

**THE IMPACT OF THE PRESUMPTION THAT
“WOMEN DO NOT OWN LAND”
AND THE UGANDA LAND ACT**

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April 2000

1. Introduction

The current difficulties in amending the Uganda Land Act to include co-ownership rights of women stems from bias against culture that has existed since colonial days. There is need to revisit land management under customary tenure. This will allow for proper and a correct analysis of cultural/gender implications of land management under customary tenure. This will also enable the assessment of the changes that have taken place over time and the changes that the Land Act has had on the current debate. This paper is a contribution towards this analysis.

2. Analysis of culture, land management and women’s rights under land

Under customary tenure, there is a *presumption that women do not own land* and that *land is not for sale*. These two presumptions taken together acted as a protection of women in land use. The debate on women’s ownership concentrated only on one presumption that *women do not own land* and forgot the second presumption that *land is not for sale*. This omission distorted the understanding of customary tenure. Although women did not own land, the elders, as a group of people whose main role in land management was to ensure that land did not permanently leave the clan, protected women’s access to land. Because divorces under customary marriages were also unheard of, access to land seemed sufficient. The elders, however, leased land for use to people outside the clan, sometimes freely, sometimes not. One could say that under customary tenure the two rights of user rights and control conferred by the word ownership were allocated to two different people, the elders (as a group) and men and women. Men, women and adult children had the same rights to use land allocated to them. One could further argue that strictly speaking *individual men* did not *own* (have rights to use and dispose of land) land under customary tenure.

The Land Act uses the word *ownership* of land. In this context, the right to use and the right to control land (sales) are vested in an *individual*, very unlike *ownership* under customary tenure. The Land Act does not capture the role of elders as protectors of women’s rights. The use of the word ownership in the Act (in my analysis) had the effect on customary tenure of taking the elders’ role of control of sales over land and vesting it in the *individual man*. Men *automatically assumed* this role because of the presumption that women do not own land. Since the man already had access to use of land the same as the woman, this means the individual man now has a more strengthened position in land management than under

customary tenure. He has become the absolute and individual owner of land. This means now that ownership as used in the Act replaces ownership as is practised under customary tenure. **This is a fundamental but subtle change that has been brought about by the Land Act. The protection that was offered to women in the form of elders' protection has been eroded.** After this transformation, as women we have lobbied that the Land Act protects women's interests in land. Our lobby has been based on the Human Rights of women to own land. In my opinion, the option still remains for us to lobby for the Land Act to properly represent customary tenure practices. We have lobbied for the Land Act to give women the right to consent before the man sold his land. By implication, this means the woman's rights are superior to that of the man. In my opinion, the men will be very resistant to this because of their belief that culture does not allow women to own land. They are therefore likely to feel that women of Uganda are ignoring culture and adopting foreign cultures (Human Rights).

3. The Proposal

(a) Use customary tenure as basis for protection of women's rights

If the analysis on land issues in Uganda had started with what is on the ground as opposed to an economic growth principle, the Land Act might have been drafted differently. Unfortunately, it can be argued that the majority of Ugandans have a bias against customary tenure and have failed to note the very important role of its protection of women's **access to land**. However, I believe that as women we need to base our arguments on the analysis of what is on the ground, and use this as the basis for our lobby work. We can argue that the elders' role offered protection and that this role should be replaced by collective ownership of land of the family unit - men and wives for urban areas, and women, men and adult children for rural areas. Their names should be entered in the certificates or titles.

(b) Take the opportunity to change customary tenure practices

There is no doubt that the right of access to land has affected negatively the level of women's investment on the land, especially in areas where land is scarce and men have turned on the beam light of their control. The more I think about land issues in Uganda today, the more I think the route to economic growth in agriculture is **not** making land a marketable commodity but **giving security of tenure to women**. I know that this principle of security of tenure is an economic growth principle. The society should take the advantage offered by the Land Act and ever **so slightly change** customary tenure practices in favour of women. Simply speaking, we can argue that customary tenure protected women's rights (by vesting control of sales in elders and not individual men) and that this control no longer exists under the new Act. We can argue that whilst the access only to land was sufficient in the past because there were no divorces, today the situation is different and women lose their access when their husbands die. (Inheritance of wives is no longer practised widely because of fear of AIDS). We can then pose the question, **what should be done to replace the role of the elders in protecting women and adult children's access to land?** This can take the debate away from **women's rights to own land**. The advantage in this is that whilst our men think the issue of women's rights to land is foreign and against culture, the debate on the role of the elders is rooted in culture. The beauty of it is that the result would be the same, women's ownership of land.

4. Conclusion

Knowing that institutionalising the elders' role is not possible, we can suggest that women's names (and adult children for rural areas) be entered in the certificates of ownership and title deeds. This means that for any sale of land, those registered (the family unit) need to consent. This family unit replaces the role of the elders in determining sales of land, and will mean the individual man is not the sole owner of land. Legally, this move would be tantamount to women and men becoming **owners** of land. This process, in my opinion, will avoid the debate that pitches women against men. For me, this can be equated to a bloodless coup. The second coup will be to reduce the communal use and management of land from a clan basis to a family basis, thereby reducing the number of people managing land. This would form the basis for an evolutionary process of moving towards individualisation of land.