

THE ANALYSIS OF THE LAND TENURE SYSTEM IN UGANDA

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REG. NO: DIL/54194/151/DU

**A RESEARCH PROPOSAL PRESENTED TO THE SCHOOL OF LAW,
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF DIPLOMA IN LAW
OF KAMPALA INTERNATIONAL
UNIVERSITY**

OCTOBER, 2017

DECLARATION

I Tabingwa Diana , hereby declare that the work herein is original with exception of sources of information which are duly acknowledged and referenced and I declare that it has never been presented to any institution of higher learning for any award.

Signed:.....

TABINGWA DIANA


APPROVAL

This is to certify that this research project has been under our supervision and is now ready for submission for examination.

Submitted with our consent;

Principle Supervisor

WAHAB KASSIM

Signed.....

Date:

DEDICATION

I dedicate this work to the Almighty God for his continuous blessings and guidance that made it possible for me to attain this level. It also goes to my beloved parent, Mrs. Asiimwe Florence for standing by me seeing that I progress in life. I also dedicate it to my sisters, Ataliba Cissy and my brother Muwanguzi and all my family members for their support and encouragement during this research, my final dedication goes to all friends at KIU for their endless support.

ACRONYMS AND ABBREVIATIONS

BLB	Buganda Land Board
CEDAW	Convention Against All Forms Of Discrimination Against Women
DFID	Department for International Development
GLTN	Global Land Tool Network
IDPs	Internally Displaced Persons
KCCA	Kampala Capital City Authority Act
LCI	Local Council 1
LSSP	Land Sector Strategic Plan
NGOs	Non Governmental Organizations
NPA	National Planning Authority
PSCP	Private Sector Competitiveness Project
UK	United Kingdom
UN	United Nations
UNHS	Uganda National Household Survey

TABLE OF CONTENTS

DECLARATION	i
APPROVAL	ii
DEDICATION	iii
ACKNOWLEDGMENT	iv
ACRONYMS AND ABBREVIATIONS	v
ABSTRACT.....	viii
CHAPTER ONE	1
INTRODUCTION AND BACKGROUND OF THE STUDY	1
1.0 Introduction.....	1
1.1 Background	1
1.2 Statement of the Problem	4
1.3 Objectives	4
1.3.1 General objectives	4
1.3.2 Specific Objectives	4
1.4. RESEARCH QUESTIONS.....	5
1.5 Significance of the Study.	5
1.6.0 Methodology/Data collection Method	5
1.7 LITERATURE REVIEW	6
CHAPTER TWO	8
2.0 Land Tenure and Tenure Security In Uganda.....	8
2.1 The Land Tenure Systems in Uganda	11
2.1.1 Customary Land Tenure System	12
2.1.2 Freehold Land Tenure System.....	14
2.1.3 Mailo Land Tenure System	14
2.1.4 Leasehold Land Tenure System.....	15
CHAPTER THREE.....	18
3.0 Land Administration and its Implementation Land Administration	18
3.1 Land Administration from a Gender Perspective	19
CHAPTER FOUR.....	27

4.0	Tenure Security Differences between Tenure Systems.....	27
4.1	Dispute Resolution and its Implementation.....	32
CHAPTER FIVE.....		37
CONCLUSION AND RECOMMENDATIONS.....		37
5.0	CONCLUSION	37
RECOMMENDATIONS.....		38
REFERENCES.....		39

ABSTRACT

Kampala exhibits informal urban expansion typical of cities in Sub Saharan Africa. Of note about Kampala's urbanization process is the extent of informality estimated to comprise about 60% of all urban developments. Though there exists a diversity of circumstances and factors that contribute to informal urban developments, this study focused on land tenure considered key in land development because being the rules underlying a people's relation to land, rules of tenure define rights to land, how these rights are accessed and even influence developments put on land depending on the security accorded to land rights. This study assessed the effect rules of tenure have on urban developments in Kampala by examining land access, land subdivision and land development processes (considered the three stages where informality can occur) in the land and property development process.

Qualitative and quantitative methods including key informant interviews, household interviews, literature review, observation, in-depth interviews and case studies were applied in data collection. Research findings show that land in Kampala is held under the Mailo, Leasehold, Freehold and Customary tenure systems with Maio being the dominant land tenure system and Customary tenure being negligible. A defining characteristic of land holding in Kampala is the separation of land ownership from the ownership of developments on land, designed to accommodate rights of occupants (called Kibanja occupants) who own developments on land under the Mailo and Freehold tenure systems. Rights ascribed to occupants and processes proposed to administer these rights by The Land Act 1998 have never been realised because they are contested by the registered land owners. This emerged as the cause of informal land access under the Mailo and Freehold tenure systems. Informality in land access is perpetuated in land subdivision and land development processes as the KCCA only approves subdivisions and developments on land with formal land ownership documents, in Kampala comprised of land under Leasehold tenure hut which constitutes less than 30% of overall land holding.

To address informality in land access, land subdivision and land development processes under the Maio and Freehold tenure systems, the study identified positive aspects of the current informal structure applied in administering Kibanja rights especially the role played by Local Councils in registering, demarcating and adjudicating Kibanja rights which could form the basis on which the KCCA could build on (through formulation of subdivision and development regulations responsive to Kibanja rights and incremental implementation of planning standards on land under Kabanja occupancy) to achieve planned urban developments in spite of persisting conflicting tenure relations. These proposals made in view of the considerable time and financial resources it would take to resolve the disagreements over occupant registered owner rights as currently constituted and in light of the rising demand for land in Kampala caused by high population growth.

Keywords: land tenure; land access; land subdivision; land development

CHAPTER ONE

INTRODUCTION AND BACKGROUND OF THE STUDY

1.0 Introduction

Secure land tenure and property rights are fundamental to shelter and livelihoods, and for the realization of human rights, poverty reduction, food security, economic prosperity and sustainable development. Secure land rights are also critical in achieving the various new priorities and thematic areas of UN-Habitat including urban legislation and governance, urban planning and design and urban economy and job creation, amongst others.¹ Likewise, access to land and security of tenure are prerequisites for providing shelter and for the realization of food security and sustainable rural and urban development, in particular in the developing world. Yet, in most countries of the South, life in both rural and urban areas is marked by widespread and pervasive land tenure insecurity. In most developing countries over 70% of the land falls outside any formal land register recording the land rights of its holders.² This has profound, negative consequences for a large proportion of the world's population, presenting enormous challenges and opportunities to governments, citizens, and the many agencies and bodies involved in land, poverty alleviation, food security and development. It also impacts land management in regard to food security, city, water and environmental management and sustainable development in general.³

1.1 Background

Uganda is a land locked country astride the equator and covers a total area of 236, 000 square kilometers of which 194,000 square kilometers is dry land and the rest being either open water or permanent swamp. Uganda has a population of over 30 million people out of which more than 80% of the population are 11 resident in rural areas and derive their livelihood directly from

¹Dr. Liz Wily, May 1998: A further note on: Customary Land Tenure and the Land Bill, 9

² P Larmour, 'Policy Transfer and Reversal: Customary Land Registration from Africa to Melanesia' (2002) 22(2) *Policy Administration and Development* 151.

³ Principles of a National Land Policy framework for Uganda: Prepared for Uganda Land alliance by Prof. H.W. Okoth-Ogendo, Jan, 2002, 23

⁴http://www.unhabitat.org/downloads/docs/8502_98906_GLTN_Midterm_assessment.pdf and

agriculture that is completely land based. Population growth rate is 3.23%⁵ and this is one of the highest in the world. The population is unevenly distributed in the country with some districts in the south west (Kabale, Kisoro etc) and East (Mbale area) with population densities as high as 350 persons per square kilometers while the population density in some areas like Acholi land and Karamojong sub-region population is less than 70 persons per square Kilometer⁶. In the locations with high population densities and in locations around big urban areas, there is increasing scarcity of land. Even in relatively rural locations, good quality arable land and common pool resources are becoming more valuable due to greater market engagement, changes in production systems, population growth, migration and environment changes.⁷ The legal and policy framework for land in Uganda is complex. Uganda law recognizes four categories of land tenure: customary, freehold, mailo (similar to freehold, but subject to the rights of the occupiers) and leasehold. The land policy envisages to also categorize land in private, community, public and government land. In Uganda, 75 to 80 per cent of land is under customary ownership, combined with largely malfunctioning Ugandan land administration institutions, this limits citizens and investors to fully utilize one of Uganda's most valuable assets. Though a juxtaposition of customary and statutory tenure systems exist in most rural areas of Africa, and as such does not necessarily hamper investments, this situation frustrates the growth of the Ugandan economy, particularly in agriculture, because of lack of clear rules and regulations and enforcement by institutions. The GLTN (Global Land Tool Network) tools are designed in a way that can assist the government and stakeholders to address some of these issues.

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. (For convenience, "land" is used here to include other natural resources such as water and trees.) Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and

⁵ UN-Habitat, "Global Land Tool Network Phase 2: Secure Land and Property Rights for All" (as amended July 2012).

