, I would love to acknowledge all my former classmates, friends and everyone who has been of great importance to the conclusion of this research.
4.2 Ignorance of rights ................................................................. 31
4.3. Weak institutions.............................................................................. 32
4.4 Prevailing customs and practices ...................................................... 33
4.5 Corruption.......................................................................................... 34
4.6 Low literacy levels ............................................................................. 34
CHAPTER FIVE ...................................................................................... 36
CONCLUSIONS AND RECOMMENDATIONS.............................................. 36
5.0 Introduction ....................................................................................... 36
5.1 Conclusion .......................................................................................... 36
BIBLIOGRAPHY ...................................................................................... 41
ABSTRACT

The research aimed at investigating the extent of Land Evictions and Human Rights in Uganda, a Case Study of the Central Region. It aimed at the exploration of the legal and institutional framework governing the land laws and how human rights are enforced and followed during land evictions in Uganda. It also expounds on the conflicts between the provisions of the Land Amendment Act and tenure system, the gaps between the exploitation of land tenure systems and other related laws in Uganda. Land tenure thus constitutes a web of intersecting interest, and these include; Overriding interests, overlapping interests: when several parties are allocated different rights to the same parcel of land, complementary interests: when different parties share the same interest in the same parcel of land, competing interests: when different parties contest the same interest in the same parcel. And majorly land disputes arise from competing claims. This research was carried out in Uganda and it brings out the different literature related to human rights violations and how they should be preserved in relation to land law in Uganda. Finally, the report concludes and recommends to the various stakeholders on what’s to be done and what needs to be implemented so that both women and children enjoy their right and freedom in relation to land matters.
CHAPTER ONE: INTRODUCTION

1.1 Background

Land is one of the most important assets of households in many countries in the world and a primary basis for their live\(^1\). Land continues to be a critical factor, as it is the most essential pillar of human existence and national development, and economic growth in many countries since the agricultural sector employs a big number of the working population and contributes a lot to gross domestic products in many countries. Land influences spirituality and aesthetic values of all human societies\(^2\). Land is usually a political issue with potential to be volatile, so its control continues to be a critical factor. Land is the basic resource in terms of the space it provides, the environmental resource it contains and the capital it represents and generates the importance as been since time immemorial and a clear understanding of existing legislation is therefore imperative\(^3\).

Land in Uganda is a critical factor of production and an essential pillar of human existence and national development. Since the advent of colonialism, the country has never had a comprehensive Land Policy. What has been in existence are the scattered policies and laws on land and natural resources. Post independence attempts to settle the land question and deal with fundamental issues in land tenure, land management and administration through the Land Reform Decree of 1975, the 1995 Constitution\(^4\) and the Land Act Cap 227\(^5\) have had limited success. This policy therefore, consolidates the various scattered policies associated with land and natural resources with emphasis on both ownership and land development.

---

1. Land tenure and economic activities in Uganda: a literature review Rasmus Hundsbaek Pedersen, Rachel Spichiger, Sarah Aloba and Michael Kidindo, with the collaboration of Bernard Bashaasha and Helle Munk Ravnborg, Diis working paper 2012:13
2. Source book of Uganda’s land law by J T Mugambwa pg. 22
3. Course on land rights and land value capture, *By Earth Rights Institute, page 10*
5. Laws of Uganda
The key issues addressed by the policy include: Historical injustices and colonial legacies, which have resulted in multiple rights and interests over the same piece of land; disposition and loss of ancestral land by some communities; border disputes arising out of tribal, ethnic groupings and trans-state border disputes; and the ineffective dispute resolution mechanisms, which have resulted into illegal evictions. Whilst under contemporary issues, Uganda is faced with disparities in ownership, access to and control of land by vulnerable groups; displacement, land grabbing and landlessness resulting from high population growth and the increasing demands on land for investment especially communal lands which are neither demarcated nor titled.

In addition other issues addressed by the policy include under utilization of land due to poor planning and land fragmentation; environmental degradation and climate change; poor management of the ecological systems due to their trans-boundary nature and unsustainable exploitation arising out of the conflicting land uses and inadequate enforcement of natural resource management, standards and guidelines. It also tackles issues of inefficient and ineffective land administration and management system, which has made the system prone to fraud and forgeries.

The policy further introduces essential reforms for stemming off escalating land conflicts and land evictions through re-institution of administrative Land Tribunals, creation of a special division in the Magistrates Courts and the High Court, and recognition of the dual operation of both customary and statutory system in land rights administration, land management and land dispute resolution. The policy further affirms the responsibility and mandate of the Ministry of Lands to continue performing its residual roles of policy formulation and implementation, standard setting and quality control, resource mobilization, and monitoring and evaluation. To implement this policy, a National Land Policy Implementation Unit has been designated to coordinate the planning and implementation of the proposed measures and strategies.

In Uganda, before 1894 agriculture and pastoralist were the major economic activities in Uganda but all these activities depended on land, the British protectorate later
declared land in the territory crown land by virtue of the protectorate. The 1900 Buganda agreement between the British and Buganda fixed Buganda’s once fluid boundaries, established the institution needed for indirect rule and formulated a land settlement.

In 1902, the British crown passed the Uganda Order in Council. Under that Order in Council, statutes made by the Crown, the common law and principles of equity were to be the legal regime governing the lives of the people in the protectorate. The problems created on land courtesy of a colonial legacy are to do with disentangling the multiple and conflicting tenure rights and interests often overlapping in the same piece of land. Despite attempts to rectify this, the enactment of the Crown Land Ordinance 1903, Land Legislation Ordinance 1908, Bussulu and Evujjo Law of 1928 for Buganda and similar laws in Ankole and Toro in 1938, the multi structure of rights persisted and has become a defining characteristic of the complexity of land relations in Uganda today. It has been largely blamed for the increasing land conflicts and evictions in Uganda where resolving dual interests of ownership between registered owner and the bona fide occupants is nearly becoming impossible. The change of government regime in 1986, the regime tried to handle the issue of land in Uganda. This came with the promulgation of the 1995 constitution which led to the passing of the Land Act 1998 to fictionalize the provisions of the constitution which related to land matters. However the landlord-tenant relationships enacted under the Land Act Cap 227 has become controversial, for example the definition of bona fide occupant, the rights conferred on the tenants and the rent payable. The Land Amendment Act of 2010 attempted to address these issues although some still remain unsolved.

1.2 Statement of the problem

In Uganda, land is one of the most important assets of households and the most essential pillar of human existence and national development. Government has continued and extended its intervention through policies, laws enacted with the aim of
harmonizing and solving these problems but this has not helped because land problems still persist in the country. Land cases in Uganda are extremely overwhelming in all regions and people have faced a number of problems in relation to human rights violations, members of parliament and other officials have debated about the issue but despite the government efforts to tackle this problem there is still much efforts needed. This research therefore aims at establishing the effect of land rules in the country towards the achievement of human rights.

1.3 Purpose of the study

The purpose of this study is to investigate the effect of Land Evictions and Human Rights in Uganda, a case study of the Central Region.

1.4 Research objectives

I. To establish the various the land tenure, land use and management in Uganda.
II. To establish the legal and institutional framework on land tenures in Uganda and their impact on human rights.
III. To establish the various human rights meanings and concepts related to land management in Uganda.

1.5 Research questions

I. What are the various land tenure systems, land use and management in Uganda?
II. What are the legal and institutional framework on land tenures in Uganda and their impact on human rights?
III. What are the various human rights meanings and concepts related to land management in Uganda?
1.6 Scope of the study

The study will be carried out in a period of three months, it will begin in the month of January to March 2015.

The study will be carried out in the Central Region of Uganda, it will include districts such as Kampala, Wakiso, Mukono, among others.

The study shall investigate on the Ugandan land policy, the legal framework underlying the land policy and the effects of the land use and management to the community.

1.7 Significance of the study

The research will help the government, in formulating policies, getting solutions and finding where the conflict on land is, by the laws formulated.

