

Press Release

OXFAM GB STATEMENT ON SECURITY OF TENURE FOR WOMEN IN UGANDA

Change in customary tenure management

If culture were static, the current debate on co-ownership of land by women would be irrelevant. Unfortunately, culture is never static. A conscience examination of changes in cultural practices and their impact on society is necessary. This paper examines the changes that have taken place in the management of customary tenure and how this has impacted to make women's access to land more vulnerable. The paper will recommend strategies for empowering women to have secure access rights and increase their security of land tenure.

The argument put forward for not wanting co-ownership is that it is culturally insensitive. The women activists on the other hand believe customary land tenure practices prohibit women from "**owning**" land and therefore must be changed. If one were to ask us what the current and greatest risk women face in customary land tenure holding, we would say the risk of losing user rights to land. The risk has come about because of changes in culture. *In the past and under customary tenure, men, women and adult children had only, but equal user rights to land. None had the right to dispose of the land. This role was for a group of elders.* Would you then not agree with us that neither individual men nor women *owned* land in the sense that they used it and had the right to sell it? Hence "ownership" under customary tenure had different connotations to that used in the debate on land today. Rights over land vested in separate structures.

Women's access rights to land made more vulnerable by change

The change has come about when individual men assumed the role of elders and started disposing land, thereby putting women's user rights at great risk. At household levels, individual women have been powerless to stop sales of land by individual men. While the elders were guided by the principle that "**Land is not for sale but held in trust for the next generation**" some individual men do not hold this principle. Studies show that men sell land for various reasons. Some sell land because they are sick with AIDS, have no male children, need to drink, are irresponsible or want to start business. Oxfam GB in Uganda stresses that this change is to the detriment of women and that there is need to ask the question "How can women's interests in not losing their user rights to land be protected and how can land be protected from sale by irresponsible individuals? The Land Act provision on consent of the spouse at time of sale is impractical for the simple reason that the spouse would not be aware that property exists or when it would be sold. There is also the question of the ability of the disempowered individual woman to enforce this right. The law therefore needs to find other ways of protecting the woman and the land from sales by an individual men.

Legal protection of women's rights - a must for economic growth

The current co-ownership proposal is for ownership of property by spouses as **tenants in common and not as joint tenants**. In the case of rural and customary tenure, one is talking of agricultural fields that are sometimes massive. In simple terms, the proposal argues for dividing up land amongst the spouses as individuals. The aspect of dividing land amongst individuals so they have absolute control to use and to sell land that is inherited is still not practiced widely especially in rural areas where land is not scarce. The notions that a woman now has the right to decide the fate over land (urban, rural, customary and inherited land) not only changes customary tenure but also brings stiff resistance. The fact that men are reluctant to allow women to hijack the "elders" role as they have done means that they are not aware that many **individual men** are now assuming the roles of the elders. This is the change in culture not appreciated by many. The assumption of the power of elders by individual men has disempowered the individual woman and made her access rights to land very vulnerable.

Proposal For way forward

What should therefore be done? One needs to remember that the most important aspect of customary tenure is *equal user right to land for men and women and protection of land from sale*. Given the weakening of the elders' role, Oxfam proposes that the family unit should become the unit of ownership and management of land under customary tenure. This applies too to occupants on mailo land. This means all those who derive livelihoods (or would if they returned home) should be registered on the title or certificate of ownership as **joint tenants**.

If there are too many family members, the names of all the wives, husband or father, the first boy and the first girl could be registered in the certificates or titles. At the most the names of wives and husbands should be registered. This means that for any transfers, the consent of all those requested is required. *It is only after entering the names of women on the certificate of ownership and occupancy as well as titles that the consent clause would provide the protection it is supposed to give*. This does not mean the woman or the man divides land in their individual names but it means now they own their land and have a right to refuse or agree to sell. This proposal changes customary tenure slightly but keeps the principle that land is not held by individuals. *This change replaces the elders' role of control over land, not by the individual men, but by a family unit comprising of men, women and agreed adult boys and girls*. This proposal should promote family dialogue and unity. The debate should concentrate on whose names are to be registered on the certificate for the family unit or community unit.

For urban land or land bought by the spouse during marriage, the same principle should apply. The difference would be that the spouses jointly decide to whom to bequeath the property. The spouses should hold their title or certificate as joint **tenants and not tenants in common**.

Conclusion

The above proposal would mean that *registration of customary tenure and land under occupancy and issuing certificates of ownership and occupancy as well as titles remains the one important strategy the law can use to give women the security of tenure*. Luckily the Ministry of Lands has plans for pilot registration. Customary tenure can then evolve on its own and at its own pace

towards individual land holding. If we do not compromise now, we lose the opportunity to protect women's user rights to land and allow individual men to hijack the role of elders in determining when to sell land. This will lead to untold suffering by women, children and the nation. In this eventuality, the government's dream of modernising agriculture will remain a dream. Modernising agriculture can only happen if women are empowered by law to have access to and control over the land from which they derive their livelihoods. Oxfam offers a culturally sensitive strategy for achieving this. We hope policy makers will agree with Oxfam and use the strategy of registering customary land and land under occupancy in a manner that women's names are required *by statute* to be entered on the Certificates and titles. The law should make a certificate or title null and void if this requirement is not met.

Oxfam GB in Uganda.
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