⁶ Rose Mwebaza; Integrating Statutory and Customary Tenure systems in Policy and Legislation: The Uganda Case, Workshop on Land Tenure Policy in African Nations Berkkskshire England, Feb, 1999,7

⁷ J. T Mugambwa, H A Amankwah, and C E P Haynes, *Commercial and Business Organisations Law in Papua New Guinea* (2007) 188.

transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.⁸

Land tenure is an important part of social, political and economic structures. It is multi-dimensional, bringing into play social, technical, economic, institutional, legal and political aspects that are often ignored but must be taken into account. Land tenure relationships may be well-defined and enforceable in a formal court of law or through customary structures in a community. Alternatively, they may be relatively poorly defined with ambiguities open to exploitation.⁹

There are four types of land tenure systems recognised by the Constitution of Uganda; Customary, Mailo, freehold and lease hold. The Land Act 1998 defines 'freehold tenure' as a tenure that derives its legality from the Constitution and the written law. Freehold tenure may involve either a grant of land in perpetuity, or for a lesser specified time period. The Act specifies that the holder of land in freehold has full power of ownership of it. This means that he or she may use it for any lawful purpose and sell, rent, lease, dispose of it by will or transact it in any other way as he or she sees fit. Only citizens of Uganda are entitled to own land under freehold tenure. Non-citizens may lease it for a period up to 99 years. Leasehold tenure is a form of tenure whereby one party grants to another the right to exclusive possession of land for a specified period, usually in exchange for the payment of rent. Any owner of land in Uganda – whether through freehold,¹⁰ Mailo or customary tenure – may grant a lease to another person. In practice, much of the land that is leased was previously owned by government bodies, particularly the Land Commission and the District Land Boards, and these tend to impose some development conditions on the land's subsequent use. The Land Act 1998 treats Mailo tenure almost identically to freehold tenure. Registered land can be held in perpetuity and a Mailo owner is entitled to enjoy all the powers of a freehold owner. The only significant difference is that Mailo owners should not use these powers against the interests of customary tenants, bona fide or lawful occupants. This provision was introduced due to concern at the possible mass

⁸Prosterman, R. & Riedinger, J. 1987. Land reform and democratic development. Baltimore, Johns Hopkins University Press.

⁹Herrera, A. 2000. New approaches to land reform. Rome.

¹⁰ Shelter and Settelements:Uganda Human Settlements Friday,August 18,2017

eviction of thousands of people who were occupying Mailo land, as customary tenants or squatters, at the time when the Act was passed¹¹

1.2 Statement of the Problem

Despite obstacles posed by a post colonial legacy of neglect at all levels, Uganda has been working strategically to overcome many of the obstacles constraining the land sector by undertaking to implement a comprehensive Land Sector Strategic Plan (LSSP). At the core of the LSSP is a search for greater efficiency in a decentralized land administration system and the desire to improve market access and related benefits in Uganda. The first major initiative to implement the LSSP is a pragmatic revision of the existing land policy environment and the drafting of a new National Land Policy. This process which started in 2004 is currently nearing completion. The exercise has not only provided a forum for discussing issues pertaining to land rights, but is attempting to shift policy emphasis towards land access and development. The second motivation derives from the Government's resolve to modernize the land administration infrastructure by supporting the development of a parcel based land information system through the Land Component of the Second Private Sector Competitiveness Project (PSCP II). Initiated in 2006 with funding from the World Bank, this project is designed to improve access to land and real estate through secure property rights, backed by reliable land information and permitting processes. This paper draws extensively from these two ongoing LSSP events to identify and evaluate measures to improve land access in Uganda.

1.3 Objectives

1.3.1 General objectives

The objective of this study is to analyze land tenure system in Uganda.

1.3.2 Specific Objectives

1. To analyze Land tenure and tenure security in Uganda.
2. To analyze Land administration and its Implementation in Uganda.
3. To analyze Land tenure Security system in Uganda.

¹¹Land tenure and rural development. UNHABITAT

1.4. RESEARCH QUESTIONS

1. How are land tenure system practiced in Uganda?
2. How is Land tenure and tenure security practiced in Uganda?
3. How is Land administration and its Implementation practiced in Uganda?
4. How is land tenure security practiced in Uganda?

1.5 Significance of the Study.

This study is very important especially to developing country like Uganda land tenure system is, in response to concerns for food security and poverty alleviation, development agencies and organizations are introducing strategies that help to build assets and promote the self-reliance of poor people and communities. Interventions include helping poor people protect and enhance their natural resource base, improving access to agricultural land through resettlement schemes, and ensuring food security of the vulnerable, including women, minorities and indigenous groups. In many cases, responses to concerns of environmental sustainability, social conflicts, and food security of the vulnerable are affected by land tenure and have an impact on land tenure. Failure to consider land tenure implications at the beginning of an intervention is likely to result in unanticipated outcomes and may lead to it not generating an improvement. In some cases it may even worsen the situation, for example by inadvertently dispossessing people of their rights to land. Situations of this kind have arisen, for example, when projects have resettled displaced people on land that was incorrectly identified as vacant. This study is also important as a requirement in partial fulfillment of the award of my diploma in law.

1.6.0 Methodology/Data collection Method

In conducting this research, qualitative data was used where both primary and secondary materials were used such as: reviewing books, journals articles and electronic materials to extract data

Various libraries be visited to find books relevant to this research. The libraries to visit include; Kampala International University The Iddi Bassajjabalaba Memorial Library, Makerere University Library, and Uganda Human Rights Commission Library, Kampala. These libraries have various Commission Reports that contain relevant data about, textbooks, research papers,

dissertations and case law reports which were relevant to this research especially for the theoretical part.

Internet materials were used to access information from various web sites like the Ministry Of Lands, Housing and Urban Development Service web site, Ministry of Finance, Planning and Economic Development websites of foreign jurisdictions. These sites contain various annual reports that contain up to date data about Land tenure system, Land use act and other Lands development programs in Uganda that would be otherwise hard to get directly.

1.7 LITERATURE REVIEW

Uganda's 1995 constitution has been hailed as being particularly gender sensitive and progressive and among the most female friendly in the world¹². It stipulates that women and men are equal and have equal rights and "specifically prohibits laws, cultures, customs, or traditions that violate the dignity, welfare, or interest of women"¹³. Moreover, as a signatory to the UN convention against all forms of discrimination against women, CEDAW, Uganda is committed to eliminating discriminatory practices based on gender¹⁴. The land act also contains provisions reinforcing the land rights of women, children and orphans. It is thus in line with similar reforms elsewhere in sub-Saharan Africa which have sought to eliminate discrimination during the last couple of decades. The general recognition of customary land rights also applies to women's rights to land. However, the act's simultaneous recognition of customary authorities may undermine these rights. Customary systems do not always take women's rights into account. Customary inheritance systems, for instance, often disadvantage women, as do practices of division of property during divorce.

The acts are like most other contemporary land reforms in sub-Saharan Africa, Uganda's land reform recognizes existing rights to land. The 1995 constitution and the 1998 land act recognize four different tenure categories: customary, freehold, mailo and leasehold. Public land owned by the government (gazetted reserves, including parks, forests, etc.) is not cited as a separate land tenure system. Unambiguous recent figures about the distribution of land by tenure types are

¹²Go Rugadya, (2009). Escalating Land Conflicts in Uganda. A Review of Evidence from Recent Studies and Surveys

¹³Roth, M., J. Cochrane & W. Kisamba-Mugerwa (1994). 'Tenure security, credit use, and farm investment in the Rujumbura pilot land registration scheme,

¹⁴Bruce & S. E. Migot-Adholla (eds), Searching for Land Tenure Security in Africa. Dubuque, Iowa: Kendall/Hunt: 169-198.

hard to get, about 95% of landowners in Uganda do not have land titles and their rights remain unregistered. Customary tenure is the predominant mode of access to land in Uganda. the 2010 statistical abstract from the ministry of lands, housing and urban development, basing itself on the 2002 Uganda population and housing census analytical report, claims that 68.6% of all households are on customary land, 18.6% on freehold, 9.2% on mailo and 3.6% on leasehold. deiningner and castagnini report that customary tenure accounts for 59% of while the below table from the 2010 national development plan, based on the 2002/3 Uganda national housing survey, claims that only about 45% of the land in Uganda is customarily held. Despite the confusing categorization of tenure where, for instance, freehold and mailo land often are grouped as one category. This grouping provides the most recent and probably most reliable data on the distribution of land in Uganda land tenure systems.

CHAPTER TWO

2.0 Land Tenure and Tenure Security In Uganda

The Legal Framework Uganda reformed its land tenure systems with the 1998 Land Act, which spelled out the inherent principles enshrined in the new Constitution of 1995. The passing of the Act was highly politicized¹⁵. It fed into ongoing processes of decentralization in the country¹⁶. Generally, the new legislation is seen as a big step forward after the 1975 Land Decree which had nationalized all land by declaring it public land, but did not provide much protection of the user rights of small-scale farmers¹⁷. The 1995 Constitution reverses the nationalization by stipulating that land belongs to the citizens of Uganda and shall be vested in them. The reform attempts to reconcile two objectives. On the one hand, like most other contemporary land reforms in Sub-Saharan Africa, it recognizes existing rights to land. For instance, the Constitution is the first document ever to recognize customary tenure, which is the predominant mode of access right in Uganda. Tenants' rights are also strengthened. The reform strengthens individuals' rights to land¹⁸ to the extent that, for instance, public infrastructure development has proved difficult and expensive, or has been blocked altogether, until the government invokes compulsory acquisitions that involve the Minister responsible for lands¹⁹. However, the fact that the government has retained possibilities, stemming from the 1975 Land Decree, to acquire land in the public interest has been criticized²⁰. Finally, the reform contains provisions to enhance the land rights of underprivileged groups; for instance, it prohibits discrimination against women's rights to land²¹. On the other hand, the reform provides the basis for formalizing and individualizing existing, customary rights to land and promoting the development of a land market. It also aims at streamlining tenure, transforming the different tenure systems into individualized freehold tenure, that is, fully individualized and registered rights to land²².

¹⁵This paper is based on information that was current at the time of the conference, December 2005.

¹⁶School of Law, Murdoch University.

¹⁷East African Royal Commission, 1953-1955: Report, Cmd. 9475 (EARC Report).

¹⁸Beyaraza 2004: 78. See also Rugadya 1999: 6; and Olanya 2011: 7

¹⁹See for example, Irving Gershenberg, 'Customary Land Tenure as a Constraint on Agricultural Development: A Re-evaluation' (1971) *East African Journal of Rural Development* 51.

²⁰Section 25, *Public Lands Act 1969*.

