

LITERATURE REVIEW: LAND AND GENDER SURVEYS IN UGANDA

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1. INTRODUCTION

1.1 BACKGROUND

Uganda is a land locked country occupying 241551 sq. km, 18% of which consists of open inland waters and permanent wetlands. Uganda's population has been doubling almost every 20 years from 5 million in 1948 to 9.5 million in 1969 and 12.6 million in 1982 to 24.2 million in 2002. The mid 2007 population projections stood at 28.3 million of which 87.5% live in rural areas and 73% are engaged in agriculture as their main stay and livelihood. Uganda has one of the highest population growth rates of 3.3%, higher than the sub-saharan average of 2.4%, with a real per capita income of US\$ 334 in 2005. Uganda has made considerable progress in poverty reduction; from an income poverty of 56% in 1992 to 31% in 2005¹.

Land and labor resources are key factors of production, the distribution and utilization of these resources is a matter that is assuming policy and strategic importance. From the late 1990s, Uganda adopted various (diverse and scattered) enabling policies and laws geared specifically towards promoting women's empowerment and active role in the development of their families and communities with remarkable progress in registered law and policy reform². Notwithstanding the reforms, such progress is hampered by consistent failure to move legislation from "Bills" to "Acts" or "Statutes", because of the sensitive nature of the subjects being handled and the legislation's inherent ability to re-arrange the power-gender and property relations at households and in communities, which has met stiff resistance from different sections of society in Uganda³.

The political devotion necessary for implementation of such reforms is absent especially on changes that directly touch productive resources' use and ownership, since gender equity is perhaps the most difficult frontier to confront, as it requires a direct and immediate change in power relations⁴. Often times, policy makers and law makers have hanged excuses for not taking effective action for securing property rights for women on the absence of sufficient evidence and the lack of sufficient consultation with the beneficiary populace, despite the fact that women's input in the production process is not matched by equal benefits and control over the economic, social and political processes⁵.

Agricultural production is heavily resource-based with land and labour being the most significant inputs generating 40% of the country's gross domestic product (GDP), 70-80% of export earnings, all most all domestic food requirements and raw materials for local industries⁶. While women play an important part in agricultural production, especially the food sub sector, their role as producers and agents of change in the much-needed rural transformation has been severely constrained by their meager share in the means of production, land, capital, credit and technology, and by their marginalization in production⁷.

This study seeks to confront the realities that come with recognizing the importance of women's land/asset engagement. Yet, reliable quantitative data on women's land/asset

¹ Human Development Report 2007; Rediscovering Agriculture for Human Development, UNDP

² the 1998 Land Act and in the 2002 Land Sector Strategic Plan

³ classical failures to realize legal reforms in the Domestic Relations Bill and Co-ownership of marital property,

⁴ Agarwal 1994; Rugadya 2005

⁵ Uganda's Poverty Eradication Action Plan (PEAP) 2004/2007

⁶ Human Development Report 2007;

⁷Rugadya, 2006

engagement is generally not available. Women’s interaction with land and other assets is not well-measured, and the relative importance of different factors contributing to that interaction has generally gone unmeasured. As a result, current policy debates are not adequately informed by credible, well-documented facts, and policy and programmatic action are not shaped by a complete understanding of the factors determining women’s land/asset engagement and its impact on development outcomes⁸.

1.2 STUDY SITES SELECTION

Since Assets/Land engagement is at the core of this study a review of the description and status of these variables either as determinant factors, influencing factors, explanatory factors or as relevant factors in the study sites is necessary to generate a holistic spectrum of the context within which the variables operate. The selection of sites was on the basis of criteria developed along regional location, land tenure regimes, population density, education levels and other health considerations as shown in the table 1 below.

Table 1: Criteria for Study Sites Selection in Uganda

A. APAC DISTRICT - ADUKU SUB COUNTY	B. MASAKA DISTRICT - BUTENGA SUB COUNTY
<ul style="list-style-type: none"> Located in Northern Uganda Lango region. 	<ul style="list-style-type: none"> Located in the central region of Buganda
<ul style="list-style-type: none"> Enjoyed moderate stability during the LRA insurgency, although was mainly a host community, this has implications on HIV/AIDS rates, land use; land market activities especially rental and sales. 	<ul style="list-style-type: none"> Land is individually registered mainly under Mailo tenure although with title in hands of a few people who were the 1900 Buganda Agreement allocates whose current interests are now with the fourth generation of their descendants
<ul style="list-style-type: none"> Land is customarily owned and women don’t freely own or inherit land. 	<ul style="list-style-type: none"> Attempts to change the situation by undertaking systematic demarcation to enable sitting tenants get land titles, failed due to registered not updated.
<ul style="list-style-type: none"> Education levels of women are considerably low 	<ul style="list-style-type: none"> Part of the central region where women own and inherit land freely
<ul style="list-style-type: none"> Because of acting as a host community there could be an increase in HIV infection rates. 	<ul style="list-style-type: none"> Women have higher levels of education.

Table 2: Selected sites Profile

Region	Central	Northern	
District	Masaka	Apac	
County	Bukomansimbi	Kwania	
Sub County	Butenga	Aduku	
Sub County	Total Households	10,099	5,413
	Total Population	45,148	26,545
	Female Population	23,113	13,683
	Male Population	22,035	12,862
	Average Household Size	4.5	4.9
Ethnicity	Largely Baganda (Bantu Speaking)	Largely Langi (Luo Speaking)	

Source: UBOS, National Census 2002

The two study sites selected are Apac district in northern Uganda and Masaka district in south-central Uganda, with appreciation of the country’s multiple land tenure systems⁹ and location specific socio-economic undertakings, as well as the ethnic-cultural

⁸ Project Proposal (Final) ICRW Land and Gender Studies, January 2008

⁹ Land in Uganda may be held in terms of four tenure categories, namely: customary, freehold, mailo, and leasehold. Incidents of these tenure regimes (other than leasehold) are, however, defined in terms of generalities which establish no particular frontiers, in practical terms there are variations of this incidents across regions either as a result of traditional customary regulations and rules of access or as a question of colonial legacy (such as mailo land) with varying levels of appreciation, understanding and enforcement of rights of use, control and ownership access genders.

The prosperity and general well being of the country, as well as its prestige in the eyes of neighbouring peoples, was thought to be due to him.

Indeed, the Luganda word for land is *ttaka* while the traditional second name for the *Kabaka* is *Ssabataka* (leader of the clans), indicating the antiquity of the link between clans, the *Kabaka* and land ownership and – inasmuch as clan identity is the most important social means of ethnic identification for the Baganda – between ethnic identity and land as well. In 1900 the British signed an agreement, thereafter known as the 1900 Agreement, in which they gave 8958 sq. miles to the *Kabaka*, the royal family and several thousand top Baganda chiefs as freehold – known in Buganda as *mailo* (from the word ‘mile’) – and allocated the rest, or 9000 sq. miles of ‘waste and uncultivated land,’ to the Protectorate as Crown land¹¹.

