

GENDER IN UGANDA'S NATIONAL LAND POLICY

Issues, Theories and Policy Responses: Implications for Poverty Social
Impact Assessment in Uganda

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Abstract

In this paper, the context within which the National Land Policy ascribes to tackle gender issues and specially provide for entrenchment, opportunity and strengthening of women's land rights is analyzed. In the first part acknowledgement of influencing context conditions that refine gender issues are detailed these include; the nature of women's rights, position of women given their transient rights, the consequences of gender inequality on land and the effect of dispute resolution on land matters. The economic efficiency and equity theory together with the human rights discourse have provided a firm foundation for negotiating and demanding for women's rights in national policy, which has either had to make choice between options or promote concurrent ideologies to accommodate evidence based demands to tackle two key issues; access to land and control of land (including its outputs) through adaptation of tenure and legal dualism, making a choice between representation, participant or professionalism in land management and purchase or inheritance under customary or registered tenure. This paper concludes by outlining key implications of gender for PSIA data collection and ex-post analysis, as well as implications for systematic demarcation projects.

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1. INTRODUCTION

1.1 Policy Context

The struggle for land ownership rights is perhaps the most difficult frontier in the gender equity journey, as it requires a direct and immediate change in power relations². Four key characteristics shape policy issues and response on gender and land; (i) nature of women's rights, (ii), position of women on land, (iii) consequences of gender inequality on land and (iv) non-effective conflict resolution for women.

The nature of women's rights in patrilineal societies is *dependent on relationship with a male*, usually a father, husband, brother or son. In most cases, women do not inherit land on their own, and where they do, they inherit less land their brothers. It is mainly through marriage that women acquire use rights in land, and husbands assign particular fields for cultivation. Upon widowhood, women act as guardians or trustees for the minor children until a male heir becomes of age to take charge. Women with grown up sons are largely assured of cultivation rights, in contrast to childless women or women who bore only daughters, whose position is very precarious.

In a few societies where widow inheritance exists, the practice ensures continuing use rights for women in the fields they had cultivated during marriage; refusal to marry the successor may mean cessation of use/cultivation rights. Thus *women enjoy transient rights to land* as a result of their rights being appended to male relations, essentially pegged to the institution of marriage, thus making the destiny of marriage determinant of her continuity to enjoy the rights there from. However, the degree of secure access and control in the matrimonial estate largely depends on the type of marriage (customary, co-habiting, and religious) and the success of the marriage (relations of the spouses).

A woman's position *on land in society is inferior*, reflecting the nature of power and authority that she has over land either in the matrimonial estate or the natal estate. Customarily, a woman's right to inherit land is viewed in terms of her responsibility to nurture the children of the deceased. Custom denies her an independent right to own and inherit land; preference is given to children over their mothers, in event of death of the male household head. In the natal estate, sons take precedence over daughters when a father is determining who the beneficiaries should be, how much each of the beneficiary should get, and when a beneficiary should receive a share. Succession to land and other property by either the children (for the matrimonial estate) or the brothers (for the natal estate) does not guarantee the security of a woman's right to land.

Lack of secure access, ownership and control of land has resulted into a poor and *low socio-economic status of women in society with direct implications for their investment in agriculture and the development of the entire economy*. It is not surprising therefore that the solutions to poverty and underdevelopment largely depend on addressing the gender dimension of these issues. Today, throughout Uganda, women have considerable legally accepted but practically untenable rights to land.

The success of the women's struggles, through legal means, has also been constrained by their lack of *effective conflict-resolution mechanisms for protecting the interests of women in land*. The court processes of trying to resolve conflict have tended to be lengthy, expensive and too technical for the women, to the extent that the majorities who have sought recourse to the courts of law have either lost or withdrawn the cases. These institutions are male-dominated and they tend to favor their male counterparts (considering corruption reported), by maintaining the status-quo.

² Agarwal 1994; Rugadya 2005

1.2 Theories and Evidence

There are generally two related theories on which feminists and women's rights activists have used to demand for women's land rights in policy in Uganda.

Human Rights Theory:

This theory cites the fact that Uganda is a signatory to international human rights law³, with obligations to modify social and cultural patterns of conduct to eliminate practices based on stereotyped roles for the sexes. Arguments within this approach also cite the Uganda's Constitution, which contains non-discriminatory clauses to the effect that women have the same rights to land as men. By drawing on these and other legal instruments, the argument is made for women's autonomy and individuality to be recognized in land reforms. Despite government's gender-progressive reputation and a rhetorical commitment to women's rights, many anticipated changes are still at cosmetic level and do not impact women on the ground.

