

# **Gender Dimensions in Women's Property Rights: The Case of Uganda**

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**BY**

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## **Abstract**

"Gender dimensions in Women's property rights" is a critical issue for consideration in the policy/legal/regulatory/development arena because of its bearing on poverty reduction/eradication, economic growth and private sector development and more so the important but unrecognized contributions women in the rural areas a group make to their households, communities and ultimately to the Country's GDP. Uganda is one of the many African countries seeking to ensure that woman's property rights particularly land is addressed by way of legislation although it is also faced with the challenge of protecting property in this case land from being dealt with unscrupulously on the one hand and maintaining the status quo on the other. Using policy statements and available literature the paper shall to appraise the current status of women property rights in light of on going process on developments initiated targeting the rural poor; assess the country's policies vis-à-vis the global status and history of land in Uganda, looking at the legal/policy and conceptual framework. To complete the analysis I would also examine other factors: patriarchy, custom/traditional practices, HIV/AIDS, conflict/instability, the socio-economic elements that limit women's access, ownership and control of land and the implications thereof.

### **1.0 Introduction**

Given the fact that property as an asset is essential to economic empowerment women in Africa and the world over especially in Uganda and bearing in mind that the women folk have since time immemorial been discriminated against in as far as ownership of property and land in this context is concerned and also given the attempts being made at eradicating poverty using land and labour as major factors of production makes this a very interesting subject for discussion.

For land as a property right for women has "Gender dimensions to it" and therefore far reaching policy, political, cultural, socio-economic implications that if not addressed shall defeat the purpose for which laws/regulations/policies are being developed/enacted. But what do we mean by property rights? And why the quest for women's property rights?! "Property" here could simply be defined as something tangible capable of

being owned and "right" here would mean an entitlement to something be it life or property. But property rights to land should if I may quote" be defined in a way that makes them easy to identify and exchange at a cost that is low compared with the value of the underlying land. With limited land values, low-cost mechanisms of identifying boundaries, such as physical marks (hedges, rivers and trees) that are recognised by the community, will generally suffice, while high-value resources will require more precise and costly means of demarcation.<sup>1</sup>

This paper therefore seeks to appraise the current status of women in as far as ownership of land as property is concerned reviewing the land tenure system for if more than 70% of Uganda's land is held under customary tenure what are the implications for the property regime for women in light of the on going process on developments initiated targeting the rural poor. It shall also briefly examine the land reform process/history of land in Uganda, legal/policy contexts of property rights specifically exploring the role of government taking into consideration Uganda's poverty strategy, agricultural policy, conceptual framework and implications thereof vis-à-vis the global status. In looking at the conceptual framework the paper shall also examine other factors: patriarchy, custom/traditional practices, HIV/AIDS, conflict/instability and the socio-economic elements that limit women's access, ownership and control of this key resource. What are the implications?

The fact that the seminar lays less emphasis on rural sociology land as a property right and a key component of wealth virtually for every nation would be a matter for serious consideration for to understand property rights and their evolution over time is important to appreciate how property rights to land affect households' behavior and can in turn, be influenced by Government policy.<sup>2</sup> Finally, if good land laws/policies and better institutions are success tools that enhance ownership of property, what is the case for Uganda because if a country does not have well defined, secure and transferable rights to land which are crucial in development then its economy cannot grow! What then are the implications from a sociological perspective? For the quest of property especially women's secure

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<sup>1</sup>Klaus Deininger: *Land Policies for Growth and Poverty Reduction*, P. xxiii

<sup>2</sup> Klaus Deininger: *Ibid* P. xvii

tenure/ownership? What are the possible solutions to the issues raised above?

## **2.0 Contextual framework**

To appreciate and understand gender dimensions in women's property rights in Uganda and the underlying discussion in the global context especially within the African continent, a look at the land reform and political process culminating into the enactment of the Constitution of the Republic of Uganda (currently under review) and the Land Act, 1998 (recently amended); a review of the history and land tenure system to enable us clearly understand how land rights are defined and assigned is necessary. Thereafter a discussion of the conceptual framework using a multi-disciplinary approach to assess the implications of the legal/regulatory and institutional framework shall be done leading to development of possible policy, practical recommendations and a conclusion.

### **2.1 Land Reform in Uganda**

Land reform refers to the changing of rules by which individuals relate to one another with respect to land and the law is simply put in place to recognize and legitimize the reality of what is happening on the ground. The rules of Land tenure define each individual's rights and duties with respect to other people concerning the use and transfer of land.

<sup>3</sup>The main reason for land reform in many African countries is not merely to respond to economic forces (increase agricultural productivity mainly because most African Countries depend on agriculture to sustain their economies) but also address historical/social imbalances. Many African countries also undertake land reform in order to protect the interests of the most vulnerable members of the society like women, children and people with disabilities from loss of access to land for their subsistence production. There is often a conflict created in trying to make sure that the two interests are catered for i.e. increase of agricultural production and protection of vulnerable groups. However, in general, some of the most successful land reform policies in Africa have been those:

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<sup>3</sup> *Uganda Land Alliance: Gender Perspectives in the Land Reform Process in Uganda, P. 5*

- Which have recognized and protected access to and use of land by the masses;
- Recognized how traditional land tenure has evolved over time;
- Attempted to guide the future evolution by encouraging those changes that are beneficial and preventing those changes, which are harmful.