As all this newly allocated land became legally inheritable as well, the 1900 Agreement thereby created a ‘hereditary ruling class’ in Buganda. As a result of the Uganda Agreement, the land tenure system in the Buganda area was formally transformed from a customary system based on a chief’s domain over land and community members’ rights to agricultural land, to a system approaching freehold tenure with one legislative decree, the Buganda Agreement of 1900. The colonial government conferred to chiefs and other notable personages individual ownership rights to large extensions of land called *mailo* estates. Land not held under *mailo* or established customary tenure became Crown (public) land. Thus approximately half of Buganda (more than 8,000 square miles) became formally privatized¹².

These *mailo* estates were already settled by smallholders under customary tenure; however, their usufructory rights were not legally recognized. *Mailo* owners permitted their peasants to retain possession of the land (called *kibanja* land) they were occupying. *Mailo* tenure in effect converted them from customary usufructory holders into tenants on private property. Other persons who wanted to settle on *mailo* land had to approach the *mailo* owner and get permission to occupy a specific piece of land. Initially, most tenants paid little or no rent and labor services, particularly on large estates. *Mailo* owners were considered lords of their area and their tenants were their servants¹³.

Aduku:

Customary tenure in Uganda has persisted for a long time despite its neglect by the legal regime. In contemporary Uganda, rights to control, use and ownership of customary land are derived from being a member of a given community and are retained by fulfilling certain obligations in the community. These systems of land allocation and land transactions are important in determining equity, land administration, and dispute resolution mechanisms within customary tenure communities. Two general customary systems can be distinguished¹⁴.

Under the communal land system, primarily found in northern Uganda, the household is the primary owner of the land and may include extended members of the family. Communal land in Uganda includes gardens and pastures, grazing areas, burial grounds and hunting areas commonly known as common property regimes. The common property regime is especially utilized by the pastoralist communities in northern Uganda

¹¹ 1900 Agreement, Chituo Cha Katiba

¹² Makerere Institute of Social Research and Land Tenure Centre, University of Wisconsin (1989)

¹³ Makerere Institute of Social Research and Land Tenure Centre, University of Wisconsin (1989)

¹⁴ Rugadya, 2007; Gayiyya 2006, Adoko 2004

and parts of the cattle corridor in the West. User rights are guaranteed for farming and seasonal grazing, access to water, pasture, burial grounds, firewood gathering, and other community activities. No specific ownership rights of control are conferred on users. Control and ownership are through the family, clan, or community¹⁵.

Under individual/family or clan customary tenure, emphasis is also placed on use rather than on ownership. Male elders are the custodians of customary land in most communities and determine distribution of the land. However the family rather than the community has more control in the land utilization, and individuals in the family are allocated land¹⁶.

1.3 SOCIO-ECONOMIC PROFILE

Population:

Trends in population growth have long-term implications to gender time-poverty, access to land and service delivery. In table 4, the gender composition of the population in the selected sites by parish is illustrated. The national gender composition is at the ratio of 49:51 for male and female¹⁷.

HIV/AIDS and war-related male deaths, is pushing up the proportion of female headed household currently emerging as one of the most critical demographic phenomena. Approximately 30% of households in Uganda are headed by females¹⁸. Data shows that female-headed households have less land than male-headed households¹⁹.

Table 4: Population by Sex in the selected Sites

Population of Butenga Sub county by sex by Parish				
Parish	Female	Male	Total	% female
Kabigi	4,465	4,206	8,671	51.5
Kassebwera	3,314	3,251	6,565	50.5
Kawoko	5,325	4,945	10,270	51.9
Kisagazi	4,139	3,887	8,026	51.6
Kisiita	2,937	2,912	5,849	50.2
Kyankoole	2,933	2,834	5,767	50.9
Total	23,113	22,035	45,148	51.2
Population of Aduku Sub county by sex by Parish				
Parish	Female	Male	Total	% female
Aboko	3,080	2,949	6,029	51.1
Adyeda	2,999	2,734	5,733	52.3
Alira	2,395	2,315	4,710	50.8
Ongoceng	2,986	2,698	5,684	52.5
Apire	2,223	2,166	4,389	50.6
Total	13,683	12,862	26,545	51.5

Source: UBOS, 2002 National Census

The gap in income poverty suggests that women-headed households are not able to compensate for their lack of land. If women had full ownership of the land they farmed,

¹⁵ Makerere Institute of Social Research and Land Tenure Centre, University of Wisconsin (1989)

¹⁶ Makerere Institute of Social Research and Land Tenure Centre, University of Wisconsin (1989)

¹⁷ Human Development Report 2007; Rediscovering Agriculture for Human Development, UNDP

¹⁸ UBOS – Uganda DHS 2006

¹⁹ PEAP

they would be in a better position to retain control of the incomes.²⁰ Though widows have quite high land holdings per adult equivalent, they tend to lose these assets over time as their male children grow up.

Employment

Employment can be a source of empowerment for both women and men. It may be particularly empowering for women if it puts them in control of income. The UNHS survey revealed that 92% of currently married women and almost 100% of currently married men were employed at some time in the year prior to the survey. However, men are more likely to be paid in cash (34%) for their work than women (19%). Women are more likely to work but not receive payment (30%) compared with men (13%). For both sexes being paid in kind and not being paid is more predominant in rural areas than urban areas. There also existed an inverse relation between education attainment and in-kind earnings²¹.

It is believed that employment and earnings are more likely to empower women if women themselves control their own earnings and perceive their earnings as significant relative to those of their husbands/ partner. The UDHS reveals that about 55% of the women mainly decide by themselves how their earnings are to be spent. Three in ten women report that they make the decision jointly with their husband / partner, while 13% report that decision is mainly made by their husbands / partner. Older women are more likely to make their own decisions on how their cash earnings are spent than younger women. Urban women are more independent (68%) than rural women (52%) in making their own decisions. Regarding the magnitude of a woman's earnings for those of her husband / partner three in four working women (76%) reported that their earnings were less than those of those their husband / partner²².

Labour

Table 5: Labour force in selected sites

LABOUR FORCE, ADUKU SUB COUNTY				
PARISH	LABOUR FORCE NUMBER			% IN SUB. AGRIC
	Female	Male	Total	
1. Aboko	761	752	1,513	92.7
2. Adyeda	437	743	1,180	66.2
3. Alira	457	598	1,055	87.1
4. Ongoceng	743	675	1,418	74.6
5. Apire	223	257	480	82.5
Total	2,621	3,025	5,646	
LABOUR FORCE, BUTENGA SUB COUNTY BY PARISH BY SEX				
PARISH	LABOUR FORCE NUMBER			% IN SUB. AGRIC
	Female	Male	Total	
1. Kabigi	772	790	1,562	80
2. Kassebwera	666	943	1,609	86.3
3. Kawoko	946	1,132	2,078	67
4. Kisagazi	1,559	1,306	2,865	81.2
5. Kisiita	772	737	1,509	80.7
6. Kyankoole	848	836	1,684	92.2
Total	5,563	5,744	11,307	

Source: UBOS (National Census 2002)

²⁰ see Chapter 6, of the PEAP

²¹ Uganda Demographic and Health Survey 2006 – UBOS

²² Uganda Demographic and Health Survey 2006 – UBOS

Agriculture is mainly on smallholder farms, which depends on family labour mainly provided by women and children. Women provide 70% of agricultural labour and 60% of labour for cash crops. Uganda has a relatively young population (below 15 years) increasing from 46.2% in 1969 to 49.3% in 2002. On the other hand the share of economically active age group (15-64) decreased from 50% in 1969 to 47.7% in 2002²³.