This approach is supported by networks of feminist lawyers who have developed a rights based discourse that comes out of the "women's rights as human rights" approach of the 1990s. These views, focused on legal reforms that were increasingly seen as key to women's emancipation, and in particular, on constraints imposed by customary laws and practices and problems of implementing anti-discrimination laws. Their primary concern is with joint occupancy rights, ownership, and registration of spouses. It is argued that achieving sustainable development requires addressing inequality between men and women in the distribution of resources such as land. Renewed pressures to replace customary and communal forms of land ownership by private and registered forms of individual ownership are being advocated in the interests of greater agricultural productivity. But concern is also mounting that this will lead to greater inequalities and further accentuates rural poverty and landlessness. In such a context, is it possible to provide some guarantees for land security to the rural poor? Is there a need for a ceiling on the size of private farms? These are important questions at a time of increased and new patterns of land concentration alongside increasing landlessness and the scope for challenging private land rights has reduced.

Generally, there are some real difficulties in approaching land rights from a human rights perspective. For one thing, land rights do not fit easily into typological distinctions commonly drawn between civil and political rights on the one hand, and economic, social and cultural rights on the other. Foremost is the concept of a right to development, which has underlined the indivisibility of human rights, and the inter-linkages between civil and political rights. The nature of a right to land has different dimensions which depend on whether or not one owns or possesses the land, persons who are utterly dependent on the land for survival, and who have no alternative means of subsistence. The second issue has revolved around efforts to actualize economic and social rights, directly linked to the issue of land rights and access, as key to the all important right to food. Here, there is an obligation to protect the access by vulnerable groups to resources required to ensure their access to food. On its own, it may therefore make sense to talk of a universal right to food, shelter, health care and even to employment, whether or not that right is realized in practice.

As a consequence, human rights approaches have not been of immediate relevance in supporting arguments for particular types of tenure arrangements. These approaches, however, are of immense value in determining the moral authority of competing land rights, when the claims of those who need the land, but do not own or possess it, are pitted against the claims of those who hold legal rights to the land, but do not necessarily need it. Ultimately we are faced with the question of finding a balance between equity and efficiency,

³ International treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

and adapt principles of land law changes, needs and competing needs of various sections of the population. This is the only way of meeting the challenge of ensuring that land rights become an integral part of the human rights realization. Viewed in this perspective therefore, it is easy to argue that land access, land security, and land reform are fundamental human rights concerns. This is the more reason why the language of human rights should be increasingly used to press for more equitable land policies. However;

In traditional African society, the individual is not autonomous, nor does she possess rights above and beyond those of the rest of society. An individual's place in society is fixed by a defined role or status in a greater whole, be it the family, clan, tribe, or community. The emphasis is on duties rather than rights, mutual obligations rather than individual advancement. Accordingly, when the women's movement advocates for women's rights, which are already considered Western and individualistic, it is accused of elevating women over and above family or society⁴.

Economic Efficiency and Equity Theory:

A second type of theory draws on development and efficiency concerns. In the mainstream economic thinking, employment has hitherto been taken as the principal measure and guarantee of women's economic status. In exploring the link between gender subordination and property, it is necessary to look beyond the distribution of property between households to its distribution between men and women within households. It is also vital to view beyond who owns property to who controls it. Three aspects are important here; (a) women's continued investment of labour in land based subsistence production, (b) protection from family land conflicts which reduce women hours in the production process and (c) equity articulated by the "sweat argument"⁵ by which women believe they have the right to co-own land with their husbands as compensation for their labor in the fields, home, and caring for household members.

Evidence⁶ shows the imperative of mobilizing property assets as the key to economic development, it is clear that the gender imbalance is a vicious circle, which has to be broken, since attempts by women to control property, especially land, are considered by the community as misbehavior. A woman who buys land is seen as having "sinister" intentions either to run away from her marital home, or use it as a place to "entertain" other men. The threat of women gaining power through property ownership makes society frown upon women who go ahead to acquire property of their own. "Proper" women are satisfied with males being the providers in their lives, and they take whatever is given to them with gratitude, and teach their daughters to do the same⁷.