²¹Hunt 2004: 174

²²See S Obol-Ochola, Customary Land Tenure and the Economic Development of Uganda (LLM dissertation, University

Customary ownership rights and the rights of tenants are thus strengthened through the provisions which make it possible to obtain certificates of customary occupancy. These certificates can subsequently be upgraded to freehold titles. Recently, this principle has been spelled out even more clearly in the Draft National Land Policy of 2011, which states that “public policy regards freehold as the property regime of the future”²³. A land fund has been set up to facilitate the process. Initially it was proposed to buy out absentee landowners in Kibaale District, but it ended up having a nationwide coverage with the purpose of assisting disadvantaged people to acquire land²⁴. With the recognition of customary rights alongside more formal, state-backed property rights, the reform accepts a certain degree of legal pluralism, defined as a situation in “which two or more legal systems coexist in the same social field”²⁵. The dual reform objectives have been traced back to different approaches to the land reform – a market and a constitutional approach²⁶. Sometimes the two have proved hard to reconcile²⁷.

The reform is not very clear about how customary land should be regulated. This leaves implementation in the hands of different actors at the local level. Similarly, the 1998 Land Act restores the ownership rights to mailo land – the land tenure system of central and western Uganda with landlords and tenants – but it reduces the landlords’ control over the land to a very narrow sense of de jure ownership with barely any de facto rights. Occupants are allowed to deal with the land as they see fit, i.e. also sell their occupancy rights, which have been made permanent²⁸. This perpetuates a situation with overlapping rights to land. Several scholars have criticized the reform for not being based on a land policy which spells out the principles behind it. A land policy, some say, is needed to guide the implementers in case of contradictions and inconsistencies in the legal framework, for instance between the Land Act and older pieces of legislation like the Survey Act, the Registration of Titles Act, the Land Acquisition Act, the Mortgage Decree, and the Town and Country Planning Act²⁹. There may also be a contradiction with the later 2007 Land Use Policy and the 2011 Draft National Land Policy, currently on its

²³MLHUD 2011a: 22

²⁴Mugambwa 2002: 33; Hunt 2004: 177; and Rugadya 1999: 6

²⁵Merry 1988: 870

²⁶McAuslan 2003: 281

²⁷Okuku 2006: 21; and Adoko & Levine 2008: 103

²⁸Baland et al. 2007: 290

²⁹Rugadya 1999: 9; NsambaGayiia 1999: 9; and Hunt 2004: 177

way through the political system, which both aim at enhancing effective use of land³⁰. This signifies a change in focus compared to the Land Act's focus on individual rights. Furthermore, from a political economy point of view, the reform has been criticised for freezing the distribution of land, whereas many had wished for a more redistributive land reform³¹.

The Legal Framework from a Gender Perspective Uganda's 1995 constitution has been hailed as being particularly gender sensitive and progressive and among the most female friendly in the world³². It stipulates that women and men are equal and have equal rights and "specifically prohibits laws, cultures, customs, or traditions that violate the dignity, welfare, or interest of women" (Khadiagala 2001: 62).

Moreover, as a signatory to the UN Convention against All Forms of Discrimination against Women, CEDAW,⁶ Uganda is committed to eliminating discriminatory practices based on gender³³. The Land Act also contains provisions reinforcing the land rights of women, children and orphans³⁴. It is thus in line with similar reforms elsewhere in Sub-Saharan Africa which have sought to eliminate discrimination during the last couple of decades³⁵. The general recognition of customary land rights also applies to women's rights to land. However, the Act's simultaneous recognition of customary authorities may undermine these rights. Customary systems do not always take women's rights into account. Customary inheritance systems, for instance, often disadvantage women, as do practices of division of property during divorce.

The Convention for the Elimination of All Forms of Discrimination against Women was adopted in 1979 by the UN General Assembly contains a number of clauses to prevent such discriminatory practices. For instance, even though it stipulates that any decision taken in respect to customary land should follow customary law, it declares that a decision will be "null and void" if it discriminates against women's or children's access to ownership, occupation or use of any land³⁶. A consent clause in the 2004 Land Amendment Act, requiring the consent of spouses

³⁰MLHUD 2007 and MLHUD 2011a

³¹Okuku 2006: 21

³²Goetz 1998: 245; and Rugadya et al. 2007: 21

³³Tripp 2004: 11

³⁴Hunt 2004: 177; and Walker 2002: 57

³⁵Augustinus & Deininger 2005: 6

³⁶GoU 1998: section 27; and Mugambwa 2002: 82

for land transactions, seeks to further protect women's rights. A similar clause for children was annulled with an amendment in 2004³⁷. Despite these provisions, the Land Act has been criticised for not including a provision for joint ownership of land, much advocated for by women's groups, that would strengthen the rights of women, for instance through registering their names on titles and certificates on a par with their husbands³⁸. The clause was in fact removed from the Land Bill,³⁹ but included in the Marriage and Divorce Bill 2010.⁸ Other laws also affect women's rights to land, for instance the Customary Marriage (Registration) Act, the Domestic Relations Bill, the Succession Act, and the Succession (Amendment) Decree. Some of these laws may disfavour women⁴⁰. The debate about the protection of women's rights to land directs attention to the interrelationship between state law and customary practices. Customary institutions are key for most women's access to land. They may also play a role in interpreting state law and regulations at the local level and vice versa⁴¹.

2.1 The Land Tenure Systems in Uganda

Like most other contemporary land reforms in Sub-Saharan Africa, Uganda's land reform recognises existing rights to land. The 1995 Constitution and the 1998 Land Act recognise four different tenure categories: customary, freehold, mailo and leasehold⁴². Public land owned by the Government⁴³ is not cited as a separate land tenure system. Unambiguous recent figures about the distribution of land by tenure types are hard to get. About 95% of landowners in Uganda do not have land titles and their rights remain unregistered⁴⁴. Customary tenure is the predominant mode of access to land in Uganda. The 2010 Statistical Abstract from the Ministry of Lands, Housing and Urban Development, basing itself on the 2002 Uganda Population and Housing Census Analytical Report, claims that 68.6% of all households are on customary land, 18.6% on freehold, 9.2% on mailo and 3.6% on leasehold. Deininger and Castagnini report that customary

³⁷GoU 2004a: section 19

³⁸Joireman 2007: 476

³⁹Bird et al. 2004: 23

⁴⁰Ssenyonjo 2007: 345

⁴¹Bikaako & Ssenkumba 2003; and Nkonya et al. 2004: 17

⁴²GoU 1995; GoU 1998; and Rugadya 1999: 6

⁴³gazetted reserves, including parks, forests, etc.

⁴⁴GoU 2010b: 161

tenure accounts for 59% of plots⁴⁵, while the below table from the 2010 National Development Plan, based on the 2002/3 Uganda National Housing Survey, claims that only about 45% of the land in Uganda is customarily held (table 1). Despite the confusing categorization of tenure where, for instance, freehold and mailo land often are grouped as one category, table 1 provides the most recent and probably most reliable data on the distribution of land in Uganda on tenure systems. Museveni, according to Tripp, said the following: ‘When I learnt that the Bill was empowering the newly-married women to share the properties of the husbands, I smelt a disaster and advised for slow and careful analysis of the property sharing issue’⁴⁶. 8 These two bills form the Domestic Relations Bill. The largest proportion of land in central Uganda is under mailo tenure. Much land is acquired through inheritance, but the land markets seems to be lively and on the increase. Only 10% of the land owned was registered with land titles or certificates of customary ownership⁴⁷. Western Uganda faces the highest land pressures with the average landholdings in the region being 25% below the national average. On the other hand, the region had the largest tracts of land under the leasehold system⁴⁸. Generally, formal registration and different types of titling are more frequent in central and western Uganda, whereas customary tenure prevails in eastern and northern Uganda.

2.1.1 Customary Land Tenure System

Customary tenure is recognized on a par with freehold and leasehold⁴⁹. Under this type of tenure people may own or have the rights to use land, but they do not have land titles. The systems vary from one place to another. Some communities allocate individual plots to their members, with known and defined boundaries marked by ridges, trenches, trees etc. whereas pastoralist communities tend to manage the land on a communal basis. Access to customary land is generally administered by different types of customary land tenure institutions in which kinship is important. Land is often administered by extended family linkages⁵⁰. For the same reason, land is often subject to restrictions on transfers outside the family and the clan. Still, these practices

⁴⁵Deininger & Castagnini 2004: 12

⁴⁶Tripp 2004: 7; see also Khadiagala 2001: 62

⁴⁷Baland et al. 2007: 290; and Economic Policy Research Centre [EPRC] 2008

⁴⁸EPRC 2008

⁴⁹Busingye 2002: 5; Olanya 2011: 8; and Walker 2002: 59

⁵⁰Quan 2000

were seemingly not enough to guarantee tenure security all over Uganda. The Land (Amendment) Act 2010 was passed as a way to address widespread evictions related to land grabbing of customary and Mailo land and, thus, to enhance tenure security⁵¹. Pastoralism entails particular uses of land under customary tenure. Pastoralists typically manage land communally. In the literature there are descriptions of a ‘cattle corridor’ Source: National Planning Authority, NPA, Government of Uganda (2010). Table 1.

Table 1: Distribution of Land Tenure System in Uganda by Region, 2002/03 (percentage)

Tenure system	Uganda	Central Region	Eastern region	Northern region	Western region
Registered freehold mailo	7.8	8.9	7.8	1.8	11.1
Unregistered freehold mailo	35.7	78.3	11.9	6.6	33.6
Leasehold	15.9	12.3	26.4	15.6	8.8
Customary	40.6	0.4	53.7	76.1	46.6

stretching from the north-east all the way to the south-west of Uganda⁵². This type of land tenure is under pressure from individualization and commoditisation of land. Furthermore, national land policies over the years have tended to ignore the interests of pastoralists⁵³ or have been aimed at individualising their land use⁵⁴. Though the Land Act provides for recognition of communal ownership, later policy interventions which stress intensified land use are believed by some observers to put further pressure on the pastoralist lifestyle. Despite the recognition of customary tenure, the current land legislation has not yet strongly impacted on land matters in customary areas⁵⁵. This may have much to do with the inadequacy of technical and financial support to implement the formal legal framework and the lack of awareness at the local level.