In both selected study sites, majority of the labour is in subsistence agricultural production with a slight difference between the central and northern region as shown in the table above. Participation in economic activities generates an earning for the individuals and hence empowers them to take decisions concerning themselves and their dependants.

However, much of the women's work in developing countries are overlooked, undervalued or undercounted. For instance women's participation in unpaid domestic duties is not recognized under the system of National Accounts. Because of this, the Uganda national census revealed that out of the 6.7 million persons in the labour force 47% were females. Women constitute the majority (60%) of the population that is not working.

Table 6: Occupation types of all men and women (percentage)

OCCUPATION	MEN %	WOMEN %
Professional	5.6	2.0
Administration	0.6	0.2
Clerical	0.5	0.4
Sales	6.1	5.5
Service	3.0	1.6
Crop	48.8	60.1
Livestock	3.0	0.4
Poultry	0.6	0.0
Forestry	1.1	0.1
Transport	4.5	1.5
Unskilled	5.0	1.2
Other	21.9	27.0

(Source UNHS 2002/03)

Further, majority (66%) of the working women (aged 14 – 64 Yrs) are unpaid family workers. This has far reaching implications on the empowerment of women since they are economically active but do not earn an income. It is only 10 percent of the working women who are in paid employment²⁴. In terms of occupation category, women slightly outnumber the men among the clerical workers and subsistence farmers. The men dominate in all the other major occupations and were engaged in the generally better paying professions²⁵.

Literacy and Education

The census (2002) results indicate that overall 19.3% of the population aged 6 yrs and over never attended school. Of these 24.5% were females and 13.5% were male. Results further revealed that the share of females who had never been to school increases with age reaching a maximum of 70% among persons aged 25 – 59 years. One of the set

²³ Human Development Report 2007; Rediscovering Agriculture for Human Development, UNDP

²⁴ UBOS: 2002 Census Analytical Report – A Bridged Version October 2006

²⁵ UNHS 2002/3

targets for gender equity is achieving by 2005, equal access for boys and girls to primary and secondary schooling.

Table 7: Population by school attendance status and age group by sex

Attendance status	Aged 6 yrs and over			Aged 15 yrs and over		
	Male	Female	total	Male	Female	Total
Attended in 2000	43.8	37.7	40.7	19.9	13.2	16.4
Left school	42.7	37.5	40.0	64.5	54.6	59.3
Never been to school	13.5	24.8	19.3	15.5	32.2	24.3
Total	100	100	100	100	100	100

Source: UBOS, census Analytical Report, 2006

Affirmative action to address gender inequity that existed in primary education has been addressed by the Universal Primary Education Program. In 2001 there were 3,528,035 boys compared to 3,372,881 girls reflecting girls to boys ratio of 96:100²⁶. However this ratio tended to drop for pupils attaining P.7 (completion level) i.e. at 79:100. Thus more girls drop out of school than boys. This may be due to the social and cultural disadvantage that girls face. Therefore translating girls into the secondary level education still remains extremely difficult.

Table 8: Literacy Rates (Percentage)

LITERACY RATES , BUTENGA SUB COUNTY BY PARISH BY SEX			
Parish	Female	Male	Total
1. Kabigi	80.8	85.4	83
2. Kassebwera	78.9	82.7	80.8
3. Kawoko	81.9	84.4	83.1
4. Kisagazi	81.1	86.8	83.8
5. Kisiita	84.7	86.8	85.7
6. Kyankoole	78.1	83.1	80.5
LITERACY RATES , ADUKU SUB COUNTY BY PARISH BY SEX			
Parish	Female	Male	Total
1. Aboko	56.9	79.9	68
2. Adyeda	64.9	86.3	74.9
3. Alira	55.7	79.7	67.2
4. Ongoceng	70.3	89.5	79.3
5. Apire	58.2	83.9	70.6

Source: UBOS (National Census 2002)

The 2002 census results show that female and male literacy rates are 62% and 77% respectively. The literacy levels were higher among the urban population at 88% compared to the rural population at 67%. Within the selected study sites, in the table below shows the literacy levels by parish.

Housing:

Uganda is one of the few African countries with a large population of internally displaced persons either as a result of internal population movement mainly in search of land from areas of extreme land shortage to areas where land is relatively abundant or as a result of armed insurgency mainly in the northern part of the country, where local communities and people were forced to relocate to areas that are better secured²⁷.

²⁶ MoES, 2002

²⁷ Human Development Report 2007; Rediscovering Agriculture for Human Development, UNDP

According to the national census results, owner-occupied accounts for 87% of housing in rural areas and 49% in urban areas country-wide, an analysis of the specific sites in which the study is to take place shows a higher percentage of owner-occupied housing in the northern region than the central-south, which also corresponds to the population density and level of socio-economic activity in the two sites.

A higher percentage of better housing materials in the central in terms of rammed earth floors, iron sheets for roofing than grass thatched housing that is preferred in the north as an indicator of lower living standards and a response to climate or weather conditions in the north that is generally hotter than the central-south. The detailed statistics in each parish of the study sites is detailed in the table below on housing conditions.

Table 9: Housing Conditions

HOUSING CONDITIONS, BUTENGA Sub-county 2002					
Parish	Owner occupied (%)	Rammed earth floor material (%)	Iron sheet roofed HHs (%)	Grass thatched HHs (%)	Mud and Pole wall (%)
1. Kabigi	74.9	76.7	81.1	17.8	41.4
2. Kassebwera	79.5	70.5	85.5	13.9	36.4
3. Kawoko	70.4	64.1	88.6	9.4	35.3
4. Kisagazi	72.9	62.1	87.6	11	32.1
5. Kisiita	78.8	69.7	90.5	6.5	36.2
6. Kyankoolle	88.2	77.1	82.9	14.9	41.7
HOUSING CONDITIONS, ADUKU Sub-county 2002					
Parish	Owner occupied (%)	Rammed earth floor material (%)	Iron sheet roofed HHs (%)	Thatched HHs (%)	Mud and Pole wall (%)
1. Aboko	86.1	95.7	13.9	72.8	15.7
2. Adyeda	72.8	82.2	26.5	72.4	2.5
3. Alira	97.8	94.7	17.9	81.8	11.1
4. Ongoceng	87.1	84.6	24.2	74.9	10.4
5. Apire	78	93.8	15.2	84.5	15

Source: UBOS, National Census 2002

2. LAND AND ASSETS

2.1 OWNERSHIP OF LAND AND ASSETS

An asset is an item or resource that either is used to store wealth and can be sold when money is needed or that generates new income or resources. Assets are often defined in terms of²⁸;

- (i) *financial assets*: cash, savings, loans and gifts, regular remittances or pensions, other financial instruments
- (ii) *physical assets*: housing, buildings and land and improvements to these, other physical items which maintain or increase in value such as gold jewellery, or physical items that decrease in value including consumer durables such as household appliances, shoes, clothing, and vehicles.
- (iii) *human assets*: skills and knowledge, ability to labor, good health, self esteem, bargaining power, autonomy, control over decisions
- (iv) *social assets*: networks, membership of groups, relationships of trust, access to wider institutions of society, freedom from violence.