In Uganda, the Land reform process leading to the enactment of the Land Act 1998 was based on three principles which espoused that:<sup>4</sup>

- i. A good Land tenure system should support agricultural development and overall economic development through the function of land market, which permits those who have rights in land to voluntarily sell their land, and for progressive framers to gain access to land.
- ii. A good land tenure system should not force people off the land. Land tenure system should protect people's rights in land and ensure social justice as enshrined in the Constitution.
- iii. A good land tenure system should ensure sustainable utilization of land as a resource and the protection of the environment. This explains why the Constitution of the Republic of Uganda 1995 in its objectives provides for the protection of the environment and goes further to provide for the enactment of legislation and policies that ensure wise and sustainable use.

In the absence of a National Land Policy in Uganda, it was envisaged that those three principles will guide Uganda in its land reform process.

## **2.2 The Historical Background of Land Tenure reform in Uganda**

### **2.2.1 Pre-colonial Phase:**

Right from the pre-colonial era there was no single land tenure system for the whole of Uganda. This is because of the varying practices of customary tenure that differed from one ethnic group to another. In the central region for Buganda Kingdom there were at least four categories of rights of control over land:

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<sup>4</sup> *Makerere University Institute of Research on developing a new land law, 1990*

- Rights of clans over land which was comprised of ancestral grounds and was not alienable to strangers;
- Rights of the King (Kabaka) who held paramount title to all land in Buganda who could grant land to his chiefs and subjects;
- Individual hereditary rights stemming from long undisputed occupation and/or original grant from the Kabaka;
- Peasants' rights of occupation which entailed the peasants in Buganda choosing a chief under whom to live.

This kind of structure existed in other inter-lucustrine kingdoms of Ankole, Toro, Bunyoro and Busoga but in varying degrees.

In the rest of the country, customary practices varied from place to place. However, scholarly researches have indicated that whatever the differences, none of the communities in Uganda recognized individual ownership of Land and women's Land rights for that matter. There was however, recognition of various individual rights to possess, control and use/access land subject to supervision by his family, clan, or community.

The individual (who in most cases are men) had the right to utilize his land in accordance with customary practices and as he deemed fit: thought best, to rent out his piece of land, pledge crops on the land but not the land itself, sell land subject to the approvals of the family, dispose of the land according to the customary laws of inheritance where he came from, dispose of trees growing on his land, prohibit grazing near his home stead and fence his homestead to mention but a few.

The clan or family had the power and right to settle land disputes, exercise the right or option to buy any land offered by its members, prohibit the sale of clan land to an undesirable person and declare void any land transaction which had not received its approval.

The general community had the right to graze communally but damage to crops had to be made good. The community also had access to salt licks, watering of cattle and access to water from springs and other common rights.

It can therefore be implied that customary tenure in pre-colonial Uganda recognized both individual and communal holding of land although it is very clear that it did not explicitly recognize the rights of women given the patrilineal nature of society. Women had secondary rights to land which means they rarely owned, only had limited access which meant limited dealings on the land which has persisted to date.

## **2.2.2 Colonial and Post Colonial Uganda:**

When the British colonized Uganda, they chose to govern it as a protectorate which meant that indirect rule as opposed to direct rule was used to run their day to day affairs. Although this would presuppose that the British did not introduce any new changes but maintained the existing African practices, this was not the case. When the British took over Uganda, they introduced some fundamental changes in the Land holding system that totally altered the way land was held in Uganda. For the first time in Uganda, they introduced three types of land tenure, which were hitherto unknown. They introduced Mailo Land Holding, Freehold and Leasehold.

Mention is made to the role of colonialism because they contributed a lot to shaping our laws and eventually policies and I need to stress here that <sup>5</sup>in retrospect, the colonial experience that had secured a semblance of security of tenure between the rulers/kings, his subjects and the colonialists themselves was neither true. Rather it initiated a landless class and limited the ordinary person with a sustained assault on the institutions that should have enabled them attain that which was there by favoring only a few privileged as shall be considered below.

### **2.2.2.1 Mailo Tenure**

This tenure was introduced in Buganda (partly where Uganda's capital is situated) as part of the Buganda Agreement of 1900. By Article 15 of this Agreement, the total land area in Buganda was assumed to be 19,600 square miles. This was to be divided between the king (Kabaka) and other notables within the protectorate. The Kabaka, members of the royal family and high-ranking officials received 958 square miles either as private Mailo or as official estate. One thousand chiefs and private notables were to receive 8 square miles each, which totaled up to 8000 square miles. 92 miles was to go

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<sup>5</sup> M. A. Mohamed Salih: *ibid* P.11

to the existing government and 1500 square miles was computed to be forest reserve. The rest of the land estimated to be 9000 square miles was considered to be waste and uncultivated land and was vested in the queen as crown land. Peasant rights did not receive any recognition under the Mailo Agreement. Peasants were only able to secure recognition through a Lukiiko (Parliament) enactment of <sup>6</sup>Busuulu and Envunjo Law, 1927 which prohibited the Mailo owner from evicting the Kibanja holder or to increase their rent and other charges capriciously. It also specified the respective rights and duties of both the Mailo owner and the Kibanja holder. The Buganda possession and of Land Law 1908 prohibited Mailo owners from transferring to one not of Ugandan origin without the consent of the Governor and Lukiiko.