⁵¹Nakirunda 2011; and GoU 2010a

⁵²Rugadya 2006; Kisamba-Mugerwa et al. 2006

⁵³Pica-Ciamarra et al. 2007

⁵⁴Kisamba-Mugerwa 1998

⁵⁵Bashaasha 2011

2.1.2 Freehold Land Tenure System

Freehold land was given as a grant to the citizens of Uganda and existing institutions (religious organizations, educational institutions and other big corporate bodies) by the colonial government before independence in 1962. It is a classic, individualized type of land tenure which reduces community control over land significantly. A study undertaken in five districts⁵⁶ found that freehold tenure was the most valued by landowners and national lending institutions⁵⁶. The Public Lands Act of 1962 provided for the conversion of freehold into public lands and the implementation of leasehold tenure throughout the country⁵⁷. In 1975, with the Land Reform Decree, all land previously held by title was declared public land; the decree abolished all freehold interests and vested the land in the state. Freehold tenure was converted into leaseholds for 99 years for public bodies and 99 years for individuals⁵⁸. All this changed with the 1995 Constitution, although freehold still has a limited distribution in Uganda. The current land regime, as described below, is aiming at gradually making freehold tenure, together with leasehold, the predominant form of land ownership⁵⁹

2.1.3 Mailo Land Tenure System

The mailo system was introduced by the colonial authorities in mutual agreement with the Buganda Kingdom in 1900. It gave the King and the feudal landlords freehold rights over large tracts of land, often inhabited by poorer subjects who then became tenants of *kibanja*⁶⁰. This type of tenure system is prevalent in some regions of Uganda, for example Buganda, Bunyoro, Toro, Ankole and Bugisu. The traditional land authorities in these areas, mailo landowners and the Baganda leaders, have opposed the national government's efforts to gain control over land administration. The 1995 constitution guarantees the security of occupancy of tenants and other 'bona fide' occupants, who have occupied, used or developed land unchallenged by the owner for at least 12 years. With the agreement of the landowner, these occupants can apply for certificates of occupancy and upgrade the 9 Kabale, Ntungamo, Isingiro, Mbarara and Kiruhura. 10 With the Land Act and subsequent amendments, the

⁵⁶Bashaasha 2011

⁵⁷Batungi 2008

⁵⁸Batungi, 2008

⁵⁹Okuku 2006

⁶⁰Batungi 2008

government sought to provide security of tenure for occupants and provide for state-backed land administration institutions. Among the Baganda, however, this has been seen as an ethnic bias towards western Ugandans and against the Baganda ⁶¹and to a freehold title⁶². Recent legislation (the Land Amendment Acts of 2004 and 2010) has further strengthened the security of tenure of tenants vis-à-vis that of the landlords by controlling the land rents and protecting tenants from eviction⁶³. A particular version of mailo tenure can be found in Kampala, where most land is mailo land, but where the predominant means of obtaining land, now, is through purchase of plots from either mailo owners or mailo tenants, thus reducing the role of the Buganda Land Board in land distribution⁶⁴. Since it perpetuates overlapping land rights, mailo tenure presents one of the main challenges to the government's ambition of streamlining land tenure and land administration. Only some mailo owners occupy and farm their land. In many areas, occupation of land is overwhelmingly by bona fide occupants⁶⁵. Maybe that is the reason why conflicts over land seem to be more prevalent among households in central Uganda, where the mailo system of land tenure prevails⁶⁶.

2.1.4 Leasehold Land Tenure System

Leasehold has, since independence in 1962, been granted from public land vested in the government (the state). It is a tenure system which makes access to land on contract possible. An owner of freehold land or a district makes a grant of land to another person with land for a specified period of time and on certain conditions, including the payment of a rent. The grantee of a lease for a period of three years or more is entitled to a certificate of leasehold title for a certain period and on specific terms. There is a significant premium for leasehold titled land in Uganda. This may be because, compared to customary land, it is often located close to economic centers⁶⁷. It enables access to land by a wide range of users and land use

⁶¹Green 2006 and Boone 2007

⁶²Hunt 2004

⁶³Nakirunda 2011

⁶⁴Nkurunziza, 2006

⁶⁵Place and Otsuka 2002

⁶⁶EPRC, 2008

⁶⁷Alobo et al., 2011

functions and, thus, ensures an effective use of land⁶⁸. The Tenure Systems from a Gender Perspective Uganda's different tenure systems are regulated by different legal systems. Areas near urban centres tend to be governed by the more gender-sensitive state law whereas land in rural areas tends to be regulated by customary law. A study based on the 1999/2000 Uganda National Household Survey (UNHS) has shown that female headed households constitute both around 25% of the households (of which almost half are widowed) and the same percentage of the households who participated in land market transactions⁶⁹. As such, once they are household heads, women seem to be participating in the land markets on an equal footing with men, even though woman-headed households' landholdings are still significantly lower than those of male-headed households⁷⁰. However, the weak implementation of state law as well as customary practices may pose problems for women in all tenure systems. Women are more likely to experience land conflicts than men⁷¹. Like elsewhere in Sub-Saharan Africa, women's access to land in Uganda is largely dependent on their relationship with a father, husband, brother or son⁷².

According to the recent UNHS for 2009/10, this figure is 30%. The most common way for a woman to access land is through marriage⁷³. Scholars evaluate these customary practices differently. Tripp emphasizes the flexibility of customary systems and finds that "women have found ways to claim land through a wide variety of mechanisms: through inheritance, gift, purchase, pledge, loan, lease, and sharecropping, as well as through their husbands or male relatives"⁷⁴. Nevertheless, it has been argued that more formal certificates of customary ownership could be important for women, especially widows⁷⁵. Tripp notes that research by the Makerere Institute for Social Research (in 1995 and 2002) found that between 15-20% of women in different districts throughout Uganda owned land, and 45% of women owned land

⁶⁸Bashaasha 2011; and Alobo et al. 2011

⁶⁹Deininger & Mpuga 2003

⁷⁰Nayenga, 2008

⁷¹Rugadya & Kamusiime 2008: 102; see also Kafumbe 2009; and Deininger & Castagnini 2004: 17

⁷²Gray & Kevane 1999; Joireman 2008; and Bomuhangi et al

⁷³FAO country report on Uganda; and Joireman 2008

⁷⁴Tripp 2004

⁷⁵Adoko & Levine 2005

in the district of Mukono⁷⁶. Another study, carried out in districts in central and western Uganda respectively, also shows that women's control over land in these areas is related to the ways the land was acquired⁷⁷. When talking about customary institutions and practices, it is important to remember that there is no unified and uniform body of customary law. Uganda has more than fifty ethnic groups, each of which consists of several smaller sub-groups who have a wide range of customary practices and laws, all evolving over time⁷⁸. Women's status thus varies in the different systems⁷⁹. Most ethnic groups practice matrilineal inheritance, which implies that it can be difficult for females to maintain access to land in case of either divorce or the death of the spouse. Indeed, 75% of a male property owner's estate is allocated to lineage heirs (sons in matrilineal communities and sister's sons in matrilineal communities) while 15% is allocated to wives⁸⁰. The mailo system enabled women to inherit land, and to rent or purchase land under customary tenure⁸¹. Women in central Uganda are indeed more likely to own land both because of inheritance and land purchases. Still, Rugadya and Kamusiime find that even on mailo land "women are culturally frowned upon when they purchase kibanja land or other property in their own name"⁸². Finally, urban and peri-urban plots of land under leasehold tenure are more easily acquired and kept by women. Similarly, inheritance under freehold tenure follows statutory law and is less discriminatory. A study from Mpigi and Lira districts indicates that the main impediment for women acquiring land in these districts has to do with lack of money more than it has to do with discrimination⁸³.

⁷⁶Tripp, 2004

⁷⁷Bikaako & Ssenkumba 2003

⁷⁸Kane et al. 2005

⁷⁹Joireman 2008

⁸⁰Cooper 2011

⁸¹Obbo 1980 in Gray & Kevane 1999

⁸²Rugadya & Kamusiime 2008

⁸³Eilor & Giovarelli 2002 cited in Nayenga 2008

CHAPTER THREE

3.0 Land Administration and its Implementation Land Administration

Uganda's Land Act of 1998 provides for a new structure for the administration of land. Generally, responsibility is decentralized to a large number of new institutions for land administration and dispute settlement in order to provide for community involvement in decision making⁸⁴. The land reform represents a major change from the 1975 Land 12 One can also note that among urban farmers in Kampala, more women than men are reliant on farming as their major occupation⁸⁵. Decree which nationalized land and primarily provided services related to registration and leasehold to the elites in and around the major cities⁸⁶. Members of the boards and committees are appointed by local authorities. They are responsible for overseeing the administrative land bodies at various administrative levels. To some degree the reform thus also eliminated control over land by locally elected politicians⁸⁷. The land administration model is thus characterised by deconcentration more than by devolution. The model has been criticised for insufficient downward accountability⁸⁸. At the national level the Uganda Land Commission retains the responsibility for administering government land, for instance where state buildings and public infrastructure are or are planned to be located. Also at the national level, it is the responsibility of the government – the Ministry of Lands, Housing and Urban Development – to create procedural frameworks and guidance, and to monitor the function of the new land administration⁸⁹. The 1998 Land Act also provides for the establishment of District Land Boards, independent of the land commission. Their establishment is the responsibility of the District Councils, which also appoint the members of the boards (with the approval of the Minister for Lands). With the land reform, all public land in the cities which was not held in freehold, which was unclaimed in customary terms or unalienated in other forms of tenure, was to be vested in the District Land Boards, which hold them in trust for the citizens of Uganda⁹⁰.

