

**Module 1: Land Tenure Security and Linkages with Poverty**

**Session 2: Gender Dimensions of Land Rights**

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**Questions for Discussion:**

1. Does integration of gender in land reform impact on poverty?
2. What other alternative options are available for dealing with gender and land rights other than legislative and policy reform?
3. Realizing the benefits of gender mainstreaming in land requires successful implementation. How can you ensure this?

## Issue Notes

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## 1. Gender and Land rights

The need to tackle gender issues in land and property rights is now widely recognized in the debates for land reform. The question of gender and land rights is a very sensitive one particularly so because it involves relinquishing powers and privileges by the holders of those rights to those who do not possess these rights. In our political set-up and social organization, the power holders are at the same time the policy makers. This is further compounded by the fact that the majority of the citizens (particularly women) are blind to the tools of oppression that subvert undesirable policies in their favor.<sup>3</sup>

Land is one of the most important factors of production for agrarian economies in Sub-Saharan Africa, access to and control over it are an essential aspect of its utilization and productivity. Statistics world wide attest to the fact that women form just over half of the world's population, they perform 2/3 (60%) of the world's working hours and 50% of the agricultural production and processing. They earn 1/100 of the world's income and own 1/100 of the world's property<sup>4</sup>. Given this central role women play in agricultural production, it's without doubt that lack of protection of their rights on land and secure access to land has direct implications for investments in agriculture and efforts to promote agricultural productivity.

In the East African sub-region as in many parts of Africa, the gendered nature of roles for both men and women is undeniable. In Uganda, the women's struggle for gender balance with particular regard to land, is a direct result of the fact that, whereas women have played the central role in agriculture and food production, history, tradition and customs (such as polygamy, bride wealth and the limitation of the practice of women succeeding to property in their homes of birth) have deprived them of actual ownership of land. The transfer of land is limited to either out right purchase or inheritance; women have been deprived from either of these options and have thus turned to legislation and policy as the most viable option.

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<sup>3</sup> Margaret Rugadya, 2003 *Consent, Co-ownership or Occupancy: Policy and Legal Responses in Uganda*

<sup>4</sup> United Nations Development Programme (UNDP): Human Development Report, 1995

## 2. Gender and Poverty

Land tenure insecurity among the women is severe and is linked to low incentives to produce, perpetuating poverty and food insecurity. The stake of Uganda's female farmers in this critical productive asset is severely limited and the manner of accessing land for women perpetuates social and economic inequality. Direct links between women's tenure insecurity and household food insecurity is becoming more evident. In cases, where women own land and have a stronger stake in decision making on the family farm, they also have a higher degree of control over production and income from the cash crops. The issues of women's land rights and gender concerns are of critical importance, not only to the land reform process but also to wider poverty reduction strategies, through both production and social welfare impacts<sup>5</sup>.

Equal rights for both women and men to hold and use property is the cornerstone of social and economic gender equality. Women are the majority of the small-scale farmers and therefore, investments should be made to strengthen their land rights in all tenures to ensure commitment to productivity and economic growth. Equality in access to land encourages faster and more equitable growth. Research has shown that divergence between ownership and control rights can have a negative impact on productivity. The enhancement of women's rights through joint titling increases tenure security and therefore, productivity and economic growth<sup>6</sup>.

Reducing the barriers to women's control over land is crucial for policy against poverty. The barriers against women's possession and control of land has perpetuated poverty through discrimination within households that do not pool income from assets, or do not distribute that income equally. The risk of poverty and the physical well being of a woman and her children depends on whether she has direct control over land and productive resources not just access mediated through male family members. Denying Women who are predominantly the managers of land, control and ownership

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<sup>5</sup> Joan Bosworth; 2003, Pg.11 *Country case Study – Uganda: "In Land Policy and Administration"* World Bank Institute, 2003.