There has also been a long-standing assumption in economic theory and development policy that the household is a unit of congruent interests, among whose members the benefits of available resources are shared equitably, irrespective of gender. To argue therefore that the economic needs of women require a specific focus, distinct from those of men is to challenge the above assumption. But to further argue that women need independent rights in land, (the most critical form of property in agrarian economies) is to challenge the assumption that women's economic needs can be accommodated adequately merely through employment and other income-generating schemes. This has obscured the would-be self-evident yardstick of property ownership and control.

However, the general trend is towards greater security of private land rights in the interest of greater productivity and efficiency. Nevertheless, the trend towards land privatization has

⁴ As Asiimwe explains in Rugadya, 2005

⁵ Articulated by Lynn Khadiagala

⁶ provided by de Soto (2000)⁶ in his book the Mystery of Capital

⁷ Chibita wa Duallo, President Museveni's Legal Advisor, argued that the co-ownership clause was an attempt to commercialize marriage and would destabilize families if passed

culminated into a new and big dilemma. How is a balance to be achieved between security and productivity on the one hand and equity and traditional notions of land security on the other? Can we recognize private land rights, and at the same time limit them by other considerations of gender interest?

2. POLICY ISSUES ON GENDER IN UGANDA

Response to gender issues on land in Uganda is around two critical areas namely; access to land and control of land and proceeds thereof. It is evident and clear that equality in legal rights to own property does not, by all means, guarantee gender equality in actual ownership, nor does ownership guarantee control. The distinctions between law and practice and between ownership and control are especially critical in the context of gender.

2.1 Access to Land

There are four major ways in which access to land by women is achieved in Uganda, namely; donation or inheritance, access by virtue of membership within a family, purchase and borrowing. The trends on the above are clear in a recent survey result as shown in the table below;

Table: 1: Means of Land Access by Regions in Uganda

How Parcel was Acquired	Region								Total	
	Northern	Eastern	Central	Western	n	%				
Purchased	176	22.2	383	40.4	561	61.3	398	42.8	1518	42.3
Gift/Inherited-Husband Family	492	62.0	519	54.7	252	27.5	436	46.9	1699	47.4
Gift/Inherited-Wives Family	8	1.0	13	1.4	30	3.3	29	3.1	80	2.2
Borrowed	14	1.8	7	0.7	8	0.9	5	0.5	34	0.9
Rented	45	5.7	10	1.1	12	1.3	13	1.4	80	2.2
Share cropped		0.0	4	0.4	1	0.1	2	0.2	7	0.2
Just settled	47	5.9	7	0.7	20	2.2	23	2.5	97	2.7
Gift/inherited- my relatives	11	1.4	5	0.5	31	3.4	24	2.6	71	2
Total	793	100.0	948	100.0	915	100.0	930	100.0	3586	100

Source: Gender Baseline Household Survey, May 2005

A. Inheritance and Donation

- (i) Donation is one of the major means through which land is customarily acquired under prescriptions guided by customs and practice: grown-up son receives a share of his father's land, on which he can build a house for himself, his wife and children. The implication is that only sons can and do receive donated land to expand the clan.
- (ii) By tracing lineage after the male descent, customs do not allow a daughter to become heir to her father despite the fact that she is "linear descendants". It is only the son (or in absence, another male relative) who can become heir to his father, even if such a male is a collateral relative or not, in contrast to the daughters who may be given preference to collateral relatives in law.
- (iii) Succession is effected by either a written or oral will. In the latter case, an (ageing) father invites clan elders to physically witness the distribution of his land to his children; amongst the heir (who retains the largest portion) and those sons who previously did not benefit from the donations (unmarried sons mainly).. On his death, the clan elders are accordingly expected to implement the wishes of the deceased. In event of absence of the above two means, the clan elders are empowered to distribute the deceased's land, using the customarily-recognized criteria.
- (iv) As far as the parents are concerned, daughters have largely transient rights, since upon marriage it is taken for granted that their status changes as they move to reside in the homes of their husbands. It is in their husband's home that most of their adult contribution, in terms of labour is made, and consequently it is argued that their due share should be there, but not at their parents.

B. Family Access

Family land (akin to ancestral land) is described as that land which has been handed over by several generations through the male lineage. As a result, of this customary practice, the sons deem their right to family land as automatic while daughters are not eligible. Hitherto, there is growing conflict generated by the son's demand for a share, even when the father is not prepared to distribute it. Where family land is in surplus and the children of majority age need an independent source of income, a father may conditionally allow them to use his land for specific reasons and for a specified period. Under such an arrangement, there is no clear permanent demarcation of the land that one is supposed to use; the land is used only temporarily, in accordance with the fathers' specifications.