The analysis in *Moving out of Poverty, 2007* embraced all the four aspects around which assets are defined and found ten individual assets and capabilities that were most frequently cited and noted as enabling most individuals or household to move out of poverty or to maintain prosperity in Uganda. Two key individual asset and capabilities were:

- (i) having multiple income sources especially income from diversified crop farming plus either any other non-crop farm income sources e.g. animal husbandry or non-agricultural or off-farm income sources e.g. petty trade (like buying and selling produce, brewing and selling local alcohol)
- (ii) possessing marketable technical or professional skills – a formal job and regular salary or at least primary level education in addition to having the multiple income sources. Professional skills included: possessing improved farming techniques, building and carpentry training, traditional medicine skills and basic arithmetic and book-keeping business skills or being / having been a professional teacher / civil servant.

The other individual assets and capabilities were:

- (i) being hardworking
- (ii) being enterprising
- (iii) having a god saving culture
- (iv) Inheritance and or buying and utilizing productive assets especially land profitably.
- (v) Having hardworking spouse(s) – often wife and / or abundant family labour.
- (vi) Support from children who are earning an income
- (vii) Having religious or political influence
- (viii) Migration to either rural or urban area.

The study also found that the key collective assets and capabilities enabling an individual to move out of poverty or sustain prosperity were:

- (i) Belonging to a local self help initiative or micro-finance group
- (ii) Possessing church or family / personal social safety network

²⁸ UPAPP, 2004

Data from the National Census 2002, specifically extracted for the two study sites (where this study is to be carried out) in Aduku, Apac and Butenga, Masaka revealed that next to land (and housing), ownership of assets is in the form of radio, bicycle, motor-cycle, phones and motor car is often captured in survey and focuses on ownership and value of assets at household level but not necessarily use of a particular item as shown in the table below.

Table 10: Asset Ownership in Aduku and Butenga

HOUSEHOLD CONDITIONS AND ASSETS FOR ADUKU SUB COUNTY, 2002											
Parish	% HHs with water access	% HHs with Radio	% HHs with Bicycle	% HHs with Motor car	% HHs with Motor cycle	% HHs using Char Coal	% HHs using firewood	% HHs with Fixed phones	% Hhs with Mobile phones	% HHs with toilet facilities	Total HHs (No.)
1. Aboko	94.6	36.4	55	0.1	1.6	11	99	0	1	76	1284
2. Adyeda	91	50	52	1.6	2.3	215	79	0	42	86	1194
3. Alira	63.1	44.4	54	0.1	1	11	99	0	5	87	923
4. Ongoceng	99.8	40.5	57	1.1	2.3	71	94	0	23	76	1136
5. Apire	72.4	47.1	58	0.3	0.7	11	98	0	4	73	876
HOUSEHOLD CONDITIONS AND ASSETS FOR BUTENGA SUB COUNTY, 2002											
Parish	% HHs with water access	% HHs with Radio	% HHs with Bicycle	% HHs with Motor car	% HHs with Motor cycle	% HHs using Char Coal	% HHs using firewood	% HHs with Fixed phones	% Hhs with Mobile phones	% HHs with toilet facilities	Total HHs (No.)
1. Kabigi	38.1	53.9	35	0.9	3.7	48	97	1	27	97	1904
2. Kassebwera	48.7	54.9	41	1.4	4.8	26	98	1	12	98	1534
3. Kawoko	55	59.4	34	1.9	3.1	232	88	1	49	99	2324
4. Kisagazi	34.1	56.2	32	1	4.1	162	88	1	20	99	1820
5. Kisiita	62.6	58.1	33	0.9	2.2	15	98	0	13	98	1292
6. Kyankoole	35.7	54.1	37	0.8	4.1	9	99	1	6	98	1225

Source: UBOS, National Census 2002

The data presented below is merely telling of the conditional possession within a household and not capturing the individual engagement with assets or their use in household, hence the extent to which genders may benefit or build up empowerment from the presence of such assets within a household.

Economic growth in Uganda's case appears to have been associated not only with an increase in asset ownership but also with considerable activation of land rental markets, consistent with the greater scope for efficiency-enhancing land transfers that one would expect to be both a cause and a consequence of higher levels of economic development²⁹.

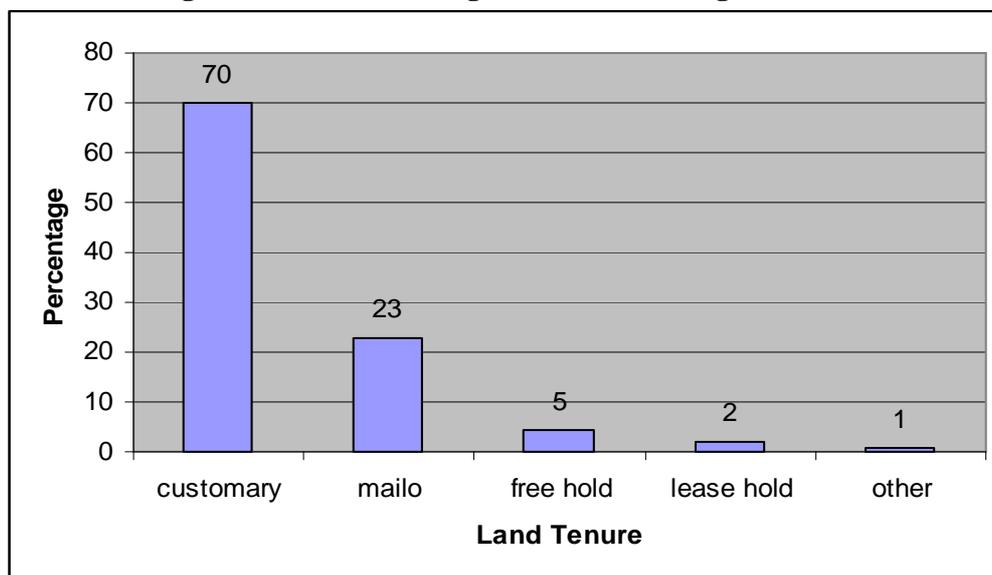
Of the total land area of Uganda, 84,694 km² (approximately 35%) is farmland of which 84,010 km² of this farmland is under subsistence agriculture while a mere 684 km² is used for commercial farming, illustrating the importance of land in supporting rural livelihoods. Land is thus the major constituent of household assets. Evidence indicates that about 50% of most Ugandan households' wealth is held in the form of land³⁰. Household survey results using basic descriptive statistics indicate that land makes up more than 50% of the average household's asset endowment and that 74% of households use agricultural land for subsistence (Deininger and Okidi 2003).