The study is aimed at creating a general understanding of the major causes of weakness in the land tenure reform law in Uganda.

The research is expected to act as a guide for the future research about the same topic.

The research is expected to contribute towards revision of the land laws in Uganda to ensure justice in the land use, ownership and administration.

The research is significant, as the researcher’s partial fulfillment for the requirement for the award of a bachelor’s degree in laws.

1.8 Methodology

The research is based on the theoretical analysis especially of the statutory laws. The research is majorly based on information acquired from already published books, journals, newspapers, statutes and many other forms or written materials for example from internet, seminars which relate to the subject matter. The researcher makes a comparative analysis and reference from other foreign jurisdictions with similar related matters to find out how they have curbed the problem of land.
CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction
Land law and human rights have never seemed particularly natural bedfellows. Perhaps it is because the popular notions of property and humanity appear somehow antithetical, a jarring juxtaposition of the self-regarding impulse towards personal appropriation and another-regarding vision of the intrinsic merits of strangers. Again, land law and human rights law may have tended to look like polar extremes of jurisprudential concern precisely because, across the distance of the supposed public-private divide, the rather different resonances of their unshared terminology -- the intellectual tenor of divergent legal traditions intensified the impression that these areas were culturally and substantively quite distinct. Their lack of congruence may have appeared all the more understandable in those jurisdictions where the allocation of the primary goods of life was already largely settled and where disputes over land seldom raised fundamental issues of raw human entitlement. On this view human rights considerations were apt to penetrate the sphere of the land lawyer only in the context of aboriginal land claims or systematic ethnic displacement or gross colonial exploitation in far-flung parts of the globe.

2.1 Land tenure, land use and management

2.1.1 International perspective
Habitat for Humanity International (HFHI) led nearly 30 Housing Indicators surveys in different cities around the world since 2010, targeting indicators that assess the health of the housing market and the quality of policies related to it. This effort has been complimented by various collaborations and working groups with the Inter – American Development Bank (IADB), The World Bank, the U.S. Department of Housing and Urban
Development (HUD), the United Nations Human Settlements Programme (UN-Habitat), among others. The assessments are conducted and completed by in-country experts and HFHI convenes a team of experts both inside and outside the country to review the GHI results. The GHI website provides a one-stop portal for transparent data, discussion, debate and dissemination.

The Global Housing Indicators survey analysis demonstrated that in the case of Armenia, statutory laws in place are established to ensure women’s rightful access in land. Under the Civil Code, women and girls as widows and daughters have the same inheritance rights as men and boys. However, there is no information readily available regarding how women enjoy their inheritance rights in practice in Armenia. The marriage act is based on the civil code that is gender neutral, which means that property acquired during the marriage is fairly split between the wife and husband in the event of a divorce. Research did not yield any discriminatory behaviors in the land titling environment. The tenure systems in Armenia are mostly favoring privatization and investment attraction, with a high rate of decentralization and self-governance but with the same statutory laws nationwide. There are no recognized differentiations between the laws applied in the 10 different provinces. Land gained a great deal of importance after the independence of Armenia from the former Soviet Union: the national government compensated the centrally planned industrial economy failure with decentralized agriculture and opening to international markets.

There is not enough documentation on the customary practices in Armenia. The authors advance the hypothesis that most of the customary laws disappeared during the years when Armenia was under the communist regime. However, there are still covert types of discrimination against women. It is a common practice that women are paid in the workplace less than their male colleagues with the same job description. Women are falling behind men in employment in Armenia. For example, according to the UN data, in 2009 the share of women aged 15 to 64 in the labour force was 59.6 percent.

Articles 1216 and 1222, Civil Code of the Republic of Armenia
Statistical Yearbook 2007, Armenia National Statistical Service, Yerevan
compared to 74.6 per cent for men. As of 2011 the gender pay gap was 39.2 % yet the National Population Census shows that the share of women aged 15 to 75 in the labour force was 44.4 percent compared to 55.6 per cent for men. Also based on the Armenian Statistics Data collection as of 2008, the poverty rate among women was 55.6 as compared with 44.4 per cent of poverty among men. Although they form 56 percent of the workforce, women constitute only 16.98 percent of the population that have construction loans, and only 31.9 percent are registered as business owners which can be significant to the issues women might be facing in accessing land.

2.1.2 Regional Perspective
In the 1990s, the World Bank supported a land observatory to understand land tenure issues in Africa generally Mali and their impact on productivity and economic growth. They also worked to develop models to encourage private investment in irrigated land. From 1998 to 2007, the National Rural Infrastructure Project implemented an irrigation component that piloted efforts to deliver land titles to private investors to encourage the settlement and subsequent development of 1,149 hectares within the Koumouna perimeter. This process facilitated the selection of 130 small-scale producers and supported their dialogue with a local bank, which loaned the producers CFA 200 million (approximately USD 420,000 in 2007 US dollars) to build irrigation canals and procure inputs. It was noted that it took almost four years to adopt the decree for the pilot land tenure program (World Bank, 2008). The project’s second phase (2001-2005) promoted titling of smallholder irrigated areas totaling 2,400 hectares within the Office du Niger (at a total project cost of USD 11.2 million). The model used was one of ‘Lease-Purchase’ Arrangements, in which the government financed primary infrastructure development (such as dams and principal canals) and pre-financed the development of secondary infrastructure through cash grants to poor smallholder farmers. This portion had to be fully reimbursed by beneficiaries over several years, with the proceeds used

---

Overall employment: 1,057,735 (men: 588,358 and women: 469,377)

World Bank Statistics

World Bank Gender Statistics 2009
for further irrigation development. Beneficiaries received full land ownership with land titles after full payment.

The World Bank-financed Private Irrigation Promotion Project, meanwhile, supported individual investors to acquire land titles, develop investment plans, and prepare loan applications for possible financing by local banks. This model targeted higher income beneficiaries, typically living in urban or peri-urban areas. This was expanded under the National Rural Infrastructure Project to the Office du Niger. Under the current Growth Support Project that began in 2005, the World Bank conducted a review of the Code Domanial et Foncier and is encouraging the Government of Mali to facilitate the transformation of customary land rights to statutory law by reducing formalization fees and streamlining the administrative systems involved. The Bank continues to promote land tenure securitization within Mali, developing a project to support rural development and agricultural productivity that will include a component focusing specifically on access to rural lands for agribusiness activities and small-scale farming.

2.1.3 Uganda

Uganda is one of the typical cases where the conflict between customary laws and statutory laws aggressively weakens women's position in the society for it has a population that is heavily tribe-organized. Officially, Uganda's constitution grants provisions for gender equality and prevails over customary practices that contradict its core values. The legal system is a mix of English common law and customary law. The Ugandan land law does not specifically enforce gender equality and the clan system does not provide a sufficient security to the female tribe members. Both systems failed to ensure women's rights to land and instigated women's movements in Uganda to add land tenure to their key issues.

The housing indicators based analysis demonstrates that legal inheritance is a big impediment to women's land tenure. The survey indicates that even though the law

---

allows women to own, buy, and inherit land, the common practice is that most of the land owned by women was bought and not inherited due to the cumbersome inheritance law. Also, the GHI mentions that the joint land titling, even though it is available by law, is limited to the wealthier portion of the society; there is no clause in the constitutional provisions for joint property binding two married people – this makes it difficult for women to have access to the land acquired during the period of their marriage. Joint titling is not a common practice due to the fact that 75 percent of the land is still under the various customary laws, which favors male heirs over their female counterparts, showing gender-biased practices.

