



The Impact of National Land Policy and Land Reform on Women in Uganda





Background to Women's Land Rights in Uganda

[Background]

Before colonialism, most of Uganda's land was held communally, except in those areas where a system of feudalism had begun. Women in the pre-colonial era, upon marriage, had access to land on which they had exclusive rights to cultivation. They themselves owned the fruits of their labor, namely the crops they produced from the land. However, as a result of the Buganda Land Agreement of 1900, which parceled out land in Buganda, land control shifted from clans to chiefs, and some of it was retained as Crown Land.

In 2009, the Centre on Housing Rights and Evictions (COHRE), in collaboration with the Uganda Land Alliance (ULA), conducted a survey in Uganda to assess the gender-sensitivity of national land policy and land reform processes and their impact on women. The survey was conducted in the districts of Kapchorwa, Luweero and Kampala. In total, 60 women were surveyed, with 15 in Luweero, 20 in Kapchorwa, and 25 in Kampala. These included grassroots women, married women with and without income, single women and some professionals. In Kampala district, researchers targeted policy-making and policy-influencing categories of women, including women parliamentarians, key women land reform activists and other stakeholders.

Luweero and Kapchorwa are among the districts in which ULA activities have traditionally been concentrated. Both districts have distinct land tenure regimes - customary land tenure and leasehold land tenure regimes. It is important to consider these different tenure regimes in order to compare the different experiences that women have under each system.

In the late 1990s, major legal reforms took place in the country, starting with the promulgation of the 1995 Constitution. The Government has focused on the design of policies and programs that are gender-sensitive and speak to the needs of Uganda's women. Chapter 4 of the Constitution (and in particular articles 31–33) provides for equality between men and women, including in respect to the acquisition and holding of land. Under Article 31 (1) of the Constitution, men and women above the age of eighteen years are accorded equal rights in marriage, during marriage and at its dissolution.

These provisions on equality are further strengthened by the principles of affirmative action, provided for under Articles 21, 32 and 33 of the Constitution, which seek to remedy the historical dis-

Despite some positive steps at the level of legal reform, women's rights to land have yet to become fully realized in Uganda and the reality for women in Uganda is too often characterized by entrenched patterns of exclusion.



A focus group discussion with married women in Serwo village, Kapchorwa, 8 August 2009. Most of these women do not own their land. They only are allowed to cultivate land, but the proceeds from the harvest are controlled by men

crimination faced by marginalized groups, including women, and redress the social imbalances that exist against them.

Despite these positive features, Uganda is also well-known for its 1998 Land Act debates, during which time Ugandan women's rights activists and Parliamentarians struggled to have a clause on co-ownership of land included. This clause was never realized, as it was technically omitted at the final stage of legislation (becoming known as the 'lost clause'). Thus, the law on land distribution, management and accessibility in Uganda today inadequately provides for women's access, control and ownership of land. However, an Amendment to the Land Act (2004) gave some minimal protection to women in that it emphasizes that the consent of a spouse must be given in the event of any transaction regarding family land.

[Key Findings]

Several key findings emerged from the conversations held with women across Uganda:

Lack of Information about Women's Land Rights: In general terms, while women were aware that there are some laws and policies that protect their land rights, they often did not know the details of such protections or where they could turn to for help. In the rural setting, women knew only about the 1995 Constitution, but not any of the other laws and policies protecting their equal rights to land. Most women were not fully informed of the Land Act or the ongoing National Land Policy process.

Only some women knew that the Amendment to the Land Act of 2004 provided that before a man can dispose of family land he has to seek the consent of his wife. However, despite the consent clause, the reality remains that the patriarchal system is still entrenched, and men still dominate the decision-making in the family. Women noted that they continue to have 'observer' status, rather than an



A Focus Group Discussion of widows in Bunyenyi village Luweero sub-county on 16 July 2009. These widows have mobilized themselves into a group called "Bwebukya sibwebuziba" to help them jointly improve their living conditions and share information regarding their rights as women.

equal role in decision-making when it comes to family land.