C. Purchase

- (i) Although Ugandan laws are quite clear about women being as free as men to own and dispose of property, including land⁸, in practice women have not accessed the land market. The women's lack of access can be explained by a shortage of funds due to their income activities being confined to the garden and kitchen. Where they can muster resources with which to purchase land, they have had to do this very discreetly because most husbands perceive their wives independent acquisition of property, particularly land, as her first step towards a preparation of an independent existence. This is the very same reason husbands try to ensure that their wives do not have independent sources of income.

Table 2: Land Ownership by Respondents Sex

Responses	Respondents Sex				Total		
	Female		Male		n	%	
	Both Husbands and wives	75	5.6	70	6.4	145	6.0
	My husbands	835	62.3	788	72.5	1623	66.8
	My wife's	13	1.0	32	2.9	45	1.9
Names Appearing on Land	Female children	14	1.0	5	0.5	19	0.8
	Male Children	45	3.4	18	1.7	63	2.6
Ownership Documents	Mine (widow)	159	11.9			159	6.5
	Mine (Single/ divorced /separated females)	50	3.7			50	2.1
	Mine (single male)			37	3.4	37	1.5
	Husbands relative	94	7.0	93	8.6	187	7.7
	Wife's relative	20	1.5	4	0.4	24	1.0
	Others	36	2.7	40	3.7	76	3.1
Total		1341	100.0	1087	100.0	2428	100.0

Source: Gender Baseline Household Survey, May 2005

- (ii) Women have not taken a sizeable advantage of this opportunity for various reasons, in spite of the fact that accessibility to and ownership of land in Uganda is increasingly being acquired through land purchases. Land purchases have been made either individually by the household heads, the majority of whom are male, or jointly by the husbands and wives, from the proceeds of their agricultural produce. The latter is common when the family is seeking additional land. As far as land markets are concerned as a means of access to land, the women are again constrained, though this time in a subtle and latent manner. It is those women who are single, either separated or unmarried who are relatively free to transact in land.
- (iii) Interestingly, most men openly claimed joint ownership of property independently acquired by the woman during her marriage, especially land, while at the same time they enthusiastically denied their wives a reciprocal ownership of what the men acquire after marriage. The men reasoned that they deserve a share of this property, since it is the conditions in their homes which facilitate women to acquire the property. On their

⁸ Registration of Titles Act; Cap 205, 1964 of the Laws of Uganda

part, the husbands are themselves secretive when transacting in land, to such an extent that their wives are often kept ignorant of such transactions.