Marriage in Uganda is mostly customary\(^4\) and therefore it does not legally bind the husband to share any acquired property with his consort, which makes women’s situation economically critical if they face the events of divorce or widowing. Since the Ugandan society is mostly patriarchal, except for the region of Buganda that benefits from a matrilineal inheritance customs\(^5\), the relation to land goes through the male heirs, and the view of women as property holders is unconventional. Practices such as dowry, bride price, polygamy or the legitimized abandonment of the wife due to her not bearing a male descendant, reinforce the socially accepted idea among most of the Ugandan population especially the rural part- that women are not made to inherit or own land, and that it is a man’s right. This perception takes a stronger turn when it comes to inheritance practices: because tenure of land is male oriented, and because either land or marriage bonds are seldom registered, the patriarchal rule is the one that prevails. Women fail to inherit parental land once they get married, if they don’t have children, and when they do have children, the land is often passed directly to the children\(^6\). The percentages of inherited land vary between 60 percent of land

\(^4\) Section 11

\(^5\) In 1983, the Provincial Government of Morobe enacted its own legislation for registration of customary land, but the national scheme within which it was supposed to operate did not materialise.

\(^6\) James, above n 38, 194. Professor James suggests at 195 that the national government was more concerned to use the incorporated land groups to facilitate the plantation redistribution scheme under which alienated land was to be restored to the original landowners rather than a reform measure of customary landholding. More recently, clans and landowning groups have been incorporated under the Act in oil-rich areas in the Southern province to facilitate payment of royalties (Mugambwe et al, above n 53, 190).
inheritance when it comes to male-headed households and 39 percent of female-headed households inheritance rate\textsuperscript{17}. Women’s equal right to inheritance has not yet been recognized in national legislation. With regard to the rights of widows, the Succession Act is in violation of the Constitution and the country’s international obligations as signatory state to treaties prohibiting discrimination against women on the basis of their sex\textsuperscript{18}.

2.2 Legal and institutional framework on land and human rights

2.2.1 International perspective

The necessity of providing access to land in order to facilitate the realization of human rights has been considered in several international principles and interpretive documents,\textsuperscript{19} but no international right to land is explicit in the international legal framework. Moreover, the obligation of states towards individuals and land access has not been given adequate attention. However, a review of the international human rights framework\textsuperscript{20} as it stands makes clear that while not wholly defined, land rights are invoked in a number of key areas, suggesting that further consideration by the international community is necessary.

Explicit rights to land have been developed in two key areas of international human rights law, the rights of indigenous people and the rights of women. Land access and use is frequently tied to the spiritual, cultural and social identities of peoples. As such, land rights have been more fully developed in the sphere of indigenous rights. Convention 169 on Indigenous and Tribal Peoples, which was adopted by the

\textsuperscript{17} Tim Curtin, Hartmut Holzknecht, and Peter Lamour, ‘Land Registration in Papua New Guinea: Competing Perspectives’ (Discussion Paper 2003/1, State Society and Governance in Melanesia Project, ANU Research School of Pacific and Asian Studies, 2003).

\textsuperscript{18} Ibid

\textsuperscript{19} The Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, Adopted June 11, 1976, General Principles: Land; Voluntary Guidelines of the Food and Agriculture Organization of the United

11
International Labour Organization in 1989\textsuperscript{21}, is legally binding on States Parties and the only binding international instrument related to the rights of indigenous peoples. The Convention establishes the right of indigenous peoples in independent countries to "exercise control, to the extent possible, over their own economic, social and cultural development," in a number of areas.\textsuperscript{22} The Convention includes a section on land, and requires States Parties to identify lands traditionally occupied by indigenous peoples and guarantee ownership and protection rights.\textsuperscript{23} In essence, the "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities."\textsuperscript{24} The Convention also requires the provision of legal procedures to resolve land claims,\textsuperscript{25} establishes rights over natural resources,\textsuperscript{26} protects against forced removal,\textsuperscript{27} and establishes a right of return and compensation for lost land through either land (of at least equal quality and quantity) or money.\textsuperscript{28}

In 2007, the U.N. General Assembly adopted the Declaration on the Rights of Indigenous Peoples, which states that "indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired."\textsuperscript{29} The Declaration, while not binding, states that indigenous people have a right to own and develop resources on their land, a right to legal recognition of indigenous lands by states, and a "right to redress . . . for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and

\textsuperscript{22} Id. at art. 1
\textsuperscript{23} Id. at art. 14
\textsuperscript{24} Id. at art. 13
\textsuperscript{25} Id. at art. 14.
\textsuperscript{26} Id. at art. 15
\textsuperscript{27} Id. at art. 16
\textsuperscript{28} Ibid
which have been confiscated, taken, occupied, used or damaged.” Both the Convention and the Declaration emphasize participatory dialogue and the need for free, prior, and informed consent with respect to decision-making about lands occupied by indigenous peoples, especially where the relocation of peoples from land is under consideration.

Land rights are also invoked in the international legal framework on women’s rights. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) requires that State Parties “shall ensure women the right to . . . equal treatment in land and agrarian reform as well as in land resettlement schemes. . . .” CEDAW also provides that both spouses must enjoy “[t]he same rights . . . in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property” in marriage. Equal rights to inherit, purchase, and dispose of property also promote women’s rights more generally. While land rights are not explicitly developed more fully in this Convention or elsewhere in the core human rights treaties, however, the human rights framework clearly dictates that human rights be applied non-discriminatorily and equally for all people.

2.2.2 Regional Perspective

In Mali, customary land tenure systems have their origins in the Mandingo Empire of Soudiata Keita and the Kouroukan Fouga agreements of 1235 (USAID, 2010), which vested ultimate authority over land in the hands of the Emperor while devolving use and management to local authorities (the Regional Assembly, the Circle Council, and commune councils). Land rights were passed on through lineage and the principle of the firstcomer. This arrangement, in which married women were excluded from holding land rights, persisted for centuries and is still used today by the Bambara people. Modifications to these land tenure arrangements were made in 1818, when a set of rules based on local practices and Islamic beliefs were introduced by the Macina Fulani

---

10 Id at art. 26(2), 26(3) & 28
11 The Right to Housing.
12 *The Right to Housing.
Empire. Here, access to resources including pasture lands, lakes, and rivers came under more formal control, whereas forests, wild products, and wildlife were considered open access resources.

The French colonial period (1892-1960) saw the introduction of the ‘mise en valeur’ principle, which required registered lands to be put into productive use. Those with ownership rights to registered lands who were not using land productively could lose land access and rights, with the land being transferred to others who promised to put it to productive use. A category of registered lands titled ‘vacant lands without owner’ was also created, enabling the colonial power to take lands or transfer ownership to meet its needs. This retrenchment of state authority continued after independence in 1960 with the nationalization of all land; while parcels could be used for various purposes, the state reserved the right to take back any lands it needed.

State control over land increased until the 1990s, when the end of military rule was followed by a series of land tenure and property rights reforms, in keeping with reforms in many West African countries at the time. These were based on European concepts of land tenure and property rights and used land titling and registration as tools in an attempt to increase tenure security eroded during the colonial era. A prime motivation in this was to provide greater incentives for farmers to invest in their land, improving agricultural productivity. The critical policies and legislation developed since 1993 include the General Land Policy (Politique Foncière Générale), the 2000 Land Tenure Code (Code Domaniale et Foncier), the Agricultural Framework Law (Loi d’Orientation Agricole), and the Pastoralist Charter (Charte Pastorale).

The Politique Foncière Nationale is an attempt to ensure greater coherence between the disparate codes, laws, and regulations governing the use of land and other natural resources in Mali, in line with the African Union’s guidance to member countries to develop strategic land policies. The policy is being drafted under the auspices of the Ministry of Housing, Land Issues, and Urban Planning, which launched a national

\[^3\text{Cotula, 2007}\]
dialogue to help build consensus for elements of a comprehensive land policy. While the policy theoretically should address all land, it is anticipated that the draft land policy will ultimately focus more on urban and peri-urban land tenure issues. Rural land tenure and land management procedures will still largely be covered by the new Agricultural Framework Law (LOA).