#### **2.2.2.2 Freehold Tenure:**

This tenure was introduced by the British in areas principally outside Buganda and was peculiar to the then Kingdoms of Ankole and Toro in Western Uganda. These freeholds were set up under the Ankole and Toro Agreements of 1901 and 1900 respectively, by which the two kingdoms committed themselves to British protection. Under these Agreements, there was a provision for a Land distribution scheme in the Kingdom in which the chief who signed these Agreements received freehold land. The land could only be transferred to a native of the Kingdom. The terms of tenure between the freeholder and tenant were not negotiable. These terms were fixed by the Ankole land lord and Tenant Law of 1937 and the Toro Land Lord and Tenant Law of 1937. These two laws curtailed the powers of the Landlords vis-a-vis the tenants on his land. The crown Lands Ordinance of 1903 placed development conditions on them which were continued by the Public Lands Act 1964 and the Public Lands Act 1969 while the Land Transfer Act 1964 continued the prohibition of any dealing in land between Africans and non- Africans.

Besides the native freeholds in Ankole and Toro, the colonial government gave away-adjudicated freeholds under the crown lands Ordinance 1903. There were very few freehold created under this Ordinance because it was

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<sup>6</sup> *Busuulu and Envunjo were a form of tax payable to the land owners by the tenants at sufferance who were on their land by either virtue of them being servants or casual laborers. These category of tenants were since the enactment of the Land Act, 1998 been accorded rights of a bonafide occupied and do still pay taxes. By law, they should be given priority in the event that the land lord wants to sell, can acquire certificates of occupancy although banks do not accept/recognize such certificates of tenure for credit purposes.*

the policy of the British government not to encourage alienation of land in freehold to Africans outside Buganda. Freehold titles were also granted to Africans who had been holding land outside Buganda under customary tenure pursuant to the crown Lands (Adjudicate) Rules 1958. These rules initiated what later came to be known as Pilot Schemes in the District of Ankole, Kigezi and Bugisu.

### **2.2.2.3 Leasehold**

The leasehold was yet another innovation of the British which is an interest created in Land as a result of an Agreement between a lessor and a lessee that the lessee will enjoy exclusive possession of the land of the lessor for a specific and certain duration in consideration of a cash payment called rent. Leasehold is regarded as a form of tenure because it gives the holder the right to exclusive possession, use and occupation of land. A lease can be either private or public or statutory. The above systems of Land Tenure existed in Uganda up to 1975 when a fundamental change took place in Uganda with the enactment of the Land Reform Decree 1975.

## **2.3 The Land reform Decree 1975**

The decree was decreed to provide for the vesting of title to all Land in Uganda in trust for the people of Uganda in the Uganda Land Commission, to facilitate the use of Land in Uganda for economic and social development and for other matters connected therewith. The decree further declared all land in Uganda to be Public Land to be administered by the Uganda Land Commission in accordance with the provision of the Public Land Act 1969.

The Decree abolished all freehold, Mailo land holding except that, which was vested in the Commission and made conversions of both tenure prior to the decree to Leasehold. These Leaseholds on conversion were for a period of 99 years in the case of Public Bodies and religious Institutions and 99 years in the case of individuals. The Decree also abolished the Busuulu and Envujjo Law 1927, The Ankole Land Lord and Tenant Law, and the Toro Land Lord and Tenant Law of 1937. It made all tenancies under the three respective laws customary tenants on public Land thus turning them into tenants at sufferance. A customary tenant on public Land did not have a transferable interest in Land. He could only transfer the developments on the land after giving three months notice to the controlling authority. This was the kind of

situation existing in Uganda until the enactment and promulgation of the 1995 Constitution and subsequently the Land Act 1998. The private ownership of the alluvial or radical title to land in Uganda was abolished. The private owner could not legally own an estate greater than leasehold. It also gave the Uganda Land Commission the power to impose development conditions and Land in Uganda under its legal control.

## **2.4 The Land Act 1998**

The Land Act 1998 completely reversed the situation created by the 1975 Decree. In pursuance with Article 237 of the constitution, the Land Act brought about the following fundamental changes:

- All land in Uganda is vested in the citizens of Uganda.
- Customary tenure is now recognised and all customary tenants on former public land now own the land they occupy.
- All lawful and bonafide occupants of Mailo land, freehold or leasehold land now have security of tenure and are protected by the constitution.
- Mailo and freehold tenure, which were abolished by the 1975 Decree, have been restored.
- Land management and dispute settlement mechanisms have been decentralized to the District and sub-county levels.
- Spouses cannot engage in any land transaction without the consent of either spouses or dependant children.