Prevailing Cultural Attitudes that Discriminate against Women: To most policy-makers and women in more privileged social positions, the current land laws accords a lot of protection to women; however, it is obvious that rural, illiterate women have not similarly benefited from the policies that are in place. Women in rural communities are still largely at the mercy of customary practices and traditional legal systems that most often look to men as sole owners of property, including land.

Lack of Formal Land Ownership by Women: Only 8 percent of married women reported that they own land in their own right. Among the six women who reported that they own land in Kapchorwa during the survey, five inherited the land from their parents, while one purchased it using her savings

from her small business. The majority of women did not have land in their own right because in most cases, even when they save money to purchase land, land agreements are written in their husband's names and the woman signs only as a witness.

Lack of Participation of Women in Land Policy Formulation:

The process of formulating revisions to the national Land Policy and the Constitution are ongoing. These processes have gone through a series of consultations, including

with grassroots communities, to ensure that these reforms embrace the interests and aspirations of all categories of people. Various stakeholders, including civil society organizations, have been consulted and their views have been considered. The Civil Society National Land Policy Working Group was also established to engage the process. The Group is comprised of organizations that work towards the protection of the rights of vulnerable and marginalized people, including women, and have endeavored to ensure that women's interests and rights to land and property rights are included. However, the survey showed that grassroots women are not adequately consulted on land policy and that the majority of those participating did not have knowledge of the ongoing land reform processes. In most cases, only women in decision-making positions had knowledge of or could report having participated in the reform process.

Asked on the source of information on land matters, a majority of the women reported having obtained the information from radio. A few of the women, particularly in Luweero, said they have been getting land-related information from civil society sensitization workshops and local authorities. The civil society organizations reported to have been active in Luweero were: the Uganda Land Alliance, Plan Uganda and FIDA – Uganda (Association of Uganda Women Lawyers). In Kapchorwa, the organization reported as the source of land information for grassroots women is the Kapchorwa Paralegals Association (KAPA). Other sources of information included newspapers and community meetings.

The protection and enforcement of women's land rights is problematic due to gender-related barriers in accessing justice, such as the low degree of gender-sensitivity of both technical and non-technical officers in the judicial or land administration system.

Exclusion of Women in Matters of Land Inheritance: Women noted that the legally-sanctioned ways in which land is acquired tend to favor men. Inheritance was a particular challenge because most often land and property was passed down through the male line, reinforcing women's exclusion and lack of economic empowerment. While for some segments of Ugandan society the old traditions are changing, the vast majority of Ugandan women continue to be unable to inherit land

and property from their parents. Even in cases where the husband dies, a woman is not able to retain her marital property or inherit property acquired by her husband, as this is seen as inheritance belonging to male in-laws or to her sons. One survey respondent, Ms. Jane Frances Kuka, of Kapchorwa District, had this to say:

When the man inherits land – he will also distribute it to his own children. The distribution is mainly to the males. The educated are more sensitized and are now giving out land to their daughters also. This is a new development which is beginning to entrench into the people.

Lack of Access to Justice: Women, particularly rural women, find it difficult to access and make use of the judicial systems because of the challenges within the justice sector such as bribery and corruption, as well as the high costs associated with managing and bringing cases. Besides, as many women emphasized, the court process is slow.

However, it should also be noted that as a result of this, the land reform process has come with new



A focus group discussion with young women with no income in Bunyenyere village Luweero sub-county, 16 July 2009. The majority of these women still feel land should belong to men because they are the ones who belong to the clan.

structures and systems to supplement the work of the judiciary. The Land Act, for example, now provides for the establishment of local council courts which, among other things, address land issues. The courts are established on the premise that at least one third of the members should be women. In addition there

is also a Land Fraud Department now established under the police force, as well as the possibility of engaging alternative dispute resolution mechanisms.