The 2000 Code Domanial et Foncier is another key document pertaining to land tenure that is currently under revision. The existing Code (Article 46) recognizes customary practices regulating ownership and access to natural resources and that any transfer of customary land rights to the state can only occur in cases serving the broader national interest, subject to fair and prior compensation (Article 43). Article 48, meanwhile, emphasizes that agreements between individuals or communities based on customary practices and procedures can be formalized in writing and that this documentation serves as proof of land transactions. While these declarations are positive indications of respect for customary rights, these legal precepts have never been translated into decrees or administrative practice, which is perceived as an indication of policymakers’ hesitancy to proceed with formalization of customary rights. Without a clear definition of customary rights, in practice it has been difficult to determine which system prevails – the Code Domanial et Foncier or customary rights – when conflict arises. And while the Code allows for the devolution of management of land and public properties to the jurisdiction of local governments, the transfer of legal responsibilities over land to decentralized entities has largely not yet occurred.

2.2.3 Uganda
In the end, it was agreed to change the system of land holding in Uganda. The new Uganda Constitution of 1995 vests land in Uganda in the citizens of Uganda owned in freehold, mailo (quasi-freehold), leasehold and customary tenure. With the exception of Buganda (central region) and urban areas, most land in Uganda is held under customary tenure. As may be recalled, hitherto customary landowners were legally

---

34 Article 237(1) & (3)
tenants at will' on government land. Under the Land Act 1998) customary tenure, like freehold tenure, entails ownership of land in perpetuity. Article 237(4) of the Constitution empowers all Ugandan citizens owning land under customary tenure to acquire certificates of customary ownership in respect of their land in a manner prescribed by legislation. The Land Act 1998, reiterates the constitutional right of individuals, families or communities owning land under customary tenure to apply for a certificate of customary ownership in respect of their land. The certificate of customary ownership is deemed by the Act to be conclusive evidence of the customary rights and interests endorsed thereon. Subject to any restrictions endorsed on the certificate, generally, a certificate holder individual or group has a right to deal with the land just like any other landowner. Thus, he or she may mortgage, lease or sell the land, except where such right is precluded or restricted by the certificate.

Interestingly, the legal recognition of customary land tenure did not necessarily translate into a pro-customary land tenure policy. Indeed, the position it is quite the contrary. The Constitution gives customary landowners a right to convert their title to freehold in accordance with any law enacted by Parliament. That law is the Land Act 1998. Section 10(1) of the Act provides that any person, family, community, communal land association, holding land under customary land tenure may convert their tenure to freehold by following the prescribed procedure. The normal practice is for customary owners to apply for a certificate of customary ownership and later, if they wish, apply to the relevant authority to convert their customary title to freehold. However, it would seem from the Act that possession of a customary certificate of ownership is not a prerequisite for conversion to freehold; applicants may fast-track the process by directly applying to the authority to convert their customary tenure to freehold. Although the provision for conversion is mainly aimed at individuals, landowning groups or

\(^{15}\) Section 4(1)(h) and 4(2)  
^{16}\) Section 8(3).  
^{17}\) Section 9(2) (c), (d) and (f)  
^{18}\) This is implied in s 12(4) and 13(2) of the Land Act 1998.
communities could also apply to convert their customary title to freehold.\textsuperscript{39} It is thought that the way forward for Uganda is not to dismantle customary land tenure in those parts of the country where customary land tenure is still very widely practiced; rather it should be encouraged. The provision for registration of customary titles under the Land Act is a step forward in this regard. Further steps may need to be taken to change the perception that freehold is superior to customary title. Conversion of customary title to freehold should be actively discouraged. This may entail amending the Land Act, if necessary, to ensure that a certificate of customary land title is treated on a par with a registered freehold title. More importantly, the people, especially outside the relevant region (including financial institutions), should be made aware of this.

2.3 Human rights meanings and concepts related to land management

2.3.1 International perspective

In England, by contrast, the interface between human rights discourse and the law of real property came to seem somewhat limited amidst the relative affluence of a post-war welfare state in which the oppressed and the dispossessed Frantz Fanon’s ‘wretched of the earth’ were conspicuous mainly by their absence. For these, and many other, reasons the intricate machinery of the Law of Property Act 1925 and its satellite legislation contains little which could be confused with the positive protection or reinforcement of basic concepts of human freedom, dignity and equality. The rights upheld by the 1925 legislation (and by its associated regimes of registration) are, in general, derivative or transaction-based rights rather than rights of an original character arising in spontaneous vindication of free-standing perceptions of human worth. Still less did the formative property jurisprudence propounded by an earlier generation of Victorian judges overtly endorse any intrinsic link between property and human values.

\textsuperscript{39} Section 23, Land Act 1998
For instance, the overseers of England's industrial revolution cared little for that most modern of concerns the human right to respect for privacy.  

The sole sense in which notions of human freedom impinged on the 19th century world of real property was evidenced by the landowner's more or less unconstrained power to exploit his land as he saw fit without regard either to the needs of others or to any higher conception of the irreducible rights of his fellow human beings. Most famously, in Bradford Corpn v Pickles, the House of Lords allowed a landowner, even though acting maliciously, to cut off a supply of clean water which would otherwise have served the rapidly developing domestic, sanitary and industrial requirements of the city of Bradford. As Lord Macnaghten indicated, the landowner might prefer 'his own interests to the public good' and might indeed be 'churlish, selfish, and grasping.' But, although his conduct might seem 'shocking to a moral philosopher', the House of Lords refused to intervene.

Yet the assumed dissociation of land law and human rights has always been one of the larger (but no less insidious) myths of the law. The law of property silently betrays a range of value judgments about the 'proper' entitlements of human and other actors. These value judgments reflect a complex picture of social relationships and rankings, each casting a shadow on some extra-legal index of freedom, dignity and equality. For instance, the law of matrimonial property long bore the imprint of a dogma of marital symbiosis which ensured that, deep into the 20th century, a substantial portion of the population lived most of their adult life in a state of legal and factual dispossession. The medieval notion of spousal unity of husband and wife as 'one flesh' had the effect of suspending the legal personality of the married woman and rendering her incompetent.

---

40 Gray, Property in Thin Air, [1991] CLJ 252 at 259-6
41 Tapling v Jones (1865) 11 HLC 290 at 311, 11 ER 1344 at 1353 per Lord Cranworth (every man has 'a right to use his own land by building on it as he thinks most to his interest').
42 Lord Hoffmann's recent description of human rights as 'rights which belong to individuals simply by virtue of their humanity, independently of any utilitarian calculation' (R (Alconbury Developments Ltd and others) v Secretary of State for the Environment, Transport and the Regions [2001] 2 WLR 1389 at 1411D-E).
43 [1895] AC 587.
44 [1895] AC 587 at 601.
to acquire property or even to earn wages in her own name. As Lord Denning MR acidly observed some time later, 'the law regarded husband and wife as one: and the husband as that one.'

The invidious discrimination practiced against the married woman was reversed only slowly by the long-term effects of the Married Women's Property Acts of 1870 and 1882, but the historical process provides yet another reminder of the way in which, as Professor C.B. Macpherson pointed out, the idea of property is being gradually broadened to include a 'right to a kind of society or set of power relations which will enable the individual to live a fully human life.' Indeed, in an older and more enlightened property philosophy which lies deeply embedded in Anglo-American political thought, the concept of 'property' was always accounted as inclusive of a person's 'life, liberty and estate'. This Lockean articulation of the coalescence of property and human right was to have energising -- even revolutionary consequences. For James Madison in 1792, just 'as a man is said to have a right to his property, he may be equally said to have a property in his rights.' By that stage, of course, the American colonists, in active assertion of 'certain unalienable rights', had just thrown off the yoke of British rule and, equally important, had altered the Grundnorm of a large part of a continent's land law.

---

46 The married woman's persona at common law was 'incorporated and consolidated into that of the husband ... her baron, or lord' (Blackstone, Commentaries, Vol 1, p 430). See Gray, 'Property in Common Law Systems', in G.E. van Maanen and A.J. van der Walt (ed), Property Law on the Threshold of the 21st Century (MAKLU, Antwerp, 1996), pp 238-40. It is remarkable that the full legal capacity of the married woman was finally recognised in England only in the Law Reform (Married Women and Tortfeasors) Act 1935.