But as you shall get to know this provision was not that effective as more women got disposed and became landless as the land market flourished hence the move to have it amended to ensure better security of tenure.

### **2.4.1 Salient Features:**

#### **2.4.1.1 Land Ownership**

Article 237 (1) of the constitution provides that land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with four tenure systems: customary, freehold, Mailo and leasehold.

This provision is re-enacted in section 3 of the Land Act. This clause totally reverses rights to land and has in a way secured the sovereign rights of citizens by virtue of occupation although the ownership of land in Uganda except for land with minerals and natural resources.

#### **2.4.1.2 Customary Ownership**

In customary systems, legal recognition of existing rights and institutions, subject to minimum conditions is generally more effective than premature attempts at establishing formalized structures and this is precisely what the 1995 Constitution did in Article 237-(4) (a) which recognizes customary tenure as one of the forms of holding land in Uganda. The majority of Ugandans hold land under customary tenure; this provision therefore guarantees them security of land ownership. These tenants on customary land can now acquire a certificate of customary ownership on the land they occupy as provided for in Sections 5 - 7 of the Land Act, 1998 and they can also convert this certificate to a freehold title as provided for in Section 10 of the same law. This certificate of customary ownership has been accorded value under the Land Act enabling it to be transferred, mortgaged, or otherwise pledged. This should enable holders of a certificate of customary ownership to have access to credit but is not the case as banks refuse to accept such certificates because of the intricate nature of customary tenure, various interests and the fact that you cannot hold an entire clan liable for a debt.

#### **2.4.1.3 Communal land Ownership**

The Land Act recognizes the right of people to hold communal land and further provides that the people may if they so wish form themselves into a communal land association and this association may be incorporated as provided for in Section 16 of the Act. The communal land Association may also form a common land management scheme by which the members agree to manage the communal land and to set out their rights and duties.

#### **2.4.1.4 Consent clause**

The Land Act in Section 40 requires that before any transaction can be carried out on land on which a family resides or from which it derives sustenance, the spouse, dependent children of majority age and the Land Committee in case of children under the age of majority should be consulted.

Section 40 commonly referred to as the consent clause is "protective" in the sense that no person should contract to sell/transfer land on which that person/family ordinarily resides and or derives their livelihood with his/her spouse without written consent. The section also accords the rights to

children of majority age to have a say in any dealings on such land. Thus the intention one would say is to have positive welfare impact by providing secure tenure and therefore economic security to household members who in the past have had no secure control over the disposition of land. The stuck reality is that this provision protects the men more than the women because their rights in this "jointly owned property" is not defined and who can give better title than he/she who owns it? Land markets have continued to flourish even with such provisions and this could be attributed to the lack of proper implementation and monitoring mechanisms that would ensure protection of such property from sale.

Question: How many women can get security of tenure by virtue of being a tenant or being married in a family?

### **3.0 Other factors that affect women's property rights**

#### **3.1. Land in War/Conflict Areas**

When there is a war/insecurity/conflict it is a renowned fact that the inhabitants are either forced to flee to safety outside the conflict area or into camps. This is not unique to Uganda especially the Northern<sup>7</sup> part where people have been restricted to camps leaving their land at the risk of being either occupied by persons that did not initially have land or opportunists. The same war is slowly spreading to the Eastern part of the country and poses real threats to the property regime if there are no policy pronouncements and legal provisions made to safe guard against landlessness and the most numerous land wrangles ever seen. Another classical example is that of that of the Twa<sup>8</sup> people who are caught in situations of violent conflict over many decades. The Twa have no political role in these battles for resources and political power yet have suffered and continue to suffer immensely.<sup>9</sup> The questions we should be seeking answers to are: What are

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<sup>7</sup> The Northern part of Uganda has not experienced peace for the last eighteen (18) years having been under civil strife since 1986 to date. This has forced Government to confine the inhabitants into camps in an attempt at protecting them from being killed.

<sup>8</sup> The Twa 'Pygmies' are one of the poorest and most marginalized communities in the Great Lakes region of Africa and can be found in parts of Uganda, Rwanda, Burundi and DRC. The Twa were originally high-altitude forest people inhabiting the mountains of the Albertine Rift Area in Central Africa and specialized in hunting. Their landlessness results from historical occupation of forests where, like hunter-gatherer or 'Pygmy' peoples throughout Central Africa their land rights were not recognized in customary or statute law. The Twa women specifically suffer from double discrimination because of their ethnicity and gender and access land through their husbands. Dorothy Jackson: *Twa Women, Twa Rights in the Great Lakes Region of Africa*, Pp 2-6

<sup>9</sup> Dorothy Jackson: *Ibid* P. 14

the implications of this war to the women folk who are already in a disadvantageous/vulnerable position? What should Government do in the wake of violence given that there are no policies on Resettlement and Internally displaced persons?