²⁹ Klaus Deininger and Raffaella Castagnini, 2005; Incidence and impact of land conflict in Uganda, The World Bank, World Bank Policy Research Working Paper 3248, March 2004

³⁰ UPAPP, 2004; Gender Baseline Monitoring Survey, 2006

In Uganda, land ownership is categorized into; mailo, freehold, customary and leasehold ownership. In 1998 a Land Act was passed, which recognised, for the first time, customary tenure alongside other forms of land tenure (freehold, leasehold and *Mailo*), however the translation of customary rules into modern law has not been straightforward due to their complexity and the myths that surround them. Customary rules have often never been written down and they are constantly changing and adapting to new circumstances. The State legal system and the customary system are also based on very different working cultures and the creation of a new set of ‘modern’ institutions to administer customary law may significantly weaken the latter. Results from the National Household Survey (UNHS), 2006 show that majority (70%) of households in Uganda own customary type of land. Mailo land is owned by about 23% of the population that own land. (see figures below).

Figure 11: Percentage Distribution showing Land Tenure in Uganda



Source: UNHS 2006 Data

Results of the survey also indicate that majority (91%) of land owners do not have any form of certificate of land ownership. On aggregate, across all land tenure types in relation to empowerment in terms of decision making data available indicates that 40% of the household owners of land have to obtain permission from their spouse or children to sell land. About 23% have to obtain permission from extended families in order to sell or transact on land. It’s only about 17% of the land owners who do not obtain approval from anybody.

There are influencing context conditions that refine gendered access to land issues such as; the nature of women’s rights, position of women given their transient rights, the consequences of gender inequality on land and the effect of dispute resolution on land matters³¹. Ssebina-Zziwa³² describes how men’s rights such as those in land, have become redefined increasingly in market terms and separated from their traditional responsibilities for lineage wives and children; marriage itself has become more transient for many men and women, leading to the creation of extraordinary complex family

³¹ Margaret Rugadya, 2007, Gender in Uganda’s National Land Policy: Issues, Theories and Policy Responses: Implications for Poverty Social Impact Assessment in Uganda, *Presentation for the Poverty Social Impact Assessment (PSIA) Training, Ministry of Finance, Planning and Economic Development Nile Resort Jinja, Uganda*

³² In her study on Succession rituals and Inheritance in Uganda, 1998

networks. In her analysis, the “patriarchal contract” under which women were “rewarded with rights in return for conformity to existing power relations” is no longer working, meaning that property relations need to be established through the intervention of the State to regulate marriage, inheritance and women’s rights under the law.

Although Uganda’s laws are quite clear about women being as free as men to own and dispose of property, including land³³, in practice women have not accessed the land market. Women’s lack of access is likely explained by a shortage of funds due to their income activities being confined to the garden and kitchen. Where they can muster resources with which to purchase land, they have had to do this very discreetly because most husbands perceive their wives independent acquisition of property, particularly land, as her first step towards a preparation of an independent existence³⁴. This is the very same reason husbands try to ensure that their wives do not have independent sources of income. Interestingly, most men openly claim joint ownership of property independently acquired by the woman during her marriage, especially land, while at the same time they enthusiastically deny their wives a reciprocal ownership of what they (men) acquire during marriage. It is those women who are single, either separated or unmarried who are relatively free to transact in land, this is a subtle and latent constraint to land and asset acquisition³⁵.

In a few societies where widow inheritance exists, the practice ensures continuing use rights for women in the fields they had cultivated during marriage; refusal to marry the successor may mean cessation of use/cultivation rights. Thus *women enjoy transient rights to land* as a result of their rights being appended to male relations, essentially pegged to the institution of marriage, thus making the destiny of marriage determinant of her continuity to enjoy the rights there from. However, the degree of secure access and control in the matrimonial estate largely depends on the type of marriage (customary, co-habiting, and religious) and the success of the marriage (relations of the spouses)³⁶.

A woman’s position *on land in society is inferior*, reflecting the nature of power and authority that she has over land either in the matrimonial estate or the natal estate. Customarily, a woman’s right to inherit land is viewed in terms of her responsibility to nurture the children of the deceased. Custom denies her an independent right to own and inherit land; preference is given to children over their mothers, in event of death of the male household head. In the natal estate, sons take precedence over daughters when a father is determining who the beneficiaries should be, how much each of the beneficiary should get, and when a beneficiary should receive a share. Succession to land and other property by either the children (for the matrimonial estate) or the brothers (for the natal estate) does not guarantee the security of a woman’s right to land³⁷.

Lack of secure access, ownership and control of land has resulted into a poor and low socio-economic status of women in society with direct implications for their investment in agriculture and the development of the entire economy³⁸. It is not surprising therefore that the solutions to poverty and underdevelopment largely depend on addressing the

³³ Registration of Titles Act; Cap 205, 1964 of the Laws of Uganda

³⁴ Margaret Rugadya, 2007, Gender in Uganda’s National Land Policy

³⁵ Margaret Rugadya, 2007, Gender in Uganda’s National Land Policy

³⁶ Rugadya, Margaret 2007, Gender in Uganda’s National Land Policy: Issues, Theories and Policy Responses: Implications for Poverty Social Impact Assessment in Uganda, *Presentation for the Poverty Social Impact Assessment (PSIA) Training, Ministry of Finance, Planning and Economic Development Nile Resort Jinja, Uganda*

³⁷ Rugadya, Margaret 2007, Gender in Uganda’s National Land Policy

³⁸ Rugadya, Margaret 2007, Gender in Uganda’s National Land Policy

gender dimension of these issues. Today, throughout Uganda, women have considerable legally accepted but practically untenable rights to land. In essence women's land rights are limited both by the inequitable legal structure and by traditional practice.

2.2 ACCESS AND USE OF LAND³⁹

Access to land is secured through donation or inheritance, by virtue of membership within a family, purchase and borrowing. Donation is one of the major means through which land is customarily acquired under prescriptions guided by customs and practice: a grown-up son receives a share of his father's land, on which he can build a house for himself, his wife and children. The implication is that only sons can and do receive donated land to expand the clan.

By tracing lineage after the male descent, customs do not allow a daughter to become heir to her father despite the fact that she is "linear descendants". It is only the son (or in absence, another male relative) who can become heir to his father, even if such a male is a collateral relative or not, in contrast to the daughters over whom collateral relatives-in-law may be preferred. Succession is effected by either a written or oral will. In the latter case, an (ageing) father invites clan elders to physically witness the distribution of his land to his children; amongst the heir (who retains the largest portion) and those sons who previously did not benefit from the donations (unmarried sons mainly). On his death, the clan elders are accordingly expected to implement the wishes of the deceased. In event of absence of the above two means, the clan elders are empowered to distribute the deceased's land, using the customarily-recognized criteria.

As far as the parents are concerned, daughters have largely transient rights, since upon marriage it is taken for granted that their status changes as they move to reside in the homes of their husbands. It is in their husband's home that most of their adult contribution, in terms of labour is made, and consequently it is argued that their due share should be there, but not at their parents. The nature of women's rights in patrilineal societies is *dependent on relationship with a male*, usually a father, husband, brother or son. In most cases, women do not inherit land on their own, and where they do, they inherit less land their brothers. It is mainly through marriage that women acquire use rights in land, and husbands assign particular fields for cultivation. Upon widowhood, women act as guardians or trustees for the minor children until a male heir becomes of age to take charge⁴⁰. Women with grown up sons are largely assured of cultivation rights, in contrast to childless women or women who bore only daughters, whose position is very precarious.