⁸⁴Mugambwa 2002: 33; and Rugadya 1999: 7

⁸⁵(Nabulo et al. 2004: 33).

⁸⁶(Mwebaza & Ziwa n.d.: 7).

⁸⁷(Wily 2000: 3).

⁸⁸Joireman 2011: 63; Okuku 2006: 20; and Wily 2003: 72

⁸⁹Mugambwa 2002: 33; and Nsamba-Gayiiya 1999: 6

⁹⁰GoU 1998, section 59

The District Land Boards' functions are:

- To hold and allocate land which is not owned by any person or authority.
- To facilitate land registration and transfers.
- To take over the role of urban land authorities (with the exception of Kampala which is the only city that has a district status⁹¹).

After a slow start, the District Land Boards in some places seem to have been established in conformity with the requirements and to be functioning, though their independence is under pressure from the interference of higher authorities and by corrupt land officials⁹². The Act also provides for the establishment of Land Committees at the lower parish level, and in gazetted urban areas and in each division of Kampala. Their primary function is to receive, assess and grant applications for certificates of customary ownership⁹³. A study conducted five years after the passing of the Act, however, indicated that these committees were largely absent and that District Land Tribunals had to do most of their assigned tasks⁹⁴. The Land (Amendment) Act 2004 reduced the number of prescribed land administration institutions. For instance, it abolished the committees at parish level and transferred their tasks to the sub-county level where the recorder, that is the one registering rights and updating registers of customary certificates, is located⁹⁵. Finally, customary and informal institutions and practices persist⁹⁶, partly because customary land makes up the bulk of land in Uganda and partly because customary authorities are granted some degree of authority over this land.

3.1 Land Administration from a Gender Perspective

The constitution stipulates that one-third of the membership of each local government council should be reserved for women. The Local Government Act contains a provision for Council Secretaries for Women in local government⁹⁷. At the national level, within Parliament, there is a Caucus system for representatives of five 'special interest' groups, including women (one seat

⁹¹Hunt 2004: 178

⁹²(Mwebaza & Ziwa n.d.: 22)

⁹³Mugambwa 2002: 35; Hunt 2004: 179; Rugadya 1999: 7; and Nsamba-Gayiiya 1999: 7

⁹⁴Mwebaza & Ziwa n.d.: 30

⁹⁵Nakirunda 2011: 24; and GoU 2004a, section 27

⁹⁶see, for instance, Khadiagala 2001; and Tripp 2004

⁹⁷GoU 1997; and Hickey 2005: 999

per district)⁹⁸, who have been influential in strengthening women's rights in the 1995 Constitution (ibid). The Land Act itself requires that at least one of the five members of the Uganda Land Commission be a female, that one third of the District Land Boards be female, and that at least one of the four members of the land committees at parish level should be a female. Still, the influence of women in policy making is often limited⁹⁹.

Land Administration and the Registration of Rights the 1998 Act aims at streamlining the different land tenure systems, making it easier to register individual rights and, with time, to convert them to freehold titles. The ultimate goal seems to be individualization of rights, a goal which is confirmed in the Draft National Land Policy of 2011, which states that freehold is the tenure of the future¹⁰⁰. However, the registration of both individual and collective (community) rights is provided for in the 1998 Land Act. The procedures for the different types of registration differ, depending on the different types of land tenure. On customary land, occupants can apply for a certificate of customary tenure occupancy when they have a piece of land without dispute on it. Such a certificate provides the holder with various transfer rights, albeit transfers have to be in accordance with customary law in the area.

The certificates are to be provided at the sub-county level by the recorder on behalf of the district land board. Communities, if having established communal land associations, can also apply in order to protect their lands from subdivisions¹⁰¹. The holder of a customary certificate may apply for conversion from customary to freehold tenure. The ultimate goal seems to be fully individualized land ownership. The responsibility of the sub-county level, then, is to 'determine, verify and mark the boundaries of all interests in the land which is the subject of the application'¹⁰². However, the division of labor with customary land institutions, also recognized by the Act, is not clearly spelled out¹⁰³. The Constitution and the Land Act, thus, do not resolve the tensions between individual interests and the communal rights that constitute legal

⁹⁸(Hickey 2005: 999)

⁹⁹(Bird et al. 2004: 23)

¹⁰⁰MLHUD 2011a: 22

¹⁰¹(Walker 2002: 59).

¹⁰²GoU 1998, section 4; GoU 2004a

¹⁰³McAuslan 2003: 288

constraints to land transactions of customary land between individuals¹⁰⁴. Mailo land tenants and other tenants and ‘bona fide’ occupants who have occupied and used a plot or who have developed it unchallenged by the owner for at least twelve years, can apply for Certificates of Occupancy, which recognize and protect their interest in the land. With the agreement of the landowner, the land may be upgraded to a freehold title¹⁰⁵ Bird et al. 2004 for a more exhaustive list of reasons for this lack of influence. Among others they mention public meeting attendance vetoed by women’s husbands, marginalization of women ministers from decision making, the fact that women tend to defend local elite interests¹⁰⁶. Leasehold offers and titles can be applied for at the District Land Boards. In the period from 1975 to 1998, this was the predominant mode of registration and the government was represented by the Uganda Land Commission. Since then this role has been taken over by the district land boards.

All leasehold titles acquired before 1998 can now be converted into freehold upon application to the district land board¹⁰⁷. Freehold land is registered and held in perpetuity subject to statutory and common law qualifications. The holder is entitled to a certificate of title which offers exclusive rights. The tenure system derives its legality from the 1995 constitution and it is the prescribed system for most registered interests outside mailo land. It has a limited spread in Uganda, but the current land regime is aiming at gradually making it the predominant form of land ownership¹⁰⁸. Finally, less formal practices to register rights, for instance the customary practice of having witnesses during land allocation processes or the writing of the more modern buyers’ agreements in case of land transfers, can be observed all over Uganda¹⁰⁹.

The Registration of Rights from a Gender Perspective There have been heated debates on the adequacy of the different tenure systems when it comes to the protection of women’s rights to land. There are arguments for and against both formal registration and customary practices. Women’s movements in Uganda have been vocal in supporting titling of land for women and

¹⁰⁴Olanya 2011: 8; and Okuku 2006: 13-14

¹⁰⁵Hunt 2004: 177

¹⁰⁶Bird et al. 2004: 23

¹⁰⁷Mugambwa 2002: 9

¹⁰⁸Okuku 2006: 16, MLHUD 2011a: 22

¹⁰⁹Nkurunziza 2006; Nkurunziza 2007; and Adoko & Levine 2008

criticizing the consensual approach of the state working alongside customary tenure systems¹¹⁰. They find that the privatization of land, land scarcity and urbanization put pressure on the kinship-based systems of land ownership. Clan leaders and groups seem to have become more protective of their land and less willing to allow women access to land. In Kigezi district, for instance, where most of the land is under customary tenure, an increasing number of women are trying to acquire titles to their land¹¹¹. The advocacy for titling contradicts the critique of registration and titling put forward by many scholars¹¹². In Uganda, similar scholarly critique has been raised by Adoko and Levine¹¹³. For a long time colonial and some post-colonial governments sought to reform land tenure through titling. Titling, however, potentially undermined the secondary rights of women to access land. Often, as the household heads, men registered land in their names and thus strengthened their control over land¹¹⁴. Scholarly work on Sub-Saharan Africa notes that the recognition that titling and privatization of land potentially marginalized women was followed by a tendency to turn to customary systems and their flexibility¹¹⁵.

In Kabale in Uganda, Khadiagala finds that the weakening of the protection of women's rights to land may not be caused by a general weakening of the customary institutions, but rather by formal court judges' reinterpretation of customary law to "subordinate women's property rights under the authority of men as the natural head of household"¹¹⁶. Some scholars have described how this trend can be reversed and how traditional institutions, if the new, more formal, land administration institutions fail to materialize, can be turned into allies for women¹¹⁷. However, the return to the customary tenure by scholars and policymakers has also been challenged.

Generally, the customary protection of women seems to be weakening. The authority of the customary elders has been eroded in many places. In the north in particular, rules of customary

¹¹⁰Manji 2006: 105

¹¹¹Tripp 2004:15

¹¹²Jacobs 2010: 185; Jacobs 2002: 889; Nyamu-Musembi 2008: 32; and Berry 1993: 173

¹¹³Adoko & Levine 2008: 118, see also Rugadya et al. 2004: 18

¹¹⁴(Tripp 2004: 8).

¹¹⁵Whitehead & Tsikata 2003; and Tripp 2004

¹¹⁶Khadiagala 2001: 62

¹¹⁷Daley & Englert 2010: 98; and Adoko & Levine 2008

law which used to protect women's rights of use of land have been weakened or even eroded by war¹¹⁸. Land Administration and its Implementation As in other Sub-Saharan African countries, the reality on the ground deviates significantly from what is laid out in national land laws and regulations¹¹⁹. The implementation of Uganda's land reform is being described as either partial¹²⁰ or outright lacking¹²¹. Implementation projects have been carried out, using systematic demarcation, but geographically, in 2006, they were limited to three out of more than 5000 parishes¹²².

The decentralized land registration system is still not functioning in many places. The records, in bad shape, are often kept at a central land registry and in former regional land offices. The land offices are often not equipped to take on their roles and corruption is rife¹²³. Land boards are often weak or absent¹²⁴. To understand the impact of the reform, in other words, it is necessary to focus on implementation on the ground. Soon after the reform was introduced it proved to be too expensive. An implementation study was carried out which concluded that the costs of implementing the Land Act, with its prescribed committees and numerous employees¹²⁵, were enormous. A draft sector plan, the Land Sector Strategic Plan 2001-11, financed by the UK Department for International Development (DFID) on the request of the Ugandan government, was subsequently developed, which suggested reducing the number of new institutions.