<sup>6</sup> Associates for Development, 2004 " *The role of the Land Sector in securing Livelihoods and achieving PEAP Goals*" submitted to Ministry of Water, Lands and Environment

rights because they are women is expensive. It is estimated that household output could be increased by 10 – 20% by reallocating currently used agricultural inputs of which land is core, more evenly between men and women. The same household income, if controlled by the woman would improve the children's health, nutrition and education<sup>7</sup>.

### 3. Importance of Gender to Land Rights

The need to recognize gender in land and property rights has to do with relations between men and women in a variety of settings at particular historical moments. These are relations that a person is involved in on the basis of their position in a network of kinship and affinity (i.e. relations by birth and through marriage) hence, the imbalance in opportunities for access to and control over productive resources and benefits.

The importance of gender in land rights is looked in the perspective of the need to promote, the following major principles and goals in policy and legislation:

- (a) *Equity*: There is a strong case for improving women's rights over land for equity reasons to satisfy social justice. Recognizing gender in land reform is important not only to redress the **historical imbalances and social injustices** suffered by women with regard to access and ownership of land, but also to address the wider economic considerations such as efficiency--the fact that agricultural production is predominantly done by women.
- (b) *Equality*: Equal rights and equal opportunities for men and women are among the fundamental human rights (equity) enumerated in any national Constitution. For Uganda, it is in Article 33. Inequalities of land access and ownership and tenure insecurity within the household play an important underlying role in shaping the face of poverty in Uganda. The equality in land tenure relations would ensure that women/ wives are involved in making decisions concerning land management. The existing gender inequality in relation to access, use and

control of family land is a major factor contributing to household poverty.

- (c) *Human Rights*: With regard to land, women's rights are generally restricted to access while men are more likely to have ownership rights. Land reform must provide an explicit legal framework to **protect human rights of women**. Failure to do so is contradictory to its international obligations and a perpetuation of gender inequalities, which have always discriminated against and exploited women, and abused their human rights. Without secure rights to land, women's ability and incentives to participate in income-expanding economic activities are reduced. However, an exclusive focus on women which ignores men's major share and control of resources and decision-making is unlikely to give sustainable results in development, as much as lack of recognition of women's and men's roles.
- (d) *Good Governance*: **Experience** shows that project and programme planning which does not take into account gender-specific differences in a society is likely to fail or be less efficient than necessary (efficiency), because it tends to reach mainly male members of the society in question. Secondly, the gender division of labor and resources is responsible for the imbalance in property ownership. Recognition of gender land rights ensures the participation of men and women in all development processes at all stages.
- (e) *Poverty Eradication*: **Eradication of poverty** is a main objective of government's national policy. Land rights are now recognized as a development issue, crucial to poverty eradication as stipulated in most government policies and programmes in sub-Saharan Africa; especially in the Poverty Reduction Strategy Papers. Evidence on the gender distribution of land resources shows that women are frequently disadvantaged in terms of their access to land but more particularly in their ability to control income from farming activities and to make decisions on land use. For rural women, this inequality of access to the key productive asset is a fundamental

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<sup>7</sup> IFAD; "The challenge of ending rural poverty": Rural Poverty Report 2001, Oxford University Press.2001 Pg. 85

determinant of poverty and social disadvantage<sup>8</sup>. Without secure rights to land, women's ability and incentive to participate in income expanding economic activities is reduced.

- (f) *Development:* Women are the primary agents in managing natural resources (such as water, firewood, etc.) and thus pivotal to the development of strategies for protecting the environment and ensuring **sustainable development**. In Uganda they are responsible for 80 percent of the food production and 60 of cash crop production. Therefore, the country cannot afford to continue to ignore the **contribution** of women to social and economic development, nor can it afford to avoid further development of women's potential in the land sector. Therefore, the management of land as a primary resource and means of production must take gender into account.
- (g) *Gender analysis* helps to **predict** how different members of society or the household will be affected by development efforts and to what degree they will be able to participate in and reap benefits from them.