[Existing Gaps in the Ongoing Land Reform Process]

The Domestic Relations Bill, 2007:

Since the debate on the Land Bill in 1998, women activists have been lobbying for a clause in the land law to provide for spousal co-ownership of land (which was not included in the Land Act 1998). The consequence of this is that

women in Uganda continue to be excluded from the use of property jointly acquired in marriage or co-habitation because of the lack of a legal framework to resolve property disputes in the event of the termination of their relationships. This has also been raised in the debates surrounding the National Land Policy. While the Land Act caters for the rights of legal wives in marriage, it does not protect the land rights of widows, divorcees and women in co-habitation. (Section 153, Draft 4 Na-

tional Land Policy).

Gaps in the Legal System: Theoretically, the Land Act provides for some protection of women's land rights by emphasizing that the consent of a spouse must be given in the event of any transaction on family land, but as noted above this approach has proven insufficient to protect women's rights in practice. In addition to what has been said earlier, this provision only recognizes the wife's rights to have a say in the administration of family land as long as the marriage persists, but does not guarantee her any rights to land if the marriage should end.

In addition, there are also some ambiguities reading the Land Act together with other laws. For instance, Section 3 of the Succession Act (Cap 162) provides that:

No person shall by marriage acquire any interest in the property of the person whom she/he marries, nor become incapable of doing any act in respect of his/her own property which he/she could have done if unmarried.

This provision means that any property individually owned prior to a marriage is owned by either spouse and is not in any way subject to the control or determination by the other spouse. This property remains individual and each spouse has exclusive rights to enjoy and deal with it in any way they see fit.

Section 34 of the Succession Act (Cap 162) further provides that: *If a person whose domicile is not in Uganda marries in Uganda a person whose domicile is in Uganda, neither party acquires by the marriage any rights in respect of any property of the other party not comprised in a settlement made previous to the marriage, which he/she would not acquire by the marriage if both were domiciled in Uganda at the time of the marriage.* This provision essentially means that any property that by law is not guaranteed as property that may be acquired by either spouse by virtue of marriage belongs to each spouse individually irrespective of the law applicable in one of the spouse's country of domicile. Only property included in the settlement made prior to the marriage shall be considered property of both spouses to which they both have control. There is the need to harmonize all these laws in

order to provide adequate protection for women and to recognize their equal right to land and property.

[Conclusions and Recommendations]

□ **Grassroots women must be involved and adequately consulted and educated on the ongoing land and constitutional reform processes,** for example through public forums, radio campaigns, community discussions, and durbars for the community on the subject. There is an immediate need for consultation, awareness-raising and an educational campaign on women's rights to land and the laws that protect these rights.

□ **The National Land Policy should fully reflect and embrace women's right to equality in access, ownership and control of land,** and when finalized should be used as a basis to amend and reconcile other relevant laws so that the concerns and interest of marginalized and vulnerable people, particularly women, are fully and comprehensively addressed by the legal framework in Uganda. The Land Act and the Succession Act, for example, should be harmonized to provide adequate protection to widows and women whose marriages may have ended. These laws should also

Conclusions and Recommendations, con't

provide for joint spousal ownership in the case of married couples, and widows should also be guaranteed ownership or title to land if they lose their husbands.

- **The State should work in collaboration with civil society organizations to translate the National Land Policy into indigenous languages and engage community leaders to disseminate it broadly.** This information must be communicated in a way that is clear, accessible, and easy for grassroots women to understand.
- Culture and traditions are still very influential in determining the way land and property is managed and controlled. As Uganda moves toward increased formal titling and individual rights to land, communal and customary interests in land should be incorporated in formulating the laws, but not to the detriment of women. **Traditional leaders and grassroots women should be involved in a process to identify cultural practices that support the rights of women, and question ones that do not provide adequate protection to women.** This could be done by organizing community trainings for leaders, showcasing best practices and peer exchanges. The State should also help to design and launch national educational campaigns that seek to transform widespread social values around women's land rights, promoting women's full equality.
- **The State and civil society organizations should seek ways to enhance women's access to justice,** for example by holding trainings for women on self representation and legal aid schemes, as well as trainings for members of the judiciary, local council courts, and legal aide practitioners. These trainings should emphasize women's rights to land and property under both international and national law.
- **The Domestic Relations Bill (DRB) should be passed with a provision on spousal co-ownership of land, to guarantee the rights and security of women.**



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