### 3.1.2 Pastoral concerns

Since colonial times, policies on Pastoralism have been influenced by a dominant view that Pastoralism was doomed to extinction because it was considered unsustainable. Consequently Government policies/interventions have been biased in favor of crop and sedentary farming practices in disregard of the contributions made by Pastoralism to the economy (contributes no less than 7.5% of the total GDP and 17% of the Agricultural GDP<sup>10</sup>). Practice and research findings also show that due to the harsh weather conditions pastoral way of life is characterized by migrations, raids and prone to conflict as pastoralists move beyond the confines of their boundaries in search of water and grass for their animals which has in most cases led to reprisals, loss of life and property. Women in pastoral communities are responsible for small stock, young/sick animals, milk production and processing although they do not necessarily sell the products nor control the income generated. It is worth noting that these activities are labor intensive and time consuming as they are very critical to the survival, health and production of livestock as opposed to those done by the men which is usually done in the public domain and around the homesteads. Like any society, Pastoral communities have well defined social institutions structured in such a manner that marginalizes women both at the community and household levels. Based on the above, the concept of household, which is often the unit of addressing poverty issues, thus becomes inadequate as an entry point for development interventions.<sup>11</sup> Given the above therefore and from a women's property rights perspective it is evident that gender disparity does exist and not only does it limit but denies women the right to own and have control of resources land inclusive.

It is my considered view that these are very critical issues for policy consideration and poverty eradication for that matter which should be

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<sup>10</sup> Frank E. Muhereza & Sarah A. Ossiya: *Pastoralism in Uganda: People, Environment and Livestock: Challenges for the PEAP*, P iv

<sup>11</sup> Frank E. Muhereza & Sarah A. Ossiya: *Ibid* P. 14

included in both the National land policy, National land use policy and the PEAP if pastoral concerns are to be addressed. It would further ease the tensions that are sometimes so rife in the cattle corridors; within the neighborhood for Pastoralism is a way of life which unless understood and taken care of in policy pronouncements shall not be solved in totality. Coupled with this is the need to have the political will and resources to ensure that the policy is implemented and Monitoring & Evaluation mechanisms put in place. Capacity building of all the stakeholders especially Government Institutions/departments at looking at land matters from a multidisciplinary perspective.

### **3.1.3 HIV/AIDS**

The pandemic has had far reaching effects on men, women and children's property rights from a succession/inheritance perspective as widows and children get evicted from the matrimonial homes/deprived off property and also the fact that people seem to believe that persons living with HIV/AIDS do not need property since they are going to die anyway. Little regard is given to the immediate family members' interest in the event of death with or without a will which questions the practicality and validity of the law on Succession and Constitutional provisions which states in no uncertain terms that every one has a right to own property? This could be partly attributed to the fact that there is no comprehensive policy on HIV/AIDS to ensure protection of property of PLWHA. As a country we have seen and experienced HIV/AIDS but have not documented it to the extent that we can see the negative social, economic, political, cultural impact it has had on our sectors.

## **4.0 Conceptual framework and analysis**

Uganda's population according to the last census was 24.7 million persons 12.1 million being male<sup>12</sup>. The census exercise also found that the majority of Ugandans (88%) live in the rural area and according to the World Bank's PRR land constitutes between 50 & 60 % of the asset endowment of the poorest households in Uganda. It also states that the majority of the land (more than 90% on average) remains under customary tenure which often lacks legal recognition. Currently, the legal position is that customary tenure is

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<sup>12</sup> 2002 Uganda Population & Housing Census

recognised in the Constitution<sup>13</sup> and the Land Act respectively and so is it defined together with the institutions that should govern and resolve disputes in the event that they arise<sup>14</sup>. My argument, given the above and statistical information below is, if agriculture is the mainstay of Uganda's economy with a contribution of about 75% to its GDP and is also the largest employer with about 80% of the population deriving their income from it. Further to that if it is true that women constitute the remaining 12.6 million of Uganda's population<sup>15</sup>, contribute about 70% of the agricultural labour and over 80% of food production and processing<sup>16</sup> and yet they only own 7%. Emphases is made on women because they bear a greater percentage of the economic burden at the household level, labour so much in the gardens, taking care of the family and yet have little or no ownership of property, are economically disadvantaged to the extent that they cannot purchase property.

Second to labor, land is a basic resource, critical for the survival of rural communities and women are central to the rural economy and therefore to the survival of not only their families but to the entire rural community<sup>17</sup>. But as portrayed in the legal/social super infrastructure women continue to be disadvantaged in as far as ownership of property rights is concerned due to the patrilineal structures, rigid customary institutions & cultural beliefs, dis-economies of scale and lack of proper Government institutional mechanisms that would guarantee their protection and realization of this right.