#### 4. Current Policy and Legal Reforms on Gender and Land in Uganda

The issue of gender in land reform is undisputed and has been debated for sometime. In developing land laws or constitutional revision, increasing attention is now being given to gender. On the African continent, Uganda ranks amongst the best countries in formulating clear state policies and programmes. One of the areas that government has focused on in designing policies and programmes is gender. Such policies and programmes have ushered in law reform in the area of land, domestic relations and sexual offences. Indeed many policymakers from around the continent are turning to Uganda for advice on her "successful gender story."<sup>9</sup>

In Uganda, there are generally three types of land rights i.e. access rights, user rights and

ownership rights, that must be addressed in the process of addressing gender issues in land. Efforts have been directed at ensuring that all the three aspects are addressed in policy and legislative reforms, with varying degrees of success and failure. In the area of policy, the following attempts are evident:

- (a) **The Poverty Eradication Action Plan (PEAP)** is Uganda's PRSP paper regarded as the core policy to guide Uganda's development towards a modernized economy by 2017. Its priority is agricultural modernisation, that is operationalised by the Plan for Modernisation of Agriculture (PMA) It aims at making agriculture more profitable through increased productivity and profitability by shifting from low-value staples to higher valued commodities<sup>10</sup>. PMA recognises that land reform is a catalyst, whose contribution will not be recognised unless if, it is meaningfully addressed to enhance agricultural transformation. The challenge is to strengthen women's land rights by addressing;
- Serious differences and inequalities between men and women in access to land, both within local communities and from one locality to another;
  - Women's ownership and access to land on death of spouse and succession.
- (b) **A National Gender Policy** was officially launched in 1997 with the aim "to guide and direct at all levels, the planning, resource allocation and implementation of development programmes with a gender perspective."<sup>11</sup> After noting that Uganda is a patriarchal society, outlining all the concordant inequities and gender power imbalances, the Gender Policy articulates its overall objective. Its goal is "to mainstream gender concerns in the national development process in order to improve the social, legal/civic, political, economic and cultural conditions of the people in Uganda in particular

<sup>8</sup> Ovonji Odida, Muhereza, Etum, Wily 2000; Gender Land rights and Development, Ministry of Water, Land and Environment

<sup>9</sup> Sylvia Tamale, Introduction To Gender, Makerere University

<sup>10</sup> NAADS, 2000: *Master Document of the NAADS Task Force and Joint Donor group*, MAAIF: Kampala

<sup>11</sup> *The National Gender Policy*, Ministry of Gender and Community Development, Kampala, 1997.

women.”<sup>12</sup> The policy is part of government’s policy framework to mainstream gender in the national development process. It provides the basic principles and guidelines for engendering all government sectors, district authorities and local councils. By the time the policy was launched, some gender-sensitive legislation and policies were already in place

- (c) **Sectoral Policy:** The Land Sector Strategic Plan (LSSP) recognises that the gender structure of land rights in Uganda varies across the country but in general is highly unequal, with women’s rights generally limited to access while men are more likely to have ownership rights, thus women’s rights being less secure than those of men. Without secure rights to land, women’s ability and incentives to participate in income-expanding economic activities are reduced<sup>13</sup>. Not only do women have weaker land rights, but also there is a traditional cultural bias against women’s involvement in decision-making on land issues. The land sector remains dominated by men at all levels. The LSSP puts in place strategies to strengthen the land rights of vulnerable groups across the genders and various categories of land users and owners.

Improving land rights not only requires “gender aware” land tenure policies, but also in many cases changes in constitutional rights, reforms in the marriage and inheritance laws. A lot of effort has been concentrated on legislative reform, with the formulation of the Land Act, 1988 and its subsequent Amendment in 2003.