Family land (akin to ancestral land) is described as that land which has been handed over by several generations through the male lineage. As a result, of this customary practice, the sons deem their right to family land as automatic while daughters are not eligible. Hitherto, there is growing conflict generated by the son's demand for a share, even when the father is not prepared to distribute it. Where family land is in surplus and the children of majority age need an independent source of income, a father may conditionally allow them to use his land for specific reasons and for a specified period. Under such an arrangement, there is no clear permanent demarcation of the land that one is supposed to use; the land is used only temporarily, in accordance with the fathers' specifications.

³⁹ Extracted from Rugadya, Margaret 2007, Gender in Uganda's National Land Policy

⁴⁰ Ministry of Health (MOH) [Uganda] and ORC Macro, 2006, *Uganda HIV/AIDS Sero-behavioural Survey 2004-2005*, Calverton, Maryland, USA: Ministry of Health and ORC Macro

The major avenue of access to land for women is through borrowing. Land is lent mainly by those who have land in excess of what they can use. This is a very tenuous and short-term form of access. Among the challenges faced by women with respect to borrowing is the fact that most of the people in a position to lend out land are men, and as such women, because of their status in society, cannot effectively negotiate with them on good terms. It is also important to mention that borrowing enforces obligations on the borrower, terms that are more or less equivalent to share-cropping. This is because those who lend out land expect, as a matter of right, that the borrower is morally (and at times obligatorily) bound to give some share of the produce to the lender.

Customarily, land that was a communal asset was passed on among the male, at least in as far as its control was concerned. At the family level, in spite of the differences in the tenure systems, the relations pertaining thereof are defined by custom. Control over individual family members is exercised by the head of the household through his control over land. The introduction of private ownership merely changed the form of control to individual male ownership from communal ownership, implying the change did not affect the position of the males over women who remained in the subordinate role of using the land.

Although farming is the major source of income for households, this does not translate into actual benefits for women because control of incomes from land is differentiated on the basis of the “value of crops” farmed. Husbands control 44.9% of perennial crops as opposed to 9.4% by wives, while annual crops of low value are controlled by wives at 45% compared to the husbands’ 5.8%⁴¹. Wives have control over land that holds low income perennial crops at 28.8%, compared with the husbands’ control of 6.9%. Although at least 55% of women and female headed household are able to access and cultivate more than 75% of land parcels available (owned, rented or leased for production) in a household, their access to land may not realistically translate into improved livelihoods for women because of the inequality in value of crops grown on lands controlled by women and men.

Data shows that female-headed households have less land than male-headed households. The gap in income poverty suggests that women-headed households are not able to compensate for their lack of land. If women had full ownership of the land they farmed, they would be in a better position to retain control of the incomes.⁴² Though widows have quite high land holdings per adult equivalent, they tend to lose these assets over time as their male children grow up. Division of labour in the rural areas is still rigidly defined by custom; some tasks are defined as women's, while others as men's. Therefore widespread practices of men being responsible for cash crops and livestock rearing, while women are responsible for food crops still persist. Consequent on the above, the main domestic chores and the detailed welfare of all the family members is the responsibility of the woman which leaves the husband ample opportunity to curve out a public role outside the home, basically in the public sphere.

From women producers’ point of view, the fact that male non-producer are the controlling authority, both at the family and national levels points to a major obstacle to empowerment. This is manifested in the manner in which decisions are made by the men, according to their priorities and interests and needs which may not necessarily

⁴¹ Gender Monitoring Baseline Survey, 2006

⁴² see Chapter 6, of the PEAP

conform to the women producers' interests or the family's needs. Such decisions include those related to the use of the land. The woman lacks the authority to determine to what use land should be put, in spite of the fact that they are the managers of production on the estate. They also lack the authority to determine the use of the income derived from the produce. On their part, the men argue that they need full control over land and the products there from, since they have specific roles described by society that they must perform and other obligations. Custom depicts women as being weak and frail and therefore, unable to manage property adequately⁴³.

Women's control over her own and husband's earnings is also investigated in the Uganda Demographic and Health Survey 2006 – UBOS and data show that six in ten married women whose husbands receive cash earnings reported that their husbands / partners were the main decision makers on the use of their cash earnings. 49% of men and (34%) of women reported that decision making is jointly done between the husband and the wife. Because ownership rights to land generally sit with men, women's rights to land are vulnerable to male actions and decisions. There is the potential that through the male's actions and decisions alone, his wife and family may lose rights automatically. Such cases include, a man mortgaging the family / individual land and fails to repay the loan; a man who individually wrongs community members and has no alternative source of income to meet community obligations. A woman may lose rights to her husband's land for various reasons. A husband may have misunderstandings with the wife during marriage and he chooses to either abandon her or chase her away from his estate. A husband may also choose to remarry and displace his wife with another woman.

2.3 CRITIQUE

A majority of the studies on gender and land in Uganda are geared towards securing an input in policy and legislation as an end in itself hence it is tilted towards specific advocacy agenda especially around the concept of co-ownership of land by spouses and debates around it. Little is done in academic circles beyond the articulation of the concept of gender on land resources and in terms of actions that are needed to understand the status of genders in relation to land resources. It is clear that there is absence of gender-specific information regarding land ownership, accessibility and control with the exception of national indices for population, housing and poverty prepared by the national bureau for statistics, whose modules on land and asset engagement are limited to exploring progress or performance in relation to the country's PRSP position and commitments⁴⁴.

The debate on women and access to land has tended to focus on women's access to arable land⁴⁵. This is logical given that most women (more than 70% in Uganda) live in rural areas. However, this has tended to play down the importance of advocating for land in other tenure areas such as land for housing, industrial use or for large-scale farming. Strategies to acquire some of these land tenure regimes for women have not been articulated because studies rarely focus on them. Often, the unit of analysis in such studies is the sex of the household head, which fails to tell the a complete and true story about the status of men and women in different types of household as regards the welfare, efficiency, equity and empowerment arguments⁴⁶.

⁴³ Rugadya, Margaret 2007, Gender in Uganda's National Land Policy

⁴⁴ Rugadya, 2006 Gender Baseline – Monitoring Survey MWLE

⁴⁵ Margaret Rugadya, et al, 2003, Assessing Gains and Losses in Women's Land Rights

⁴⁶ Bina Agarwal, 2005 in her book, A Field of One's Own

Findings from studies (Rugadya, 2007; Ssebina-Zziwa, 1998; MWLE/AfD, 2005) show that there is a marked gender gap in control over resources and decision-making power, to the detriment of women. Also, the labour burdens of men and women differ significantly, again to the detriment of women, who are “overburdened,” especially when account is taken of the disproportionate responsibility they bear for “meeting family needs.” The implications of these gender-based differences are far-reaching and intertwined in complex and multi-dimensional ways that affect virtually every aspects of life⁴⁷.