47 Williams & Glyns' Bank Ltd v Boland [1979] Ch 312 at 332C.


49 John Locke, Two Treatises of Government (2nd critical edn by P. Laslett, Cambridge 1967), The Second Treatise, s L23 (p 368).

50 After the close of the Revolutionary War the land law system of the former colonies became 'alloidial' (see Stevens v City of Salisbury, 214 A2d 775 at 778 (1965); City of Annapolis v Waterman, 745 A2d 1000 at 1006 (Md !000)).
2.3.2 Regional Perspective

In Mali, customary law and statutory land tenure systems continue to exist alongside one another. In rural areas such as those in which SUR1M will work, customary systems still take precedence in spite of land tenure reforms and decentralization efforts. In Niger, for instance, the Rural Code is being only marginally implemented, two decades after its introduction. Where it is implemented, it has uncovered latent conflicts without providing an accessible and effective dispute-resolution forum, thus reducing tenure security. In this context, reconciling the two systems through the formalization of local customary rules surrounding resource ownership and use (through AFPRs and Rural Land Charters in Burkina Faso, for instance) is a clear priority for development interventions. While this should recognize the wide diversity of different forms of customary tenure rather than simply seeking the rapid absorption of local rights into a framework of private ownership (Delville, 2010) and be made as simple and accessible as possible, registration of customary systems should be careful not to formalize discriminatory practices that disadvantage vulnerable groups, including women and pastoralists. In cases of new legislation regarding means of registering customary rights, such as Burkina Faso’s new Rural Land Tenure law, there is a need to raise awareness on legislative provisions and to support local institutions in implementation. Support is also needed to strengthening local conflict resolution systems, a necessary precursor to negotiations over customary land and resource access.

Decentralization efforts in all three countries have created opportunities, if not always the means, for effective local resource management. There is a critical need to build the capacity of relevant institutions including those at the national, local, village, and community levels to resolve conflicts, register customary rights, issue land titles, and manage local resources. Support to local government offices in realizing revenues from land management could strengthen their ability to sustain their work and improve public services. Strong community-based natural resource management can play an important role in disaster risk reduction and climate change adaptation. The intersection of new and tenure laws and policies, coupled with increasingly decentralized land
management, have created institutional frameworks whereby shifting land uses can be more effectively planned or managed.

The experiences of women-focused land tenure interventions in the Sahel illustrate both the pressing need for change and the imperative for patient, well-designed development projects that take into account deep-rooted cultural sensitivities. The Alatona project in Mali offers the clearest example of how this balance can be struck, using innovative measures to improve the chances of women securing land tenure. The project looked for ways to allocate land rights to women that would be readily acceptable in the society; sought to develop approaches to allocating land that would encourage, but not force, inclusion of women; and looked for multiple avenues for allocating land rights to women so that if one failed, others would be available. The GRAF case from Burkina Faso, meanwhile, demonstrates the importance of local dialogues on women’s rights. Similarly, a Landesa study of CRS gender approaches to agriculture in Burkina Faso highlighted the need to clarify women’s rights to land at the community level through participatory dialogues. These types of dialogue-driven approaches should guide any proposed intervention in the Sahel Region, where the strong influence of culture and tradition makes this especially challenging. Allocating plots to women’s associations for small-scale livelihood projects, building awareness of the importance of improving women’s rights to land through local dialogues, encouraging joint titling of household land, and strengthening systems for securing land titles for women are good examples of these approaches.

2.3.3 Uganda

The 1998 Land Act has provisions that have potential impact with regard to gender equity in land rights. Section 40 requires that before any transaction takes place regarding land on which a family lives and/or provides its subsistence, the spouse and adult dependent children should be consulted. The Land Act, in accordance with the

---

1 Jones-Casey, 2011
1995 Constitution, also stipulates\textsuperscript{52} that any customary practices that deny women or children use of land are null and void. The local Land Committees set up in each parish are to ensure that these provisions are carried out and that vulnerable groups are protected. What was perhaps the most disappointing event with regard to gender rights in the new Land Law was the concept of co-ownership of marital property. During the drafting of the law, the concept of co-ownership of property acquired during marriage was introduced, hotly debated, and finally approved. The article on co-ownership, however, was dropped from the bill during the final voting process by mis-use of a parliamentary procedure\textsuperscript{53}. Other provisions in the Land Act would appear to discriminate against women and other holders of secondary land rights. In Section 23, the family is considered the legal owner of customary land and is represented by the head of the family. Since in most cases, the family head is a man, men have been given the legal power to make all transactions with respect to family land, including the option of converting it to freehold, making this person the owner of the property. Unfortunately, the law did not provide that all family members be written in any transaction on customary land.

\textsuperscript{52} Section 28
\textsuperscript{53} Matembe 2002
CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK ON LAND AND HUMAN RIGHTS IN UGANDA

3.0 Introduction
Uganda's formal land tenure system was initially established by the British during that country's colonial era. Since independence (1962), Uganda has reformed its formal legislation regarding property rights several times. The most recent is the 1998 Land Act. In addition to modifications in formal law, other processes have influenced land tenure systems, and consequently land markets, in Uganda: increasing population density and commercial agriculture.

3.1 Pre-Colonial Land Tenure
Before colonial rule, land tenure in what is now the country of Uganda consisted of a number of customary tenure systems, both sedentary and pastoralist. In general, customary tenure in sedentary agricultural communities revolved around kings and chiefs who allocated land to clans and community households according to customary norms and practices. Every person and household had the right to access sufficient land for their subsistence; this right came either from the lineage or clan head or from the chief to whom the person pledged allegiance. Transfer (rent, sell, and sometimes inheritance) rights were not granted—land not used or wanted reverted to the land or chief. Since most lineages in Uganda are matrilineal, when land was handed down within a family, it passed from father to son. In the semi-arid regions of the country, where transhumance was practiced, access to land by clans and households was generally based on agreements with other clans that permitted the movement of households and cattle during the year to areas where pasture and water were available. Thus, households did not seek access to a piece of land in particular community or...
lineage on which to build shelter and plant crops, but rather access to lands along their traditional cattle corridor.

3.2 Colonial Impact on Land Tenure
During the colonial period, occupation of land by non-Africans was kept at relatively low levels, compared with other African countries such as its neighbor Kenya and South Africa. Consequently, freehold properties held by non-Africans were not as common as in other African countries, and customary tenure systems were permitted to continue functioning. This is not to say that they were not affected by colonial rule. The one major, and best known, intervention by the British was the introduction in 1900 of formalized individual private property ownership in the central region of Uganda (Buganda)—this region was not only one of the most important, it also contains some of the best agricultural land. Thus, the impact of the Uganda Agreement was significant in that it set in motion, firmly and steadily, the conversion within Ugandan communities of customary property rights towards individualized property rights (West 1972: 27). Similar interventions were carried out in other regions of the country such as instituting restricted freeholds1 for local elites in Ankole and Toro, and the establishment of leasehold estates on Crown (public) land. Often these public land leaseholds were given to elites even though communities were already occupying these lands.

3.2.1 Mailo Land
As a result of the Uganda Agreement, the land tenure system in the Buganda area was formally transformed from a customary system based on a chief’s domain over land and community members’ rights to agricultural land, to a system approaching freehold tenure with one legislative decree, the Uganda Agreement of March 1990. The colonial government conferred to chiefs and other notable personages individual ownership rights to large extensions of land called mailo estates. Land not held under mailo or established customary tenure became Crown (public) land. Thus approximately half of Buganda (more than 8,000 square miles) became formally privatized. These mailo
estates were already settled by smallholders under customary tenure; however, their un
fructory rights were not legally recognized. Mailo owners permitted their peasants to
retain possession of the land (called kibanja land) they were occupying. Mailo tenure in
effect converted them from customary un fructory holders into tenants on private
property. Other persons who wanted to settle on mailo land had to approach the mailo
owner and get permission to occupy a specific piece of land. Initially, most tenants paid
little or no rent and labor services, particularly on large estates. Mailo owners were
considered lords of their area and their tenants were their servants. Although mailo
tenants were legally tenants, these families continued to feel that they held customary
rights to land; although they paid rent to the landowner, they considered themselves
permanent holders of their land. Subsequent legislation in effect acknowledged these
rights by making it very difficult to evict tenants. The result was a confusion of who
holds what rights. Formally, landowners have legal private ownership rights to the land,
but their tenants felt they have permanent un fructory rights to the land they held even
though they paid rent. When the mailo owner sold land, for example, it was understood
that its tenants remained on the land.