The right to own property by both men and women and the equality principle has its legal basis in the Constitution of the Republic of Uganda, 1995 under Articles 26(1) 34(1) although the reality is that this rights/entitlement is given in disproportionate measures because of the same laws and Institutional mechanisms. One would also argue that since the entitlements described above are recognized by law: written/uncode remedies should be available hence the classical legal maxim<sup>18</sup> "where there is a right there is a remedy" which remedy should be addressed by Government. However it

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<sup>13</sup> Art 237(3) (a) of the Constitution of the Republic of Uganda 1995

<sup>14</sup> Sections 4(1) & 89 The Land Act 1998

<sup>15</sup> 2002 Census report (ibid)

<sup>16</sup> National Gender Policy, Min. of Gender, Labour and Social Development, 1995

<sup>17</sup> Women and Land Rights in Uganda: Eastern Africa Sub-Regional Support initiative for the Advancement of Women (EASSI) P.4

<sup>18</sup> Steiner and Alston: International Human Rights in Context: Law, Politics, Morals: Pp 260 - 261

should be noted here that rights are costly because enforcement is expensive especially uniform and fair enforcement. In Uganda, this has further been compounded by Government policy on decentralization, lack of resources (human and financial) and the use of systems (customary) that do not respond to current changes. This therefore calls for a review of systems and adaptation to other systems which are applicable to our circumstances.

<sup>19</sup>In China for instance, constructive and practical measures were put in place to ensure enforcement of the new law (2003 Rural Land Contracting Law) and the challenges posed by changing economic and social conditions and increased land scarcity. Emphasis is made on experimentation and pilots that can be modified and scaled up or discarded depending on the results achieved. Even though it requires the central Government and its bureaucracy to relinquish much of its discretionary power has provided China not only with the flexibility needed to address location specific needs but also provided a basis for moving a head with implementation much more rapidly. This could address the other administrative challenges faced by the Land Management and Dispute Resolution Institutions and not the Customary Institutions which have varied practices. And as literature would point out, the move to decentralize the institutions mentioned herein without adequate mechanisms of accountability and control exacerbates the problem increasing the discretionary powers of the local elite rather than strengthen the land rights of the vulnerable of which women are among.

The solution to the challenge of lack of ownership of land, limited access as espoused in the Klaus report would be to <sup>20</sup>define property rights without which in my opinion women's land rights would remain a theoretical thing. The definition should include a wide range of interests whether individual or shared ownership rights (individual, co-owned & communal), the various interests contained therein, legal and institutional issues and the ownership ratio given the centrality of land in poverty reduction and economic growth and more so to Uganda's economy. <sup>21</sup>After defining the rights and interests in the land the next practical step would be setting up institutions for implementation and finally dissemination of the various measures/policy/legal developments with the centre taking the lead role.

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<sup>19</sup> Klaus, Songqing, Xian Zude & Scott Rozelle: *Implementing China's New Land Law: Evidence and Policy Lessons*, April 2004: Pp 28-29

<sup>20</sup> Klaus Deininger; *Infra*: Pp 22-29

<sup>21</sup> Klaus, Songqing, Xian & Scott: *Op. cit*

What then are the implications in terms of security of tenure/property/land rights vis-à-vis existing development policies (PEAP/PRSP/PMA)?

## **5.0 Policy/legal, socio-economic, Political implications**

Clearly the implication of this is that there is no security of tenure and hence limited property rights for the majority of the rural women to be precise creating huge imbalances due to a number of factors: social, economic, cultural, political and historical which the report detailed out that therefore calls for the need for serious policy considerations if growth and poverty reduction is to be achieved. For customarily women can only access land either through their husbands or male relatives and are limited to user rights with little decision-making power as compared to their male counterparts who own and have control over.<sup>22</sup> The analysis also shows the disproportionate and unequal ratio of ownership of property/land between men and women and the cruel reality that women spend almost 90% of their valuable time investing in what they actually do not own.

### **4.1 Legal implication**

Given the numerous tenure systems above, individualization of land even the communal, active land market, and historical/political entitlements set it is imperative that security of tenure be legislated and policy provisions made to safeguard the interests of the most vulnerable in society.

Legally therefore, it means affirming Government's commitment to deliberately deal with women's property rights to land and also adapting other stakeholders' initiatives on ensuring security of tenure for women. I would add to the redefinition a break down of various interests: user/property/control/co-owned rights and an inclusion of this "old" concept of freeing the land off (all encumbrances to development: social, economic, cultural, political & historical etc), coming up with practical initiatives that ensure (better security of tenure, having alternative and affordable land) coupled with that providing other incentives (market access, loans, sensitizing/legal awareness, capacity building on policy implications, technical advice etc) that are growth focused. Emphasis is made to freeing land,

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<sup>22</sup> *Gender Perspectives in the Land Reform Process in Uganda*

(considering the fact that land and labour are the most important factors of production for an agricultural based economy) enhancing more/better access, more control over produce and ownership rights because unless that is done the very poor of the poorest (who in most cases are women) shall not improve their livelihoods, boost household incomes, increase productivity, ultimately contributing to increasing the GDP.

<sup>23</sup> Also other than replace local land tenure systems with "modern" systems of registration and title of ownership it would be better to recognize local rights and hand them back to local communities thereby consolidating on the rural land tenure system since they have showed themselves to be flexible, dynamic, more tolerant and open to change. This could also be done by developing "Rural Land Tenure Plan" as is the case in Cote d'Ivoire, Guinea, Benin and Burkina Faso. This would also ensure security of tenure and preserve the sanctity of property rights at this level which if not protected shall be over taken by property mafias.