Izumi Kaori⁴⁸ explains that assumptions made in most studies fail to appreciate the power and social relationships between and amongst the different people and how they determine their interest and access to land. Such assumptions do not take into account the manipulative role played by those in power in perpetuating and safeguarding their interests. It is argued that women’s land rights and access depend on their ability to negotiate, manipulate rules and norms and to straddle different institutions.

On the methodological side, sometimes there is a failure to account for the multi-dimensional nature and complexity of land rights. There is a clear difference between rights to transfer land, which increase the propensity to undertake visible investments and thus can be expected to affect land values in case of a sale, and more traditional measures of tenure security, which in addition increases the tendency to manage soil fertility in a sustainable manner. Similarly, households’ awareness of their land rights in a number of dimensions has a significant and large impact on outcome variables that in many respects equal to the impact of the land rights variables, suggesting that failure to account for this variable may result in biased estimates⁴⁹.

A more recent World Bank Publication⁵⁰ looked at confusions, controversies, and consensus in the area of land tenure and property rights and concluded that;

- (i) Property rights need not always confer full ownership and be individual – they can, and should be, individual, common, or public, depending on the circumstances. This is because in Africa rarely are land rights fully individualized.
- (ii) Hence, “there are no universal standards for tenure security or unconditionally uniform relationships between tenure security and agricultural productivity because of the importance of other factors that vary across sites.” and
- (iii) Most important for sustainable development is that property rights are deemed secure. Because there has been little direct testing of how tenure and land policy instruments could raise tenure security to affect agricultural investment and productivity.

These are the aspects that need to be captured in a relational manner and correlation context for studies on land and assets engagement. In agrarian societies such as Uganda land is not only the main means for generating a livelihood but often also to accumulate wealth and transfer it between generations. The way in which land rights are assigned therefore

⁴⁷ Blackden 2005: v

⁴⁸ Adams, 1999: 10-11

⁴⁹ Klaus Deininger, Daniel Ayalew, Takashi Yamano, 2006 Legal knowledge and economic development: the case of land rights in Uganda, World Bank, Washington DC Foundation for Advanced Studies in International Development (FASID), Tokyo Selected Paper prepared for presentation at the American Agricultural Economics Association Annual Meeting, Long Beach, California, July 23-26, 2006

⁵⁰ van den Brink et al 2006

determines households' ability to produce their subsistence and generate marketable surplus, their social and economic status (and in many cases their collective identity).

3. PROPERTY RIGHTS

Property rights to land are not static but constitute a social construct that responds to broader needs and evolves over time. Given its spatial extension, defining property rights to land or to write contracts regarding their exchange is costly. Therefore, boundaries may, at low levels of population density, be defined only loosely, transfers will normally involve only usufruct and not ownership and often be confined to community members, thereby allowing much of the content of land rights and associated transactions to be defined informally by unwritten "custom". Changing economic and social conditions that make land more valuable and increase the benefits to be obtained from land transfers imply that the value of attributes which have previously been left un-delineated may increase sufficiently to offset the transaction costs associated with more precise delineation of land rights⁵¹

3.1 POLICY FRAMEWORK

The Universal Declaration on Human Rights (UDHR), adopted in 1948 upholds entitlements to the rights and freedoms without discrimination on any grounds such as sex. It entitles women and men to equal rights before and during marriage and at its dissolution, recognizes every person's right to own property alone as well as in association with others and stipulates that "no one shall be arbitrarily deprived of his property", confirms the right to an adequate standard of living including housing⁵². The Uganda Constitution 1995 in its Bill of Rights and National Development Objectives mirrors these principles. In article 26, the right to property is protected, in articles 31 to 36, discrimination on grounds of sex, race and in marriage is outlawed.

The National Gender Policy, 2005

The National Gender policy, was initially adopted in 1997, and revised in 2005. It emphasizes the mainstreaming of gender concerns in the national development process in order to improve the social, legal/civic, political, economic and cultural conditions of people in Uganda in particular women. It addresses the necessity of equal participation of women and men in economic, political, civic and social development. It notes that there is gender disparity in access to and control over economically significant resources and benefits. It promotes the recognition and value of women's roles and contributions as agents of change and beneficiaries of the development process. However, despite efforts to mainstream gender in the national development process, the overall level of gender responsiveness still remains low because of inadequate capacity among sectors and local government planners and implementers to apply gender analysis skills to the policy making process⁵³, limited gender awareness among communities, bureaucratic resistance to gender mainstreaming among decision makers, and weak support among others. As a result, the poor and vulnerable remain subject to abuse⁵⁴.

The Poverty Eradication Action Plan IV (PEAP)

Poverty Eradication Action Plan (PEAP 2004/2008) is accepted as Uganda Poverty

⁵¹ Klaus Deninger, Daniel Ayalew, Takashi Yamano, 2006

⁵² Article 2; Article 6; Article 17; Article 25

⁵³ a fact that is acknowledged by the 2005 version that has devised strategies of how to deal with this shortcoming

⁵⁴ The National Report on Istanbul +5, 2001, MoWHC

Reduction Strategy Paper (PRSP). It was developed as a national strategy for reducing poverty and placing poverty at centre of the development agenda. Uganda's broad development goals are laid out in the PEAP 2004, which establishes the need to eliminate mass poverty, targeting a reduction of 10% by 2017. The PEAP influences resource allocation and mobilization, and aims to transform Uganda into a middle-income country. Gender is one of the cross-cutting issues raised under all pillars of the PEAP, especially in addressing intra-household relations for agricultural productivity, levels of incomes and its distribution across genders, review and reform of discriminatory legalization, the need to strengthen women's land rights and usage of services by genders across the sectors.

PEAP notes, further, that in many parts of the country, women are unable to own or inherit land due to restrictive practices under customary tenure. It identifies policy and legal reform as one of the priority action areas for the land sub sector. In addition to the legal reforms already achieved, there is a strong case for strengthening women's land rights to link land reform to poverty reduction strategies and improving access to land for the poor. None of these actions will work if they are perceived as 'anti-male'⁵⁵.

Draft National Land Policy, 2007

The Draft policy recognizes that colonization had an important impact on land relations in Uganda⁵⁶. In addition to the colonial legacy, a complex legal profile has evolved around land and associated resources; this consists of an elaborate constitutional dispensation as well as a comprehensive regulatory framework. The policy also acknowledges that land use in Uganda, as elsewhere in Sub-Saharan Africa is primarily an activity of the womenfolk. It is estimated that between 70 – 80% of the country's agricultural labour is supplied by women but only 7% of these hold title to land.