With the commercialization of agriculture and growth of a market economy, the value
of land as an asset motivated some mailo owners to begin charging high cash rents
from their tenants. In the late 1920s, legislation was passed to protect these tenants
from arbitrary eviction and specified the type and amounts of rent to be paid. It also
laid out the rights and conditions of both tenant and landowner. Rent consisted of two
types: busuulu and envujjo (in the literature, these are often called taxes). Busuulu rent
was for the land itself and was a set amount for each kibanja held regardless of size;
envujjo is paid on the production of cash crops (cotton, coffee, and maize) and certain
other economic activities (such as beer production for sale). Envujjo consisted of a set
cash payment per unit of production. With regards to tenants’ rights, legislation allowed
eviction for a minimum of causes (such as failure to pay rent for three years) and only
by court order, giving tenants permanent and secure un fructory rights to the land they
held. These rights have been inheritable; tenants, however, could not transfer the
rentancy nor sell the land to another person without consent of the landowner. Thus,
while tenants were legally operating on private property, actual practice was based on customary norms, and ‘rents’ did not actually reflect the asset value of land. Since law established the amounts of both these rental payments in the 1920s, over time their value eroded, eventually becoming quite small in real terms. Some landowners did not even bother to collect rents, particularly from poor farmers. Other landowners began to circumvent these limitations by not accepting new busuulu tenants, by granting short-term (several years) tenancies on a strictly sharecropping basis, by charging high initial premiums from new tenants, and charging extra fees for cash cropping.

3.2.2 Titling and Registration
Another major effort at privatizing land rights occurred in the late 1950s and 1960s. In 1955, the East Africa Royal Commission issued the Land Tenure Proposals recommending, among other proposals, that land ownership be privatized and individualized and that land market transactions be facilitated. As a result of these recommendations, a pilot land titling and registration program was initiated in Uganda in the Kigezi District in 1958. Land titling and registration was implemented in a number of districts. Because of administrative problems and disruptions brought about by the onset of independence, the program was not extended to the entire country.

3.3 Independence and State Ownership of Land
The Land Reform Decree of 1975 declared that all land belonging to the state, abolishing all other ownership rights including mailo, and repealing previous legislation, including legislation that protected kibanja tenants. Individuals occupying land, whether under customary or mailo tenure, could obtain long-term leases. Some major changes included no restriction on rents and greater flexibility for landowners to evict tenants. Some tenants banded together and successfully resisted the most abusive practices on the part of landowners (Opyene 1993). Rental arrangements in other parts of Uganda, such as in Bunyoro and Lango, are similar to the arrangements on mailo land in that tenants pay rents or have sharecropping arrangements with owners of relatively large
estates. A tenure structure to codify the rights that persons had to land under the new ownership model was never fully implemented, and mailo owners and tenants continued to operate in the semi-customary arrangements they were practicing previous to 1975. In the mid-1980s, Uganda realized that a new land law was needed to clarify and protect land rights. USAID supported research on de facto tenure systems and practices and provided assistance to policy makers interested in reforming land legislation. The next section will focus on land tenure systems and land markets in Uganda by synthesizing results from studies undertaken during the 1980s and 1990s. Many of these studies were supported by USAID.

3.4 Privatization and Land Markets
The land tenure situation in contemporary Uganda, as can be concluded from the previous section, is a mixture of customary (called kibanja), freehold, leasehold, and mailo tenure systems. While most of the country operates under customary tenure (some scholars estimate 75%3), studies have demonstrated that two features of the land market are operative in most of Uganda: individualization of land rights and land transactions. Central Uganda has the most active land market in the country. For that reason, a number of studies that examine land market operations and characteristics have been undertaken in that region. One of the features of Uganda's land market is that while land transactions between individuals are common, these transactions take into account certain customary rules. This is particularly true of rural and agricultural land. In other words, the buyer and seller are enter into a land transaction with the support and consent of their surrounding community. This acknowledgement of the social relations by buyer and seller is recognition that not only social endeavors but also economic ones are dependent on collaborative ties with support groups, be they a lineage, clan, community, or agricultural association (Heck 1996). The studies cited in this Country Brief provide valuable information on: (1) the types of rights that landholders on mailo and customary land enjoy, including transfer rights, (2) the effect of privatization and land market activities on equity; (3) the effects of the titling and
registration efforts of the late 1950s; (4) the effect of privatization in pastoralist areas; and (5) the impact of individualized property on tree coverage.

3.5 Contemporary Customary Tenure

Customary tenure in Uganda has persisted for a long time despite its neglect by the legal regime. In contemporary Uganda, rights to control, use and ownership of customary land are derived from being a member of a given community and are retained by fulfilling certain obligations in the community. These systems of land allocation and land transactions are important in determining equity, land administration, and dispute resolution mechanisms within customary tenure communities. Two general customary systems can be distinguished.

Under the communal land system, primarily found in northern Uganda, the household is the primary owner of the land and may include extended members of the family. Communal land in Uganda includes gardens and pastures, grazing areas, burial grounds and hunting areas commonly known as common property regimes. The common property regime is especially utilized by the pastoralist communities in northern Uganda and parts of the cattle corridor in the West. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan, or community. Under individual/family or clan customary tenure, emphasis is also placed on use rather than on ownership. Male elders are the custodians of customary land in most communities and determine distribution of the land. However the family rather than the community has more control in the land utilization, and individuals in the family are allocated land. Allocations are only made to male members of the household with very few exceptions.

In many places in Uganda customary land has tended to become more individualized and though not initially acceptable, incidents of sale are very high. In many ethnic groups, before a sale is made clan members and family have to be consulted. However the institution of customary land is weakening in many places, people are poorer, and sales, mostly distress sales, have increased.
3.6 The Land Act


- A good land tenure system should support agricultural development through the function of land market that permits those who have rights in land to voluntarily sell their land and for progressive framers to gain access to land.

- A good land tenure system should not force people off the land, particularly those who have no other way to earn a reasonable living or to survive. The land tenure system should protect people’s rights in land so they are not forced off the land before there are jobs available in the non-agricultural sector of the economy.

- A good land tenure system should be uniform throughout the country. With regard to customary tenure, the Land Act specifies that any person, family, or community holding land under customary tenure on former public land may acquire a certificate of customary ownership for that land. These certificates may be leased, mortgaged, and pledged in those communities that permit these practices. In addition, holders of customary ownership who want to use their land as a group can establish a common land association to manage and protect their interests in the communal land. In this way, communities that wish to continue to practice customary tenure, including pastoralist communities, are given legal recognition and are provided with the legal mechanism to do so. While the Constitution and the Land Act recognize customary tenure, it would appear that the objective of policy makers and legislators was to also facilitate individualization of land rights and the functioning of land markets. In this vein, the Land Act provides for the conversion of customary tenure land into freehold. This can be done in either of two ways: the person, family or community holding land under customary tenure can immediately register their land as freehold, or if they have a certificate of customary ownership, that certificate can later be converted into freehold tenure. Mwebaza (1999) acknowledges that the Land Act paves the way for converting customary tenure lands into private property, but whether this will actually happen depends not only on legislation but also on the culture and practices of
communities. For example, in semi-arid areas where pastureland and water is scarce, communal ownership of land is practiced and individual ownership is not permitted. It is felt that allowing individual ownership, with its exclusionary rights, would result in a relatively few number of persons controlling the fertile and watered areas needed for cattle grazing, leaving many families without access to these precious resources.