## 4.2 Social-economic implications

<sup>24</sup> According to Government, reforms have achieved impressive rates of economic growth with the economy growing on average by about 6% since 1987. The same report also states inspite of the impressive growth rates that Uganda remains one of the poorest countries in the world. It ranks 158 out of 174 countries within the United Nation's Human Development Index

In light of Governments' poverty eradication interventions the Plan for Modernization of agriculture was developed to implement the over all Poverty Eradication Action Plan but what is Plan for Modernization of agriculture mean without security of tenure for the majority and for country whose economy is heavily dependant on agriculture? What does this mean if women do not have title to access credit? Are we going to mechanize agriculture or are we going to enhance the capacity of our small farmers for increased/improved production? Or are we going to commercial agriculture? Because if we are, then we need to open up more agricultural land.

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<sup>23</sup> Making Land Rights More secure: Proceedings of an International Workshop for researchers and policy makers: Ouagadougou, 19-21 March 2002: P.3

<sup>24</sup> 2<sup>ND</sup> Participatory Poverty Assessment Report: Deepening the Understanding of Poverty, 2002: P. 3

<sup>25</sup>Realistically access to land and the ability to exchange it with others and use it effectively are of great importance for poverty reduction, economic growth and private sector development as well as for empowering the poor and ensuring good governance. And to re-affirm this point it was said that "women entrepreneurs lack property titling yet they have made contributions economically to land which is held only in their husband's name. This makes it very difficult for them to get business loans due to the need for collateral. Other issues which are more universal are the macro-economic policies and Government's policies on privatization, decentralization and liberalizations which have in a way served to widen the gender disparity.

In my humble opinion all those options have policy and budgetary implications which require Government taking deliberate policy action to for instance reclaim land for organized activities although here I must caution against arbitrary use of state power to compulsorily acquire and also the need to guard against foreign direct investment. To do this we need clear policy prescription and reliable institutions. This fact therefore makes agriculture and poverty reduction synonymous which befits the purpose considering the disparity.

I would add to the redefinition a break down of various interests: user/property/control/co-owned rights and an inclusion of this "old" concept of freeing the land off (all encumbrances to development: social, economic, cultural, political & historical etc), coming up with practical initiatives that ensure (better security of tenure, having alternative and affordable land) coupled with that providing other incentives (market access, loans, sensitizing/legal awareness, capacity building on policy implications, technical advice etc) that are growth focused. Emphasis is made to freeing land, (considering the fact that land and labour are the most important factors of production for an agricultural based economy) enhancing more/better access, more control over produce and ownership rights because unless that is done the very poor of the poorest (who in most cases are women) shall not improve their livelihoods, boost household incomes, increase

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<sup>25</sup>*Presentation by Ms. Amanda Ellis, senior specialist Gender, Private Sector Development at the World Bank given at a consultative meeting with Ugandan Women Entrepreneurs: East African Procurement News, Vol. 1 Issue 14: March 10-16, 2004*

productivity, ultimately contributing to increasing the GDP given Uganda's agro based background thereby improving its ranking.

### **4.3 Political implications**

As you are aware in Uganda we always work backwards beginning with the law then the policy which can be attributed to political pressure. Here's the challenge, Uganda had a 1975 Land Reform Decree which was not a bad law if improved upon but had it all changed due to the need to have a new law that would enable the Country deal with issues from a broad based perspective. The Land Act 1998 is a fair law but it does not deal all the concerns and Constitutional reinstatements, why? <sup>26</sup>The legal implications as it were of the Land Reform Decree is that although it was not felt on the ground it persisted until 1995 when the 1995 Constitution was enacted which in turn made radical changes regarding the relationship between the State and land in Uganda. Permit me to add that the implications here are far reaching especially when faced with implementation and also the fact that the characteristics of the land question in Uganda today is not so different from what they were during the colonial period which takes us back.

Sadly, after the departure of colonialists as illustrated above, subsequent Governments who inherited power behaved like their departing masters in that they and I mean politicians have continued to politicize land issues by using a populist approach denying their people whom they so represent the basic freedom and human right to own property. Little wonder few African states Uganda inclusive have conflicts on land related issues and still refuse to deal with the actual land issues.

The recommendation here from a policy perspective would be to delink politics from land issues (although the two are often used together) if we are to have policy principles that would last the test of time. Besides we need to have the will to implement what we have committed ourselves to do if we are to realize an increased growth that the report is talking about.