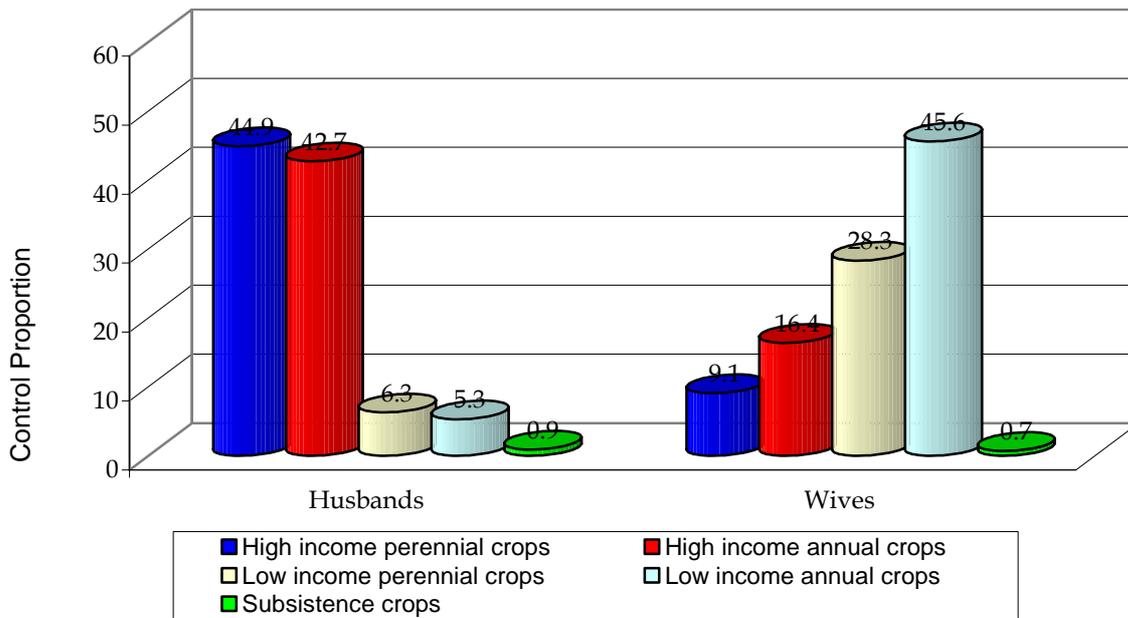
D. Borrowing

The fourth major avenue of access to land for women is through borrowing. Land is lent mainly by those who have land in excess of what they can use. Needless to mention, this is a very tenuous and short-term form of access. Among the challenges faced by women with respect to borrowing is the fact that most of the people in a position to lend out land are men and as such women, because of their status in society cannot effectively negotiate with them on good terms. It is also important to mention that borrowing enforces obligations on the borrower, terms that are more or less equivalent to share-cropping. This is because those who lend out land expect, as a matter of right, that the borrower is morally (and at times obligatorily) bound to give some share of the produce to the lender.

2.2 Control of Land

Customarily, land that was a communal asset was passed on among the male, at least in as far as its control was concerned. At the family level, in spite of the differences in the tenure systems, the relations pertaining thereof are defined by custom. Control over individual family members is exercised by the head of the household through his control over land.

Figure 1: Control of Land by Income Crop Category



Source: Gender Baseline Household Survey, May 2005

A. Women's Rights to Land

The introduction of private ownership merely changed the form of control to individual male ownership from communal ownership, implying the change did not affect the position of the males over women who remained in the subordinate role of using the land. The exclusion of women from property ownership rests on the need to preserve family property within the lineage and to effect its disposal only within the husband's lineage.

As regards the division of labour in the rural areas, the gender roles are still rigidly defined by custom, some tasks are defined as women's, while others as men's. There is still a widespread practice of men being responsible for cash crops and livestock rearing, while women are responsible for food crops. Secondly, and consequent on the above, the main domestic chores and the detailed welfare of all the family members is the responsibility of

the woman which leaves the husband ample opportunity to carve out a public role outside the home, basically in the public sphere.

Table 3: Opinions on Land Co-Ownership by spouses

Counts		Respondents Sex				Group Total	
		Female		Male		n	%
Whether Respondent Agrees with Co-ownership between Spouses	Yes	1238	66.5	885	55.5	2123	61.4
	No	289	15.5	560	35.1	849	24.6
	Doesn't Know	335	18.0	150	9.4	485	14
Group Total		1862	100.0	1595	100.0	3457	100

Source: Gender Baseline Household Survey, May 2005

However, latest evidence as shown above gives an upward trend towards joint responsibility and control within the homes between the spouses, but, as has been noted before, this is more visible in those homes where a wife was making a significant contribution to the income of the family (normally away from the family farm), or played a big role in the acquisition of the property owned by the home. It is also observed that there is an emergent trend to consult, or at least inform, the wives before their husbands undertake most major decisions that affect a family. Big decisions like the disposal of part of the family land now increasingly, sanctioned, or at least approved of, by women.

Table 4: Choices of Crops Grown

Parcel Responses		Respondents Sex				Total	
		Female		Male		n	%
Person with the right to Choose Crops Grown	Husband	391	18.9	615	33.0	1006	25.6
	Wife	501	24.2	213	11.4	714	18.1
	Both Spouses	797	38.5	967	51.8	1764	44.8
	Clan	8	0.4	7	0.4	15	0.4
	Female children	26	1.3	8	0.4	34	0.9
	Male Children	43	2.1	49	2.6	92	2.3
	My self (widow)	243	11.7			243	6.2
	My self (Single/ divorced /separated females)	58	2.8			58	1.5
	Others	3	0.1	7	0.4	10	0.3
Total		2070	100.0	1866	100.0	3936	100

Source: Gender Baseline Household Survey, May 2005

From the (women) producers point of view, the fact that the (men) non-producers are the controlling authority, both at the (family) micro and (national) macro levels points to a major obstacle that hinders development, through agricultural production. This is manifested in the manner in which decisions are arbitrarily made by the men, according to their priorities (selfish) interests and needs which may not necessarily confirm to the producers (women) or the family needs. Such decisions include those related to the use of the land. The woman lacks the authority to determine to what use land should be put, in spite of the fact that they are the managers of production on the estate. They also lack the authority to determine the use of the income derived from the produce. On their part, the men argue that they need full control over land and the products there from, since they have specific roles described by society that they must perform and other obligations. Custom depicts women as being weak and frail and therefore, unable to manage property adequately.