3.7 Gender Issues in The Land Act
The 1998 Land Act has provisions that have potential impact with regard to gender equity in land rights. Section 40 requires that before any transaction takes place regarding land on which a family lives and/or provides its subsistence, the spouse and adult dependent children should be consulted. The Land Act, in accordance with the 1995 Constitution, also stipulates (Section 28) that any customary practices that deny women or children use of land are null and void. The local Land Committees set up in each parish are to ensure that these provisions are carried out and that vulnerable groups are protected. What was perhaps the most disappointing event with regard to gender rights in the new Land Law was the concept of co-ownership of marital property. During the drafting of the law, the concept of co-ownership of property acquired during marriage was introduced, hotly debated, and finally approved. The article on co-ownership, however, was dropped from the bill during the final voting process by mis-use of a parliamentary procedure (Matembe 2002). Other provisions in the Land Act would appear to discriminate against women and other holders of secondary land rights. In Section 23, the family is considered the legal owner of customary land and is represented by the head of the family. Since in most cases, the family head is a man, men have been given the legal power to make all transactions with respect to family land, including the option of converting it to freehold, making this person the owner of the property. Unfortunately, the law did not provide that all family members be written in any transaction on customary land.
CHAPTER FOUR

FINDINGS

4.1 Obstacles to enjoyment of land rights
According to the Beijing Platform for Action, land is one of the important things for women’s livelihood and has an important link between women’s poverty and homelessness, inadequate housing, and lack of access to economic resources such as credit, land ownership and inheritance.\(^{54}\) Further, efforts have been made by the UN Commission on Human Rights to, among other things; urge States, including Uganda, to design and revise laws to ensure that women are accorded full and equal right to own land and other property, and the right to adequate housing; which includes the right to inheritance.\(^{55}\) Despite these efforts, however, there has not been much change in the status of women let alone children in accessing land rights and enjoying the same. This lack of improvement can be attributed to the obstacles discussed in the next sections below.

4.2 Ignorance of rights
Women’s and children’s ignorance of their land rights has a role to play in their continued discrimination in the accessing and enjoyment of land rights. The Uganda Constitution categorically states that all persons are equal before the law in all spheres including social and cultural life. However, historically, women’s access to land has been based on their status within the family; and it involves their right to use the land rather than actual ownership.\(^{56}\) Children, on the other hand have been subject to their mothers or guardians as the law generally does not acknowledge their ability to hold

---

\(^{54}\) Beijing Platform for Action (n 26 above) paras 47, 51 and 156.

\(^{55}\) Commission on Human Rights Resolution 2000/13. Women’s equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (2000) sec 5.

\(^{56}\) Iruonagbe (n 13 above) 2607.
property on their own. According to case studies conducted, relatives of orphans grab their land and property in rural areas; while in urban locations, orphans are more likely to suffer from losing private tenure plots. In light of the foregoing women and children do not know their rights, let alone which fore to turn to for redress. For instance, women and children are ignorant of which courts have jurisdiction over land matters and the possible available remedies. Access to such information would protect women and children from ignorance and abuse of their land rights, as well as empower them to claim for and fully realize their rights.

4.3. Weak institutions
Several institutions have been created to ensure protection of women’s and children’s rights. For instance, the judicial system was created in a bid to give life to laws that aim at guaranteeing women’s and children’s right to access and enjoy land rights, for instance the judicial system. However, despite efforts to have an effective and efficient system, the judiciary is plagued by its own problems and is, therefore, unable to extend its services closer to those it was intended to benefit. Issues such as distance of the courts as well as case backlog cripple its ability to perform. It is estimated that the judiciary has a case backlog of about 40000. As observed by the current Parliamentary Public Accounts Committee (PAC) Chairman, Nandala Mafabi, the backlog of cases pending in court are due to lack of human resource and the cases will continue to upsurge if the current judicial system is not restructured. This shows that the courts which are the main institution created to breathe life into laws and offer protection to women and children, whose land rights are being threatened and abused,

57 According to sec 27 of the Administrator General’s Act cap 157, court may appoint a father, mother of other suitable person to receive the share of a minor under a will or distribution of an estate.
59 AN Wandera ‘Case backlog blamed on lazy judicial officers’ http://www.monitor.co.ug/News/National/-/688334/915282/-/wykvul/-/index.html (accessed on 8 September 2010).
are in fact impotent. As such, the realization of land rights under these circumstances is farfetched.

4.4 Prevailing customs and practices

Custom is a very powerful force that has a deep bearing on women and children’s access to land. According to Tuyizere, cultural practices in most parts of Uganda hold women not as equal partners to their counterparts, but as subordinates. As such, traditionally, they are expected to fulfill the roles of mothers, housewives, family workers and agricultural laborers. Given that custom is deeply entrenched in most of Ugandan society today, irrespective of what the legal provisions are, it is customary practices that determine whether a woman or child will actually have access to land. In light of this, even if the law provides for women’s or children’s ownership of land, customary practices may prevent the claim over any such right. Much as ownership of land is statutorily allowed, she may be discouraged from asserting this right. An unmarried woman may use her family’s land (usually held in her father’s name) but may claim no permanent use or ownership rights to the land. The same applies to children as in the African setting, they do not have a voice. Upon divorce or death of their husbands, women can be denied property rights in their land and homes. Children, on the other hand, remain at the mercy of guardians appointed by the clan to take over property left by their deceased parents.

Further, the concept of co-ownership of land is not recognized under customary law. This means that on the loss of a spouse or dissolution of marriage, land held under customary tenure reverts back to the clan while those under other tenures will be claimed by relatives. Such customary practices are, however, void, as they are contrary to article 2(2) of the Uganda Constitution which upholds the Constitution as the

---

61. AP Tuyizere Gender and Development: The Role of religion and Culture in Iruonagbe (n 13 above) 2610.
62. Tuyizere in Iruonagbe (n 13 above) 2610.
64. Rebouche (n 36 above) 244.
65. Rebouche (n 36 above) 244.
supreme law of the land. As such, any custom that is inconsistent with the Constitution is void to the extent of the inconsistency.

4.5 Corruption
Corruption is a challenge that plagues almost every institution in Uganda including the Ministry of Lands, Housing and Urban Development under whose ambit land matters fall. According to Transparency International, Uganda is ranked among the countries most affected by bribes and scores the third-highest among 69 countries in Asia, America, the Middle East, Europe and Africa that were sampled. It is as a result of corruption that women and children are further rendered helpless when it comes to claiming titled land. As observed by the President of the Republic of Uganda, the Land Registry officials in the Lands Ministry are accused of fleecing people to process their land titles and in other instances have been known to issue false titles after getting bribes. By the time the fraud is realised, it is often too late for the women who are the rightful owners to reclaim their land as it involves a long and tedious court process, let alone an expensive process.

4.6 Low literacy levels
Low literacy levels are another factor that hamper the ability of women to fully realize their rights to land. With no empowerment, it is impossible for women to effectively follow up on land disputes as well as change of ownership in case of inheritance. Illiteracy and low levels of education limit the ability of women to push for access to and actual enjoyment of their land rights as well their children’s. Literacy is necessary for one to be able to understand land rights as well as how the judicial system can be used to protect the same. Unfortunately, most women live in rural areas and have not advanced in education. It is estimated that about half of the women in sub-Saharan

---

57 AN Wandera ‘Museveni tells cultural leaders to keep off land disputes’ accessed from http://www.monitor.co.ug/News/National/-/688334/925836/-/x07khw/-/index.html (accessed on 8 September).
Africa are illiterate. This alone, undermines any attempts of pushing for realization of women’s rights to land in rural areas. To make matters worse, culture is deeply engrained in women’s minds that they would find it difficult to try and change the status quo.
CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction
The debate regarding land tenure issues in central Uganda during the 20th century not only centered on conflicts between mailo owners and tenants. There has also been tension between freehold (individualized) ownership and customary tenure. Clan and lineage leaders have retained some authority over property rights even as individualization of land rights and the land market develop, such as approving land rentals and sales as well as inheritances. On the other hand, land owners who feel that they have full freehold (individualized private property) rights resist these customary tenure practices. In addition, formal law, until the 1998 Land Act, did not recognize customary tenure. Most studies undertaken during the last two decades have found individualized land rights and market activities in both freehold tenure (such as mailo) and customary tenure communities.