The Land Sector Strategic Plan was only approved in 2002¹²⁶ and was extended to 2012. A new phase is currently under preparation¹²⁷. The lack of a plan for implementation also meant that implementation methodologies and administration procedures were invented and tested along the way. The Strategic Plan thus suggests applying a pilot project approach to demarcation

¹¹⁸Adoko & Levine 2005b: 10; Kane et al. 2005

¹¹⁹see for instance Joireman 2011

¹²⁰Mwebaza & Ziwa n.d.; and Joireman 2007: 476

¹²¹Okuku, 2006

¹²²Oput 2004: 10

¹²³(Mwebaza & Ziwa n.d.: 29; Nkurunziza 2006: 175)

¹²⁴Rugadya 2009: 22

¹²⁵(see, for instance, Government of Uganda 1998, section 59; Wily 2000: 3; and Manji 2001: 334)

¹²⁶Manji 2006: 71; Hunt 2004: 189; and Oput 2004: 3

¹²⁷Zevenbergen et al. in Hilhorst et al. 2011: 9

methods¹²⁸. Implementation so far seems to have been largely marked by this pilot project approach, carried out in geographically limited pilot project areas, but with only partial overall effect¹²⁹. The lack of implementation is also due to the high cost of setting up and equipping a large number of new offices. Much of the implementation was to be carried out by cash strapped local governments at various levels, but there is a general lack of funds and capacity, in particular at the lowest parish level¹³⁰. Even after cost saving, implementation costs would still exceed annual budget provisions by almost 400%¹³¹.

Finally, it has been pointed out that from the outset there has been a lack of coordination between the land legislation and other plans and policies. For instance the poverty eradication plans had much more focus on redistribution and improved access to land for the resource poor than the land reform did¹³². The Land Act also did not fit the agricultural programme under the Poverty Eradication Action Plan of 1997¹³³.

The lack of implementation pans out differently for the different tenure types: On customary land, the procedures for the issuance of certificates of customary ownership are complicated and involve, according to law, a local level Land Committee, a District Land Board and, finally, a recorder, who is to issue the certificate¹³⁴. Still, the certificates are not accepted as collateral by financial institutions¹³⁵. In 2004 no customary certificate was issued¹³⁶. In 2008, in the northern part of Uganda, the district recorders were not in place. Generally, local councils and elders still play a crucial role when customary land is exchanged between people¹³⁷. Critics have also noted that the introduction of new formal land committees and boards will create a parallel structure,

¹²⁸Bosworth 2003: 245

¹²⁹see for instance Oput 2004; and Joireman 2011: 63

¹³⁰Nsamba-Gayiiya 1999: 12, Mwebaza & Ziwa n.d.: 29; and Rugadya 1999: 11

¹³¹Hunt 2004: 187

¹³²Bosworth 2003: 245

¹³³Okuku 2006: 4

¹³⁴Olanya 2011: 8-9

¹³⁵Bashaasha 2011

¹³⁶Rugadya et al. 2004 in Deininger et al. 2006: 11

¹³⁷Tukahirwa 2002: 19

which will compete with the existing customary land institutions and render decision-making extremely complex¹³⁸.

On mailo land, certificates of occupancy should enable a formal land market and, at a later stage, conversions to freehold. This does not seem to happen, largely because the landowners are unwilling to grant permission¹³⁹. It points to an inbuilt ambiguity in the legal framework. Whose rights to land are recognised: the tenants' or the landlords'? In Kampala, a lively land market exists and the use of home-made sales contracts and local witnesses is common¹⁴⁰. Such witnesses are, subsequently, relied upon in case of conflicts. Finally, the procedures and the fees for the issuance of freehold and leasehold titles are prohibitive for most people. In other words, while the enactment of the Constitution and the Land Act changed the legal status of much of Uganda's land and recognized existing customary rights, it did not provide the necessary administrative infrastructure to operationalise the more formal tenure systems. Full-scale implementation has only happened as pilot implementation projects in geographically limited areas. The reform has thus contributed to only one of its goals; the enhancement of tenure security of customary landholders and of tenants on mailo land, and the contribution has been partial and primarily on paper. The other goal, that of facilitating a more lively and formal market in land, is still far from being realised on the ground in most places.

Land Administration and Pilot Implementation Projects Much energy has been devoted to formulating new land policies during the post-independence period, much less has been done to implement them¹⁴¹. However, a few pilot implementation projects have been carried out over the years¹⁴². The most recent pilot project was financed by the World Bank as part of the Second Private Sector Competitiveness Project¹⁴³ and carried out by the Ministry of Lands, Housing and Urban Development under the Land Sector Strategic Plan 2001-11¹⁴⁴. The pilot contained

¹³⁸Rugadya 2009: 22

¹³⁹Olanya 2011: 8

¹⁴⁰Nkurunziza 2007: 518; and Nkurunziza 2006

¹⁴¹Joireman 2011: 5

¹⁴²Kisamba-Mugerwa et al. 1989

¹⁴³Zevenbergen et al. 2011, Annex 5: 24 DIIS WORKING PAPER 2012:13 11

¹⁴⁴Oput 2004; and MLHUD 2011b

several elements, including gradual capacity building within the Ministry of Lands, Housing and Urban Development and local governments, updating of land registries, etc.

Pilot registration and titling was also carried out in a number of districts in Uganda. The pilot's approach was systematic demarcation, that is, "a process by which land rights of people living in a given area are identified, ascertained, established and marked in an orderly and uniform way"¹⁴⁵. Around 1500 freehold titles were processed during the project, but even this relatively small number has led to a backlog in the central registry in Entebbe. No customary certificates have been issued. A main lesson from the pilot has been that many of the land administration institutions prescribed by the Land Act, for instance the district land boards, area land committees and recorders, do not exist or are not functioning in many districts. There also seem to have been clashes between the state law and local perceptions of rights to land¹⁴⁶. An evaluation of the experiences is currently underway. Land Administration and its Implementation from a Gender Perspective Apart from the uneven implementation of the land reform described above, which leaves land administration institutions inaccessible to most people, women face other challenges. Policy implementation is also influenced by patriarchal culture and attitudes. In other words, women may be vulnerable "not from defects in the protection offered by legislation, but in the actualization of that legislation on the ground"¹⁴⁷. Distrust and discriminatory practices of men in powerful positions persist at the local level communities and higher levels of government. Male power thus often resists the changes in land tenure relations which may favour women¹⁴⁸.

¹⁴⁵MLHUD 2011b: 2

¹⁴⁶(MLHUD 2011b: 11-12)

¹⁴⁷Adoko & Levine 2008: 117

¹⁴⁸Bikaako & Ssenkumba 2003: 41

CHAPTER FOUR

4.0 Tenure Security Differences between Tenure Systems

Whereas the 1998 Land Act accepts a certain degree of legal pluralism, it also aims at streamlining the tenure categories, transforming different tenure rights into fully individualized freehold tenure. It is part of a broad trend in Sub-Saharan Africa to individualize and register rights, often with the end goal of issuing title deeds in order to increase tenure security and promote a market in land. Because of the slow and uneven implementation of the 1998 Land Act, however, it is no surprise that customary tenure systems persist in many places in Uganda. Furthermore, not much evidence supports the assumption that titling in itself increases tenure security. The existing empirical studies from Uganda do not provide a basis for final conclusions about the relationship between tenure type and tenure security. Indeed, one study has shown that formal registration of land may have no effect in itself if the hierarchy of the underlying overlapping rights, for instance between occupants and landowner, is not clarified.

On the other hand it showed that full ownership or improved legal protection of an occupancy right, even without the full ownership right, would increase tenure security and be likely to increase the incentive for investment¹⁴⁹. Another study, based on 309 households, suggests that poverty reduction is significantly higher, when efficient farmers acquire land through land markets compared to when land is inherited¹⁵⁰. Customary tenure often derided by politicians in Uganda and elsewhere, also provides tenure security. Historically, it has provided a high degree of tenure security¹⁵¹. It may be destroyed, for instance by conflict, as happened in the north in the 1990s and early 2000s, by the increased market pressure on land¹⁵² or by state-led conservation efforts¹⁵³. In fact, a study has shown that the political environment influences the perceptions of tenure security, despite individualized tenure. In the late 1980s, the mailo owners, because of the prospect of a land tenure reform, felt their tenure security threatened whereas right holders of

¹⁴⁹Deininger & Ali 2008

¹⁵⁰Tatwangire & Holden 2009: 3

¹⁵¹KisambaMugerwa et al. 1989; Bruce 1993; and Platteau 1996

¹⁵²Adoko & Levine 2008: 110

¹⁵³Himmelfarb 2005

lands under customary tenure did not feel a similar insecurity¹⁵⁴. Thus, government interventions, like registration of rights, may at the local level be seen as a threat to tenure security. The perception that corruption prevails in the land administration is also widespread and undermines tenure security¹⁵⁵. In general, there is a lack of research that compares the tenure security provided by the different tenure systems under different circumstances. Customary tenure seems to be the predominant tenure system operating in the eastern and northern parts of Uganda¹⁵⁶. Under some customary arrangements, land is exclusively controlled by the clan. This, in theory at least, should provide security against investors or land grabbers from outside the area. The land under customary tenure is often held with no supporting documents¹⁵⁷. Neighbors and members of the clan who were present at the time of its allocation or acquisition evidence ownership of a given parcel of land. Other analyses of customary tenure in the north describe the evolution of semi-formal practices, that is, the involvement of local village council officials or chairmen in land transfers¹⁵⁸.