B. Women's' Loss of Rights over Land

Today, there is an emerging change of attitude of the parents towards the question of whether a daughter retains rights to the parents' estate after she has married. This change is premised on the increasing incidence of marriage instability and thus separation of couples; the increasingly perceived reliability of daughters to maintain the family property (unlike sons

who are believed to be interested in selling it off); and the comparative appreciation of the daughter's contribution towards the parents, even after her marriage.

Land obtained through inheritance confers specific rights to an individual. Under the customary tenure system, the successor is free to do anything on the land. Wills, whether oral or written, have offered some form of protection for the widows and children of the deceased. The family therefore, depends on the good will of the deceased to protect their property from the in-laws. In some cases, where the will seems to favour the widow, the in-laws either change the will to suit their interests or they hide them so that the contents are not disclosed. Tampering with the will is more common where the widow is given more property than the rest of the dependants, or where she is barren and/or where poor relations exist between the widow and in-laws.

Through the man's, sometimes incorrect and, sole decision making, his wife and family may lose rights automatically. Such cases include, a man mortgaging the family / individual land and fails to repay the loan; a man who individually wrongs community members and has no alternative source of income to meet community obligations. A woman may lose rights to her husband's land for various reasons. A husband may have misunderstandings with the wife during marriage and he chooses to either abandon her or chase her away from his estate. A husband may also choose to remarry and displace his wife with another woman.

3. CURRENT POLICY RESPONSE

In the review⁹ of the empirical literature (economic and others), three key principles were reaffirmed as far as access and control over land is concerned: (i) the desirability of owner-operated family farms, (ii) the need for land markets to transfer land to more productive users, and (iii) the pursuit of equitable land distributions to foster agricultural growth. A more recent World Bank Publication¹⁰ looked at confusions, controversies, and consensus in the area of land tenure and property rights and concluded that;

- (i) Property rights need not always confer full ownership and be individual – they can, and should be, individual, common, or public, depending on the circumstances. This is because in Africa rarely are land rights fully individualized.
- (ii) Hence, “there are no universal standards for tenure security or unconditionally uniform relationships between tenure security and agricultural productivity because of the importance of other factors that vary across sites.” and
- (iii) Most important for sustainable development is that property rights are deemed secure. Because there has been little direct testing of how tenure and land policy instruments could raise tenure security affect agricultural investment and productivity.

In terms of implications for policy two lessons were clear; that land titling is not always the best policy option and the equity concerns regarding land market liberalization are often misguided and that removal of barriers on land rental markets was of high priority.

Currently, Uganda has made the following choices on gender in the national land policy:

(i) Adaptation to Tenure and Legal Dualism

Despite the evidence on customary land tenure and the failure of formal land tenure systems to provide appropriate security for genders, all tenures are maintained in their multiplicity, since a replacement paradigm is unachievable. Tenure dualism is embraced in proactive and imaginative ways, by allowing customary law and practice to continue, but providing clear and secure paths to more modern formats and modes including the recognition of equity and equality requirement. In the immediate, this involves changing nothing in daily practice on the ground, but altering the formal character and structure of land rights to

⁹ Deininger and Binswanger, (1999)

¹⁰ van den Brink et al 2006

facilitate evolutionary conversion as individuals and groups come to find it necessary with the underlying tacit of gender notions applied in an incremental manner. In this sense the policy recognizes tenure dualism as a resource rather than an obstacle in the gender dynamics. However caution needs to be taken because in the real world, customary law has proved to be tenacious in such fields as family relations, economic relations and – often spanning the two – land tenure.

In addition, feminist lawyers have argued that customary law in the present day context has been used to selectively preserve practices that subordinate women, it is therefore important to eradicate customary land tenure practices and fight for the rights of women to be able to inherit, purchase, and own land in their own name. Statutory laws have been partial to women, but are often ignored in favor of customary laws that work against women's interests, when it comes to inheritance of property. Women's access to land cannot be understood without considering inheritance laws and family relations in the communities. In Uganda different legal regimes are functioning in parallel. Customary law may hardly be acknowledged in national legislation but it often continues to dominate real life – especially in the rural among the poor and under-privileged.