- (a) **The Constitution, 1995:** In Uganda, it was clear and evident that there were no deliberate principles or objectives to address land rights of women, what was at the forefront in the land reform process emanated from the need to comply with the 1995 Constitutional provisions, which included a commitment to gender equality and affirmative action. It provided for

gender quotas at the national and local council levels. The Constitution prohibits discrimination on the basis of sex. It further enumerates women’s specific rights in several of its articles, obliging the state to respect, protect and promote these rights.<sup>14</sup>

- (b) **The Land Act, 1998:** Relates the non discrimination clause in the constitution to the rights of women, children and persons with disabilities in as far as decisions on customary tenure are concerned, this was expected have positive welfare impacts by providing increased economic security to household members who in the past have had no secure control over land disposition.<sup>15</sup> The Act also introduced first rights of refusal to transaction without consent of spouses and children on family land. This introduced the concept of family land, though it was not fully elaborated. Despite lobbying and advocating, Civil Society Organisation failed to secure co-ownership of land by spouses, that entails a proprietary right over land either in joint tenancy or tenancy in common. Operationalises the representation of women on various land administration institutions and dispute resolution bodies that were introduced by the Constitution.
- (c) **Land Act (Amendment) Bill, 2003:** Introduced the concept of Security of Occupancy for Spouses: as a compromise position for Women Activists who had continued to press for co-ownership of family land by spouses. Occupancy right caters for the right to access, to use, to live on, to give and withhold consent to transact on land. It is conditional on existing family/marriage relationships and limited to transaction related consideration. Amended and strengthened the first rights of refusal to emphasised the spouses and excluded children

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<sup>12</sup> Ibid.

<sup>13</sup> Ovonji-Odida et al. al; *Land, Gender and Poverty Eradication*, 2000

<sup>14</sup> See for example, articles 12, 21, 31, 32, 33, 40, 78 and 180 of the 1995 Uganda Constitution.

<sup>15</sup> Ministry of Water, Lands and Environment, *Land Act Implementation Study – Economic Appraisal*, August 1999 (unpublished).

- (d) **The Local Governments Act, 1997:** Operationalises the Constitutional provisions for gender quotas at the national and local council levels. In the national assembly, one seat is reserved for a woman from each of the 56 districts while one-third of the local councils constitute women.
- (e) **Domestic Relations Bill, 2003<sup>16</sup>:** This piece of legislation has been in the offing for quite a long time and is intended to deal with issues of property in marriage, succession and on divorce. The draft is being debated.

*around the Matrimonial Home in Uganda*" a paper presented at Jurists Conference, Kenyan section of the International Commission of Jurists, 19<sup>th</sup> –23<sup>rd</sup> August 2003, White Sands Hotel, Mombasa

Yngstrom, Ingrid. 2002. 'Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure Systems', *Oxford Development Studies*, **30**, 1, 21-40. <http://www.oxfam.org.uk/landrights/IYngstrom.pdf>

**Websites:**

<http://www.oxfam.org.uk/landrights>

## 5. Recommendations for Strengthening Gender in Policy and Law Reform

There are no easy, simplistic solutions to issue of gender and land rights. One of the major dilemmas of reform is the extent to which one can implement the innovative proposals; a host of problems stand in the way of implementation. These include, for example, gender-insensitive leaders and individuals in charge of implementing projects; the effects of globalization, and lack of political commitment on the part of the state to implementing its policies. Secondly, there is a need to pursue other alternatives, to gender and land other than policy and legislative reforms alone.

### Key Readings:

Robin Palmer, 2002: *Gendered Land Rights – Process, Struggle, or Lost Cause?* on the Oxfam GB Land Rights in Africa website at <http://www.oxfam.org.uk/landrights/gendered.doc>

Sheila Kawamara-Mishambi and Irene Ovonji Odida, 2003: *"The Lost Clauses: The campaign to advance Women's Property Rights in the Uganda 1988 Land Act"* in **No Shorts to Power; African Women in Politics and Policy Making** edited by Anne Marie Goetz and Shireen Hassim, Zed Book: London and New York.

### Background Reading:

Margaret A. Rugadya, 2003 *"Consent Or Co-Ownership: Policy and Legal Responses*

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<sup>16</sup> Still being publically debated, CSO's efforts are spearheaded by the Women Parliamentarians and Uganda Women's Network