In the eastern part of Uganda, local village council officials have also been observed taking part in land transfers, often without any legal backing to do so¹⁵⁹. The presence of such a witness may contribute to provide tenure security. Tenure Security from a Gender Perspective Again, the focus on women's access to land provides new insights into the not always straightforward relation between tenure systems and tenure security. All the Ugandan tenure systems have drawbacks, primarily because of conservative patriarchal practices that disadvantage women¹⁶⁰. Most people interpret gender equality as "disruptive of family harmony"¹⁶¹.

Improvement of women's tenure security is thus not achieved with a stroke of the pen or the formulation of a new law. The more formal laws and institutions, despite an anti-discriminatory legal framework, may not in themselves provide tenure security for women. Much depends on implementation. Thus, it has been pointed out that the consent of spouses in case of land sales,

¹⁵⁴Place & Otsuka 2002: 108

¹⁵⁵Rugadya 2009: 16; Olanya 2011: 10; and Bashaasha 2011

¹⁵⁶Place & Otsuka 2000b: 234

¹⁵⁷ULA, 2010

¹⁵⁸Adoko & Levine 2008: 111

¹⁵⁹Joireman 2011: 64; Baland et al. 2007: 291

¹⁶⁰Rugadya et al. 2004: 2; Ssenyonjo 2007: 341

¹⁶¹Mak 2005: 159

which should protect women's rights to land, is not easily enforceable and that women may be forced into accepting¹⁶². Generally, female-headed households on average report lower landholdings and at the same time are more involved in land conflicts. Women's land rights tend to be limited to access while men are more inclined to enjoy ownership rights¹⁶³. A study on men and women's ownership of land in the eastern, western and central regions showed a large difference, not in reported ownership but in the possession of documents showing ownership¹⁶⁴. Unsurprisingly, then, women are active in seeking to enhance their tenure security in various ways. In Kigezi district, where most of the land is under customary tenure, an increasing number of women are trying to acquire titles to their land. Only a few people can afford to do it, as legal registering is costly. Still, any written proof of ownership witnessed by community members or local officials can stand up as legal proof of ownership¹⁶⁵.

A woman's marital status – whether she is married, a widow, unmarried, or divorced – is also important for a woman's ability to protect her rights¹⁶⁶. As a way to better address women's tenure insecurity in customary areas, Adoko and Levine suggest establishing a partnership between the state and the customary authorities with the responsibility to protect women rights and, for instance, verify a wife's consent in land sales¹⁶⁷. In other words, to improve women's rights to land and tenure security also requires changes in the attitudes within the local level institutions. This points to the importance of the state as a source of equity, even when customary tenure and practices persist, a point repeated by other scholars¹⁶⁸.

Tenure Security in Post-Conflict Northern Uganda The land related problems faced by the population in post-conflict northern Uganda are unique and yet familiar, in that they seem to expose and exacerbate the existing weaknesses of land governance elsewhere in the country. The conflict started in 1986 and ended with the Comprehensive Peace Agreement and the gradual exodus of the forces of the Lord's Resistance Army in 2005-6¹⁶⁹. The conflict displaced almost

¹⁶²see for instance Khadiagala 2001: 69, Hunt 2004

¹⁶³GoU 2010b; Bashaasha 2011

¹⁶⁴Bomuhangi et al. 2011: 15

¹⁶⁵Tripp 2004: 15

¹⁶⁶Adoko et al. 2011: 3

¹⁶⁷Adoko & Levine 2008: 116

¹⁶⁸see, for instance, Whitehead & Tsikata 2003: 102

¹⁶⁹Allen & Vlassenroot 2010

two million people who have only slowly been returning to their lands. A National Policy for Internally Displaced Persons (IDPs) has been introduced and the rights of IDPs are also protected by the 2011 Draft National Land Policy. Much, however, has been left to the local people and institutions as the IDP Policy lacks funding and mechanisms of enforcement¹⁷⁰. The displacements created new uncertainties around rights to land and new demands for land administration services. People, after having lived for up to two decades as refugees, returned only to find their land taken by somebody else¹⁷¹. Those who had fled the furthest and had become totally detached from their land during the conflict found it hardest to return¹⁷².

Problems with outright land grabbing, worsened by external investors' interest in the region, have been observed. A study has shown that almost half of IDPs fear for their ability to regain their land¹⁷³. Land disputes account for 63% of all disputes in northern Uganda and have prevented some people from returning to their homes. Concurrently, the predominant customary land institutions have broken down and new formal ones are hardly present. Often, chiefs, elders or parents who could have witnessed rights to land, have died. Formal committees and courts are overburdened and many disputes over land remain unsolved¹⁷⁴. On top of this, poverty is rampant, with poverty rates at 65% compared to 31% for the rest of the country¹⁷⁵.

Distress sales of land are common¹⁷⁶ and unresolved land disputes inhibit agricultural productivity¹⁷⁷. *Tenure Security in Post-Conflict Northern Uganda from a Gender Perspective* Women are facing particular tenure security problems in the north. The breakdown of customary land tenure systems due to the war has meant that the remaining protection of women's rights to land, provided by customary institutions, has often withered away. Since traditional customary land tenure does not allow women to own land, if their husband has died during the war, for instance, widows' access to land is threatened¹⁷⁸. A large proportion of the people still living in

¹⁷⁰Rugadya 2006: 12

¹⁷¹Burke & Egaru 2011: 7; Hilhorst et al. 2011: 4

¹⁷²Rugadya 2008b: 7

¹⁷³Rugadya 2006: 19; McKibben & Bean 2010: 7

¹⁷⁴McKibben & Bean 2010: 8; Pham & Vinck 2010: 28; MercyCorps 2011; Rugadya 2008b: iii

¹⁷⁵Allen & Vlassenroot 2010: 45

¹⁷⁶Rugadya 2006: 29

¹⁷⁷MercyCorps 2011: 9

¹⁷⁸Pham & Vinck 2010: 10; Rugadya 2008a: 5; Kindi 2010: 16

the refugee camps are women. The individualization processes that concentrates land in the hands of men as 'owners' also seems to have accelerated during the conflict¹⁷⁹ and the more formal institutions are typically weak and fail to protect women's rights. Tenure Security and Land Grabbing the acquisition of land belonging to people displaced by war in the north is one out of the many land alienation practices which are often imprecisely labelled 'land grabbing'¹⁸⁰.

The land grabbing term is often used for illegitimate large-scale land acquisitions by foreign investors, but such deals are hard to separate analytically from the overall increasing commercial pressure on land that results in land deals on different scales and involves local and national authorities and other actors¹⁸¹. Land grabbing is a hotly debated issue all over Uganda. The gradual strengthening of mailo tenants' and of other customarily acquired rights to land in the first decade of the 2000s reflects that the land grabbing anxiety has reached the upper echelons of government.

There are newspaper reports about land grabbing on an almost daily basis. Still, solid evidence for large-scale land grabbing is not always easy to find¹⁸². In this context, scholars also point to women running the risk of being marginalised as their use rights are generally not documented¹⁸³. A particular variation of land grabbing can be found in the Albertine Graben in western Uganda, in the area around Lake Albert, where oil deposits have been discovered. The oil find has led to rapid individualisation with large areas being registered as leaseholds, but rarely to the benefit of the communities that were supposed to benefit: "This rapid and extraordinary transition is driven by individual scramble to strategically reap from the expected demand for land anticipated in the region due to oil discovery"¹⁸⁴.

Recent Changes The 1995 constitution and the 1998 Land Act diminished the role of the state compared to the developmental state model embodied in the 1975 Land Decree, where the

¹⁷⁹Rugadya 2008a: 7

¹⁸⁰International Organisation for Migration [IOM] 2010: 7; Borras& Franco 2012; and Cotula 2011

¹⁸¹Anseeuw et al. 2012: 1

¹⁸²Green 2006: 375

¹⁸³Bomuhangi et al. 2011: 15

¹⁸⁴Rugadya 2009: 18

ultimate goal was to prevent that large areas were left undeveloped by their owners. The decentralisation, however, has been a challenge in Uganda with its tradition for topdown management¹⁸⁵. There are, in other words, differing views of the role of the state in the administration of land at the local level. The final draft of a new national Land Policy was finished in March 2011. It came about after nationwide seminars and a land conference¹⁸⁶. In some ways, it heralds the re-emergence of the state after a decade of decentralization, strengthening of individual rights and belief in the structuring power of the market. It still vests the radical title in the citizens, but it declares that the state will exercise sovereignty over all land in trust for the citizens. The state's role in the administration of land is strengthened to promote a more effective use of land (already seen in the 2007 Land Use Policy) and to speed up the clarification of property rights, the convergence towards more formal, registered types of ownership and to improve the market in land¹⁸⁷. All these changes are proposed to enhance economic development. Indeed, on a more critical note, critical voices fear that the National Land Policy will strengthen the power of the state 'on behalf of the citizen'¹⁸⁸.

4.1 Dispute Resolution and its Implementation

Dispute Settlement Infrastructure The occurrence of land disputes ranks the highest among any type of conflict countrywide. Pressure on land due to the population growth, the appreciation of the value of land and overlapping rights are the most likely explanations for the increase in the prevalence of land disputes. According to a household survey from the Ministry of Justice from 2008 – which provided “the most comprehensive survey of land disputes so far” – mailo land is the most affected tenure, with the highest dispute prevalence¹⁸⁹. The status of Kibaale District – the area taken from the Bunyoro Kingdom by the British and given to neighboring Buganda Kingdom – is that of a long-lasting ongoing conflict on a large scale¹⁹⁰. In all the other regions land under customary tenure is the most conflict prone¹⁹¹. In particular, disputes involving pastoralists are on the rise, partly because national regulations and standards to spell out the Land

¹⁸⁵Rugadya 1999: 8; and Nsamba-Gayiiya 1999

¹⁸⁶Olanya 2011: 10; MLHUD 2011a; and ULA popular version from 2010

¹⁸⁷Olanya 2011: 11

¹⁸⁸(ULA 2010: 6)

¹⁸⁹Rugadya 2009: 3

¹⁹⁰Rugadya 2009: 9

¹⁹¹Ministry of Justice cited in Rugadya 2009

Act's provisions for setting aside land for common use are lacking¹⁹². Finally, as the internally displaced persons (IDPs) started returning to their homes in 2007, the north has witnessed an increase in the number of land disputes. The change in dispute settlement provided for by the Land Act was a reaction to this increase in the number of land conflicts experienced in many areas of Uganda, which had overburdened the normal court system¹⁹³.