(ii) Transmission of Rights: Purchase or Inheritance

Transmission of rights is typically limited for women; they usually cannot designate an heir, sell land, or lend land to others. Sometimes the tenure status of women is altered primarily through redefinitions of rights and social identity. Sometimes state interventions create new rights for men and adversely affect women's access to land. The effect of this has been to reduce the bargaining power of women in the marriage, and even less with respect to their own lineage should they divorce.

In patrilineal societies, which are most prevalent in Uganda, women generally do not inherit land from either their fathers because daughters marry outside the clan, and will therefore take the land with them to another clan. Husbands often do not bequeath land to their wives for the same reason: They need to ensure that the land remains in the clan because they worry that the widow might sell the land to non-clan members. In some societies in Uganda, if the husband dies, the wife and children are inherited by the husband's brother or another family member so that he may provide for them. Thus a woman may have jointly acquired land with her husband and may have spent her entire adult life cultivating the land, but she cannot claim ownership of the property. If he dies, the land generally goes to the sons, but may also be left to daughters. Nevertheless, he may still leave the wife with no land and therefore no source of subsistence.

Rather than seeing customary land practices as a basis on which to improve women's access to land, policy is inclining towards a rights-based system that improves women's ability to buy, own, sell, and obtain titles on land. It is already evident that women have adopted individual strategies of purchasing land as a way of circumventing customary traditional authority

(iii) Representation, Participation or Professionalism

In Uganda, tenure administration has been decentralized¹¹, reason for including more women at all levels of land administration is the tacit assumption that women officials will advocate gender equality in proceedings and decisions on land, and that they may serve as role models and diminish the barriers for women to approach, and benefit from services of land institutions. Despite the changing composition land administration groups, it will take years before a good gender balance can be achieved, especially where there few female professionals in the specific land related fields. The policy has continued to embrace the principles of decentralization and affirmative representation as stipulated in the Uganda

¹¹ District Land Boards administer land, supported by a network of local land committees

Constitution and effected in various laws¹². However it is yet to be clear which of the three (amongst representation, participation or professionalism) is to take credence over others.

(iv) Process Contradiction: Titling or Customary Registration

If women were benefiting from customary land tenure arrangements, as the development practitioners argue, one would think the preservation of customary rights or modifications in the customary systems would be a desirable gender goal. By titling and registering land, the importance of secondary right for women to access land were ignored as men increased their control over land. This loss of rights occurred at the same time as men increasingly gained the right to designate heirs; men increasingly were successful in defining land as 'self-acquired' and outside the purview of the lineage while women increasingly found unsuccessful their arguments that land they farmed was 'female-property'. Men escaped the claims of the corporate body while women found themselves more incorporated. This explains why so much is at stake in these battles over women's rights to land, and why women's gains in this area have been so slow. However, sections of women in society are enthusiastic about titling because it allows them the possibility for co-ownership of family land because legal measures are seen as a way to diminish the importance of clan and communal control over land.

(v) Transaction Consent or Co-ownership

Co-ownership and transactional consent are encouraged and upheld by the draft policy.

4. IMPLICATIONS FOR PSIA¹³

The importance of collecting gender-disaggregated data is essential for assessing the extent and depth of women's land rights and for assessing the impact gender equity. (1) how land rights are distributed among different groups of women and men, and (2) what effects differentiated land rights have on gender equity and on women's capabilities. Explicitly recognizing gender as an issue to be considered at the outset will allow better monitoring and evaluation of project impacts

Data Collection and Ex-post Analysis:

- (i) You cannot afford to ignore customary institutions as they are often very important for enforcing women's land rights or making changes to long-held customary norms. They are local and therefore accessible, the leaders are generally respected by the community, and women are less ashamed to approach them. They can institute fundamental, socially agreed change in favour of gender equality and equity¹⁴. Moreover, these traditional institutions can have more power to change cultural norms than do legislative bodies or modern institutions. If any impacts are to be assessed then this should be the centre of focus for gender issues.
- (ii) The predominance of patriarchy in law, policy, and practice ensures that the land has owners but that they are not women. For law and policy to influence gender relations in the tenure realm, there is a need to deconstruct, reconstruct, and re-conceptualize customary law notions around the issues of access, control, and ownership. The view should be to intervene at points that make the most difference for women. It is insufficient to imagine addressing gender issues by only means issuing titles or co-titles to women, with little appreciation, for instance, for what happens (a) in subsequent transactions, (b) in enforcement and actualization of those rights, (c) in realizing the benefits that may stem from formalizing women's rights (such as access to credit), and (d) in altering decision-making powers within households¹⁵.