### **Proposed recommendation on property rights aspects**

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<sup>26</sup> *Ministry of Water, Land and Environment: Issues paper for the National Land Policy Pp 6-8*

The challenge to all stakeholders present today and for the Alliance in particular given its stake in the land sector is to see to it that process move a step higher beyond merely ensuring inclusion of favorable policy/legal provisions that take into consideration Poverty Reduction Strategy Paper [Poverty Eradication Action Plan], gender, HIV/AIDS, macroeconomic/trade concerns, advocacy/lobby to actual realization of land ownership/property rights as a crucial resource to poor and marginalized persons. The question then becomes how we do that? And here's the how (which may sound unrealistic although I believe can work if done on a pilot basis and in the long term since the proposals are meant to help us close the gap between policy provisions and practice thereby improving the integration of land issues not only in our Country's long term strategies but having them budgeted and planned for in our Mid-term expenditure frameworks as well):

- ✚ Ensuring the development of a National land policy with clear policy pronouncements and legislative/regulatory/institutional frameworks that take into consideration among others cultural practices, gender disparities/poverty concerns;
- ✚ To ensure success of land reform and productive use of the land, reform needs to be combined with other programmes at the Government's disposal such as dissemination/sensitization of administrators and the population. In our case aggressive dissemination of women's land rights as a property rights and the law/policy on land and other sectoral policies need to be undertaken if women are to be empowered to demand for their property rights. This will also equip them and other groups to question and challenge the authorities;
- ✚ Setting up institutions/departments in a coordinated manner to ensure that Government policies are implemented realistically and cost effectively;
- ✚ Developing clear strategies and deliberate action on the part of Government to ensure that women's property rights are addressed and how women as a minority and other disadvantaged groups can benefit from the land fund;

- ✚ Investing more funds into the already established land fund to facilitate development/Government initiatives;
- ✚ Investing more funds and including the above needs in our national budget to beef up what is available in the already established land fund to facilitate development/Government initiatives that are land/poverty reduction focused;
- ✚ Categorization of poor & marginalized/disadvantaged persons that do not have land, those that have limited access, have access but no control over the land and resources derived from it;
- ✚ Having Government come up with an inventory of land that it actually owns;
- ✚ Giving Government owned land at least cost or even free especially to the poor/disadvantaged/marginalized groups. (Borrow a leaf from what Botswana did-every person whether male or female when they attain a certain age are given land by the state);
- ✚ Selling/leasing land at affordable rates to those that can afford (elite & average income earners) and by so doing we shall enable specifically women and urban poor who either do not have land, cannot inherit land from either their husbands/fathers/male relatives own land/ property in their own right as human beings thus empowering them economically;
- ✚ Government could also lease land without necessarily demanding for a cash payment but based on a person's interest and ability to put the land to productive use;
- ✚ Looking at property specifically land/poverty issues from a multi-disciplinary perspective and rights based approach to ensure security of tenure and a people centered approach top development;
- ✚ Continuous sensitization and creation of legal awareness on land and other related issues cannot be over emphasized;

- ✚ And finally, there's need to have specific and clear policy provisions that ensure women's ownership of land as a property right. In this aspect the policy needs to consolidate affirmative action as espoused in the 1995 Constitution and the right of every person to be able to own property irrespective of their gender.

Please note that the above proposals would require a concerted effort of everyone: Government of the Republic of Uganda, relevant Ministries (Ministry of Water Lands & Environment, Ministry of Finance, Planning & Economic Development, Ministry of Gender, Labour and Social Development etc) donors/partners, end beneficiaries (on the basis of the reasons given for the public involvement in establishing and guaranteeing property rights to land) and civil society. As a woman lawyer/activist the above proposals should be a priority.

## **Conclusion**

As I conclude, why if I may ask is there so much emphasis on women's property rights and land for that matter, better security of tenure, etc? Why the realization that land and development the world over can no longer be dealt with in isolation? How does the Land Policy create coherence in directing this Country to ensure security of tenure for women? How do we anchor our agricultural production on this valuable resource if we are to use it as a basis of development? What of the planning/implementation aspects? On the other hand we need to answer the question: What the developed world has done in addressing these issues? Why, with increased and improved production the developed world shall not open up free trade rhetoric? Why do they subsidize their farmers so heavily when on the other hand the argument is that such incentives distort the market and the economy and yet all the fuel and food subsidies in poor countries MUST be stopped or no promised loans will be disbursed? Why?! The Land Policy and other long term country strategies/plans should be able to respond to controversial issues meaning if there is a position then we should stand by it. Am sorry to belabour the point but as you will discover a multidisciplinary approach to development looking at not only land policies but other policies and conditions are important in dealing with poverty issues and land is just a small aspect of it. What I am simply stating is that anything that happens whether political, economic, democratic must have an impact on the over all

world economy which could explain the urge to help the least developed countries cope and alleviate their poverty. No doubt that's one of the underlying reasons as to why we have the PRSP and PEAP. There has also been a realization of the need for women to tangibly realize their property rights as an economic/empowerment tool.

And as the Malaysian PM Dr. Mahathir Mohamad advised we must seek truth from facts. We must do what works and abandon what no longer does. We must be aware of external forces, consult, have a common stand on issues, the strength and courage to do what is productive and good for our people and for the global community of mankind.<sup>27</sup>

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<sup>27</sup> *Globalization, Smart Partnership and Government: A Memento to Smart Partners on the occasion of Dr. Mahathir Mohamad's retirement as the Prime Minister of Malaysia*

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