The Land Act changed the system for land dispute settlement, replacing the courts below the High Court with new land dispute settlement institutions: the land tribunals. At the lowest level, the Sub-county Land Tribunal (local council level three out of a total of five administrative levels in Uganda) and each gazetted area in towns were to provide the first step in hearing disputes related to land, which were the subject of an application for a land certificate¹⁹⁴. At a higher level, land tribunals were also to be established in each district and division (in the cities). Their members should be appointed by the Lord Chief Justice¹⁹⁵. They were to replace the dual system of justice based on Magistrates Courts and 'popular courts', known as Resistance Committees¹⁹⁶, as well as the de facto role of local council officials, but they were still the responsibility of the judiciary.

Finally, the Land Act also, for the first time in the history of modern Uganda, recognised the role of traditional authorities and mediators in dispute settlement by allowing the land tribunals to pass on cases to such authorities¹⁹⁷. This part of the dispute settlement system seems, to some extent, to reflect actual practice, though the role of traditional institutions in administering land is deteriorating, in particular in northern Uganda¹⁹⁸. Evidence suggests that such communitarian approaches may discriminate against women¹⁹⁹. Dispute Resolution and its Implementation Though the increase in the number of disputes has put pressure on the existing land tenure systems and subsequently on the dispute settlement institutions, government interventions that

¹⁹²Rugadya 2009: 12

¹⁹³Mugambwa 2002: 42

¹⁹⁴Government of Uganda, 1998

¹⁹⁵Hunt 2004: 179

¹⁹⁶Bosworth 2003: 238

¹⁹⁷Mugambwa 2002: 46; and Busingye 2002: 6

¹⁹⁸Rugadya, 2009

¹⁹⁹Walker 2002: 59

have aimed to reduce land conflicts do not seem to have been effective²⁰⁰. Generally, the implementation of the new land court system, prescribed by the Land Act, has been extremely slow, thus causing a “deficit in dispute resolution”²⁰¹. From the outset, the 1998 Land Act annulled the roles of existing lower-level courts and of local council officials in hearing land disputes with immediate effect and introduced land tribunals.

The Act did not make the necessary provisions for activation of the new tribunals and there was no plan for raising funds, or for the implementation²⁰². Policies have changed repeatedly. The absence of the prescribed land tribunals led to a growing backlog of cases and access to the justice system is difficult for most people. According to Deininger et al. local courts were already reinstated with the Land Act Implementation Strategy in 1999²⁰³. In 2001 a Land Amendment Act enabled Magistrates’ Courts and Local Councils’ Courts to continue handling land disputes until the new institutions were established²⁰⁴. The sub-county land tribunals were absent in most places several years after the reform and they were abolished with the Land Amendment 2004²⁰⁵.

Supposedly, District Land Tribunals were not really established in Uganda until 2004, and then only in limited numbers, only to be abolished again in 2007 after a conflict between the judiciary and the Ministry of Lands, Water and the Environment²⁰⁶. The draft national land policy of 2011 states that land tribunals should be ‘reinstated’ and ‘properly resourced’, which indicates that the land court system is not currently functional²⁰⁷. The inaccessible dispute settlement system has led to a vacuum that has given room to other actors. District Land Boards, i.e. the authorities responsible for registration of rights, are involved in settling disputes. Customary authorities and local councils, for instance local (village) council chairmen in the northern part of Uganda, and

²⁰⁰Rugadya 2009: 2

²⁰¹Rugadya 2009: 21

²⁰²Rugadya 1999: 10

²⁰³Deininger et al. 2006: 10

²⁰⁴Oput 2004: 3

²⁰⁵GoU 2004a, section 35

²⁰⁶(Joireman 2011: 63; Nakirunda 2011: 53; and Mwebaza & Ziwa 26 DIIS WORKING PAPER 2012:13 n.d.: 30)

²⁰⁷MLHUD 2011a: 39

Magistrates' Courts have also been observed settling land conflicts without any legal backing²⁰⁸. The President's Office and resident district commissioners are also often involved²⁰⁹. Finally, NGOs have played a role in geographically limited interventions²¹⁰. There are advantages and disadvantages for all of these institutions in terms of accessibility, reliability, affordability, accountability and ability to enforce decisions²¹¹.

Dispute Resolution and its Implementation from a Gender Perspective the 1998 Land Act prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land, but that does not mean that discriminatory practices have stopped. Female-headed households, for instance, are more likely to be affected by a land conflict than households headed by a male. A survey from 2001 covering 430 households in all of Uganda's main regions shows that widows are 14% and separated women 48% more likely to have a land conflict²¹². In another study conducted in two districts (Luwero and Tororo), 29% out of a total of 204 widows indicated that property had been taken from them following the deaths of their husbands, making them four times more susceptible to land grabbing than male widowers²¹³. Nevertheless, many more men bring cases to land tribunals than women²¹⁴.

The consequences of the conflicts can bear differently on women. Women are often discriminated against in the dispute settlement of customary land, but even formal courts may demonstrate respect for customary laws and set aside women's individual rights²¹⁵. The lack of legal literacy, corruption, a limited access to legal advice and the lack of economic resources to pursue rights are also barriers to women's access to land and protection of their rights²¹⁶. In the absence of accessible formal land dispute settlement institutions and when the legislation furthermore allows traditional authorities to mediate in land matters, as does the Ugandan 1998 Land Act, there is a danger that the marginalized groups in the community will continue to be

²⁰⁸ULA 2010: 14

²⁰⁹Rugadya 2008b: 13

²¹⁰Joireman 2011: 86

²¹¹see, for instance, ULA 2010: 17-19

²¹²Deininger & Castagnini 2004: 14

²¹³Gilborn et al. 2001, in Deininger & Castagnini 2006: 7

²¹⁴Ellis et al. 2006: 52

²¹⁵Khadiagala 2001: 62

²¹⁶See, for instance, Whitehead & Tsikata 2003

marginalized. The less formal practices may be easily accessible, but they are thought to have some accountability deficits. The more communitarian ones, where local or customary decision makers are involved, are often male-dominated and are also likely to disadvantage women and the poorest in the community²¹⁷. A case study from Kabale District in southwestern Uganda indicates that local council practices are discriminatory and that women seem to prefer ‘the rule of law’ by magistrates’ courts to ‘the rule of persons’ by local councils²¹⁸. The situation may imply an inherent risk of an unequal access to justice, where those who can afford it use the state courts and tribunals, whereas those who cannot have to rely on other, less formal, institutions²¹⁹.

²¹⁷Busingye 2002: 7; and Adoko & Levine 2008: 111

²¹⁸Khadiagala 2001: 72

²¹⁹Joireman 2011: 77

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 CONCLUSION

This working paper has reviewed different studies related to the links between land and economic activities in Uganda. It has examined various aspects of land tenure in Uganda, including the legal and administrative frameworks and their implementation at the local level. It has also analyzed the relations between these elements and tenure security in the country. Finally, it has discussed the various ways land may relate to economic activities. The paper's point of departure is the 1998 Land Act, which with its recognition of all existing rights to land, including customary rights, is part of the new wave of land reforms that have been introduced in a large number of Sub-Saharan countries in the last couple of decades.

The land tenure implementation part of the reform has, so far, been partial and slow. Land administration is still marred by difficulties: some prescribed institutions have been established while others have not; the division of powers and tasks between the different institutions – state and customary – is not clearly defined and the relationship between the different legislative texts is often unclear. Furthermore, the lack of implementation and continual changes of the laws and regulations outlining the land dispute settlement system have made dispute settlement hard to access for most people at the local level. In short, the legal and administrative framework, as well as the coexistence of different tenure systems, presents a more complex situation than that which is usually portrayed. This has implications for tenure security. Women seem to be particularly affected by this situation. Even though they seem to be represented in land administration and in parliament, their influence is still limited. Studies and surveys from different regions in Uganda have also shown that despite a gender-sensitive and progressive legal framework, women's rights are still hampered on the ground in several areas and women are discriminated against in both the customary and statutory settings. In cases of dispute, for instance, women are less likely than men to bring their cases to court. There is, thus, a need to find ways to reinforce women's rights at the local level. Interventions should target the entire

range of institutions that are important for women's access to land; that is, both the statutory and the customary ones

RECOMMENDATIONS

- The countries that have invested in the technical and institutional infrastructure required for efficient and equitable land tenure administration, and that have been in the forefront of ensuring property rights for both men and women, have developed much faster with a much higher level of food security, health and welfare. Such development has been much more sustainable where policy-makers, while recognizing the need to reform land tenure arrangements, have supported the protection of long-established rights of women and other disadvantaged groups to the resources they had held traditionally.
- Agricultural food production will continue to be a sector dominated by family and household units. Frequently, one of the reasons for misplaced land tenure policies is the failure to understand the complex nature of the kinds of social relations that characterize the "household" in any rural society. Policy interventions in land tenure can generate both positive and negative results. Policy based on accurate information and an appreciation of changing, dynamic contexts is much more likely to lead to the intended results.
- Denying large segments of rural society more equitable access to land and to the benefits of secure land tenure imposes unanticipated costs. This can be a major contributing factor to extreme poverty, dependence, social instability including conflicts and civil unrest, rural migration, land abandonment, and many other negative conditions. On the other hand, more equitable access to land and other assets can play a role in stimulating faster and broader-based economic growth.

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