¹² Local Government Act 1997, amended 2001, amended 2006

¹³ Information in this section is extracted from *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report* (http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf)

¹⁴ Page 13, Page 14

¹⁵ Page 18

- (iii) As we all know, even with the best of intentions, implementation is always the difficult part. It therefore makes sense to evaluate processes through indicators for gender *awareness, attention and action*. Initially by looking at the extent of awareness through upgrading the knowledge amongst professionals on gender issues in land tenure in general, and in land administration, then progressing to implementation and finally the reactive responses of beneficiary groups. It is important to tow way from beliefs such as addressing gender issues within land administration is ensuring that women are hired (for example, as clerks, interpreters, social specialists), rather than mainstreaming equal opportunities for all in all types of activities.
- (iv) The biggest impact on women is more often found in the regulations and not the broader policy statements of the law¹⁶. Therefore, among the issues that should be considered (this is not the full list) are:
- Are men and women guaranteed equal participation in the adjudication process?
 - Is the director of the land agency held responsible for nondiscriminatory practices with regard to gender?
 - What documents are required by the regulations for proof of ownership? Are these documents readily available to both men and women, and are they expensive to acquire?
 - Do the regulations require proof of marriage or consensual union? What type of proof is required?
 - Do the regulations require *written* consent for transfer of property held in common ownership? Are there guidelines for how to determine whether land is held in common ownership by operation of law, even if it is registered in only one name?
 - Do the regulations deal with polygamy if necessary?
 - Do the regulations deal with illiteracy?
 - Where are disputes adjudicated?
 - How do the issues of money, time and literacy influence the dispute resolution process?
- (v) Sessions with both men and women allow each group to understand potential barriers to full participation and may encourage households to overcome these barriers together. However, it is also often important to hold separate sessions for women to provide a non-threatening environment for discussion and to provide feedback to the land administration processes. Having public meetings in which younger people can participate is also a way to ensure that the next generation of landholders is also a way to ensure that the next generation of landholders better understands its rights.
- (vi) Cultural prohibitions against women's ownership or use of land are often more powerful than written law. Much can be done within *land* legislation' but family, inheritance or customary law 'may have a more significant effect on women. One thinks here of communities ravaged by HIV/AIDS and the struggles to change 'customs such as widow inheritance which have become inimical to women's lives and livelihoods. Legislative reform by itself often makes little difference to the majority of women' and that those who take advantage tend to be 'urban, educated, and usually wealthy women.
- (vii) Polygamy seriously affects women's rights to property and is the source of much tension and anxiety over land rights in many countries. Legislation around polygamy is difficult, but to ignore formal or informal polygamy is to inadequately protect women's property rights. There are no effective and gender-sensitive titling procedures for polygamous households. Legal marriage can be expensive and time consuming, and it may require residence or personal identification that women do not have.

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Implications for Systematic Demarcation

The gradual transition process from customary tenure systems to individual ownership calls for surveyors paying a great deal of attention to the dynamics of the land tenure system, which affects the fine balance of obligations and rights in a given community. A well-known issue is the fact that individualization and privatization of property often negatively affect women's ownership, their use rights to land, and their access to communal land, since full ownership is typically registered in the name of the *de-jure* head of household, irrespective of the *de facto* situation.

- (i) Dealing with the full bundle of legal rights is of particular importance for women, as even the modest rights traditionally held by women may be lost. Surveyors have to know the traditional land tenure systems. There is in fact no technical excuse for not including or recording such concepts in modern registration systems.
- (ii) There has been recognition that the practice of issuing titles to just one person in the household (the household head) may be denying other people their land rights. More than one person may hold rights to a particular parcel of land. Or, if there is more than one parcel, different people may have rights to different parcels. But often titling brigades are not trained to look for and identify more than one property rights holder¹⁷.
- (iii) The question of joint ownership of land for spouses, the treatment of property according to civil law, and practices of property inheritance are subjects not usually covered by cadastre and land registration. It is suggested that surveyors consider broadening the perspectives in this respect and close this obvious gap.

¹⁷ Page 27

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