5.1 Conclusion
This finding suggests that customary tenure systems have been responding to and adjusting their norms and practices to accommodate changes such as increasing population density and development of commercial agriculture. What is interesting is that some customary practices continue in even in freehold areas. In part, this appears to respond to the need to provide access to some land and/or resources to all who need it. It also would seem to reflect the reality that even commercial activities need the assistance of others to be successful. A number of commonalities were found across the different studies cited in this brief. Perhaps the most interesting one is that significant differences in agricultural productivity were not found between tenure systems: nearly all farmers employ low-input farming systems. The use of purchased inputs and long-term investments is very low across geographic regions and (customary, mailo,
leasehold, and freehold) tenure systems. Although one could argue that tenure rights are ambiguous in Uganda because of changing legislation and overlapping tenure systems, the more compelling reason appears to be factor market and information constraints: poor input markets, lack of rural credit, poor market information.

Public awareness of laws, this should be done by translating the final version of the policy into all the Uganda’s indigenous languages, train local and community leaders in the implementation of the policy, create a platform for professional organizations to discuss changes proposed in the land policy and to identify appropriate strategies for the programmed action under it, solicit private sector resources contribution for the implementation of the policy, facilitate the organizations of local and community workshops and seminars on the policy. From the interview of the lands minister, Daudi Migereko\textsuperscript{68} when he was asked what are his major priority in the next financial year and answered “to sensitize people about the new national land policy, and on the issue of land evictions which continued even after the passing of the Land Amendment Act 2010, he replied “we have a plan to intensify the sensitization of people about the laws and about the relationship between the landlords and tenants, the ministry hope that these measures will solve land grabbing and land evictions, indeed that is the major solution, because public awareness and education on land rights is very low leading to suspicion and lack of confidence in the sector. The public needs to be made aware of the existing land laws and how best they can form a basis for their effective use of land within the legal boundaries. Women in rural areas are not aware of the laws that grant them rights to land ownership. This lack of information hinders women from enjoying their rights. The Uganda land law offers protection to women on paper but many of them have not benefited from the policies. Women in rural areas are still at the mercy of traditional legal systems that look to men as sole owners of property including land\textsuperscript{69}.

\textsuperscript{68} Sunday vision, June 9 2013 by Moses Mulondo
\textsuperscript{69}New vision November 4th 2010 page 9
Land reforms, in this sense, refer to transfer of ownership from the more powerful to the less powerful, such as from a relatively small number of wealthy owners with extensive land holding to individual ownership by those who work the land. Such transfers of ownership may be with or without compensation which may vary from token amounts to the full value of the land. The common characteristic of all land reforms however is modification or replacement of existing institutional arrangements governing possession and use of land. Thus, while land reform may be radical in nature, such as regulatory reforms aimed at improving land administration. Nonetheless, any revision or reform of a Country’s land laws can still be an intensely political process, as reforming land policies serves to change relationship within and between communities, as well as between communities and state

The need for regional and international policy framework, Uganda is expected to demonstrate international conventions and regional agreements were is a signatory that have a direct relevance to land, through national legislation to ensure the commitments are implemented at national level, because there is a lot of laxity in domestication international conventions into law in Uganda.

Ensure adequate and effective institutional coordination. The success of implementation of the various land policies will depend on the effective co-ordination and contributions of a wide range of institutional stakeholders including non-government organizations, and the commitment of a large range of key factors such as efficiency of the district land boards and the Ministry of land water and environment. This will ultimately lead to effective use of land in Uganda.

There is need to introduce technological means of registering titles to avoid bureaucracies that render the whole system ineffective and dormant. By introducing technological measures, land related issues will be dealt with fast hence efficiency. This will lead to effective management of land use in Uganda.

There is need to liberalize the land tenure and to facilitate the creation of markets in land. This is because land does more than simply provide a shelter and
means of livelihood; it is also to be understood as a main vehicle for investing and accumulating wealth and transferring it between generations. Land which is unused because it has not been brought into the legal system by registration and titling is described as a dead asset. Effective use of land will only be realized with the liberalization of the dead asset.

There is need for a clear and comprehensive National Land Policy to guide the provisions in the land law, streamline the objectives and guard against contradictions and inconsistencies that cannot be underestimated. A Comprehensive National Land Policy has to be put in place and very clear to the public, the policy should address all the multiple, economic, social, ecological, cultural and political functions attributed to land tenures, with the understanding that they are to be performed in a sustainable and equitable manner and that there should be a harmony among them. There should be a clear cut distinction between bona fide and lawful occupants with their rights connected there to. A National Land Policy is essential for the sustainable management of land resources, since it is known that the majority of Ugandans are dependent on land for employment and survival. It is crucial for an integrated and effective system responding to a wide variety of intra-sectorial variables between the land sector and other productive sectors in the economy. Without a Comprehensive Policy, it is a challenge to confront the fact that land is a factor of production influenced by and interacting with socio-cultural processes as well as macro-level policy processes and strategies, whose strategic management is important for significant and sustainable economic growth and social transformation. The policy would also guide in the prioritization of objectives of the Land Act as well as their implementation. This would lead to better and effective land use in Uganda.

There is need to ensure acceptance of the law by the public. The Land Act has been recently amended by the Land Act Amendment of 2010. This Amendment was received with suspicion, apathy, fear and outright rejection in some areas of the country. This was more evident in Buganda where the majority saw this as utter disregard of their right to property since now the lawful and bonafide occupants can
only be evicted after a court order\textsuperscript{71}. The majority of Mailo owners are not happy about the new status given to the bonafide occupants by the law. It is likely that some groups of primary stakeholders whose interests are threatened by the legislation may try to overturn the legislation or parts of it, by tabling amendments in parliament, recourse to the Constitutional Court, or by causing civil disturbances. Ensuring acceptance of the law through articulating its substantial importance and bringing out the intention of the draftsperson well will help harmonize the situation thus leading to effective use of land in our contemporary Uganda.

\textit{There is need for a well-paid, motivated and transparent civil service.} This will be a tool to fight corruption that has beleaguered our land policy implementing institutions. The successful implementation requires a well-paid, motivated and transparent civil service. Currently the personnel lack tools and a living wage which factors seriously erode the capacity to deliver efficient services. After putting in place a well-paid, motivated and transparent civil service this will improve the output of the various stakeholders in land related matters thus leading to effective management of land use in Uganda.

\textit{There is need to create a uniform tenure system} that secures tenure rights of individuals this is because at the moment, Ugandans find it hard to use what they have to the best advantage because they lack secure property rights. Very few can prove that they own their land because they don’t have title deeds. This is important because without a reliable system for ascertaining who owns what, land cannot be used as collateral. And the best tenure system to serve this is definitely Freehold system, which will minimize tribalism, encourage nationalism among Ugandans and put the country on a better footing towards sustainable economic growth\textsuperscript{72} which has to come with better management of land since land forms the backbone of our economy.

\textsuperscript{71}Section 32A(1) Land Amendment Act 2010
\textsuperscript{72}Land Reform in Uganda page 205
BIBLIOGRAPHY

Adoko, Judy. Did the constitution mean to legalise customary tenure or to lay foundation for the demise of customary tenure? Oxford: Oxfam, 1997. 5 p.


Belshaw, Deryke, Peter Lawrence, and Michael Hubbard. “A decade of structural adjustment in Uganda: agricultural tradables, rural poverty and macroeconomic


Gombya-Ssembajjwe, William S., and Abwoli Y. Banana. Property rights and the sustainability of forests in Uganda: (assessing conditions of tropical forests, a case study of mango forests in Uganda).