In Uganda the centrality of land in the economy; the political ambiguity on the land question; the social and cultural complexity of the land question, particularly the fact that for many communities land relations are also social relations and the overall governance framework in which land issues are played out and resolved is important⁵⁷. To ensure that constitutional and international provisions relating to non discrimination against women and children are strictly observed, legislative and other measures have been proposed in law reform, domestication of international principles and review of customary law⁵⁸

Land Sector Strategic Plan (LSSP) 2001-2011

According to the LSSP, 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 have ownership rights, making women's rights to land less secure than those

⁵⁵ Harmsworth, J. (1991), "The impact of the tobacco industry on rural development and farming systems in Arua, Uganda" in Haswell, M. and D. Hunt, eds., *Rural households in emerging societies: technology and change in sub-Saharan Africa*, Berg, Oxford

⁵⁶ In the first instance, through a series of agreements, namely, the Buganda Agreement 1900, the Toro Agreement 1900 and the Ankole Agreement 1901 made with traditional rulers, the British imperial authorities granted the former a number of private estates, called *Mailo* in Buganda, and *native freeholds* in Toro and Ankole, that were broadly equivalent to the English freehold. In the second instance, all land in the rest of Uganda was expressly declared to be "crown land" meaning that the British imperial authorities now held radical title to such land and all land users became, at the stroke of the pen, tenants at will of the British crown.

⁵⁷ Deninger, 2003

⁵⁸ specifically to: (a) domesticate all international conventions to which Uganda is a party which outlaw discrimination against women and children; (b) mainstream gender into development planning so as to improve the status of women; (c) reform the country's property laws including those considered "gender neutral" to ensure equality and equity in ownership and control of land; (d) review and liberalize customary rules and procedures relating to succession so as to ensure that the transmission of land to women is not impeded; (e) ensure that women are fully integrated into all decision making structures and processes relating to access and use of land; and (f) Design and implement a regime of matrimonial property aimed at the protection of spouses both within and outside marriages.

of their male counterparts. Evidence shows that particularly for rural women, this inequality of access to the key productive asset is a fundamental determinant of poverty and social disadvantage. Without secure rights to land, women's ability and incentives to participate in income – expanding economic activities is reduced. However, the Poverty Status Report⁵⁹ notes the need to move beyond requirements that wives grant consent for transactions on land used for sustenance, to more equitable and substantive interests capable of withstanding threats and shocks of tenure insecurity⁶⁰. In essence, it is a call for stronger and more enforceable claims to land than “consent” which is often routinely ignored or unenforced.

Decentralisation Policy

Decentralization in Uganda is based on a four-tier structure of elected local governments, the most significant being at district and sub-county level. While significant and visible progress has been made in political and administrative decentralization, fiscal decentralization is critical to devolution of power is yet to be fully attained. The Local Governments Act requires that 1/3 of each administrative council be comprised of women while one of the executive councillors must be a woman. Representation in committees or councils is to ensure that the interests of women are taken care of and thus, fulfilling the commitments of government of ensuring good governance.

However, a 2004 survey⁶¹ shows that decentralized delivery of land services is yet to result into improved access and utilization by women for purposes of securing rights in land, neither is it empowering communities to make choices concerning improvements in land management in their areas, by shifting locus of decision making away from individuals to local elected bodies, the quality of female representative of whom the balancing effect of equal representation is expected is yet to be fully achieved.

3.2 LEGAL FRAMEWORK

Constitution of the Republic of Uganda 1995

It is heralded as one of the most gender neutral constitutions with regard to property rights in Sub-Saharan Africa including land rights, both in content and language. In objective XV⁶² of the National Objectives and Directive Principles of State Policy, the significant role women play in society is recognized and subsequently affirmed by article 33(3) which provides that the state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

The Constitution further prohibits laws, customs or traditions, which undermine the dignity, welfare or status of women in article 33(6). In article 31(1)⁶³ on marriage, the Constitution guarantees equal rights to both men and women at commencement, during and at its dissolution. In article 20, it provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and is guaranteed equal protection of the law. Therefore, there should be no

⁵⁹ Ministry of Finance, Planning and Economic Development, 2001

⁶⁰ Currently Security of Occupancy on family land which is not a proprietary right is provided for, something which is less than what is aspired for.

⁶¹ By Ministry of Lands undertaken by Associates for Development

⁶² Constitution of the Republic of Uganda, 1995, page 6

⁶³ Under Article 31 (1) of The Constitution of the Republic of Uganda men and women above the age of eighteen years and above are accorded equal rights in marriage, during marriage and at its dissolution.

discrimination against women regarding land and property rights due to custom or tradition. Nonetheless, discriminatory treatment against women abounds⁶⁴.

In articles 26(1) and 26(2)⁶⁵, the fundamental right of every person to own property individually or in association with others, in addition to protecting the right of every person not to be deprived of personal property without compensation is guaranteed. The guarantee is without bias to gender or marital status since all persons are equal before and under the law as stated in article 21(1) and (2)⁶⁶. The land sector remains dominated by men at all levels⁶⁷, many people still regard land as a “man’s issue” notwithstanding the legislative changes that have introduced minimum quotas for women’s representation on various land sector decision-making bodies in order to guarantee women’s interests.

Article 243 of the Constitution provides for the establishment of District Land tribunals and their jurisdiction in dispute resolution. It is interesting to note that the law did not give a requirement for the composition of the Land Tribunal to ensure women’s representation as it did for the land administration institutions, though in practice, women have been appointed as chairpersons and members to the District Land Tribunals on affirmative basis of 1/3 representation. Uganda’s Parliament has special seats for Woman Members of Parliament (now 80 in total) Persons with Disabilities (5 in total PWD’s), Workers Representatives (5 in total), Youth Representative (4 in total) and 10 Army representatives.

The Land Act Cap. 227 as amended by the Land (Amendment) Act 2004

The main thrust of gender in land law has been the transformation of domestic land tenure relations by providing for ownership of the matrimonial home, proscribing discriminatory practices in land ownership, occupation and use, and requiring spousal consent to any transaction involving family land. It is a deliberate effort under the laws relating to land to ensure the implementation of the constitutional provisions and the gender policy, even though they have not been successful as these are routinely ignored and are, in any event, non applicable to widows and divorcees. The Land Act Cap 227, Registration of Titles Act and the Land Acquisition Act have adopted a number of doctrines (principles for enhancement of property rights of women as follows;

(i) Doctrine of co-ownership of matrimonial property by spouses

In Uganda, the first major attempt to secure co-ownership rights⁶⁸ for married women was during the debate on the Land Act, arising from pressure mounted by the flurry of activities that civil society organizations⁶⁹ engaged in the land reform process. Apart from fault in legislative drafting, the advocates of co-ownership were besieged by predicament of the Registration of Titles Act⁷⁰ and an inkling of unconstitutionality in the face of article 26 (2) which protects the right of every person not to be deprived of

⁶⁴ Margaret Rugadya, 2004 Gender and the Land Reform Process in Uganda

⁶⁵ Article 26 of the Constitution provides that every person has a right to own property, either individually or in association with others

⁶⁶ The provisions on equality have been strengthened by the principles of affirmative action in respect to marginalized groups who have hitherto been discriminated against on the ground of sex/gender or customary considerations by society as provided for under Articles 21, 32 and 33 of the Constitution

⁶⁷ Land Sector Strategic Plan, 2002

⁶⁸ Was drafted by a coalition of NGO’s, a technical team from Ministry of Water, Lands and Environment, the First Parliamentary Council spearheaded by Hon. Maria Matembe, Woman MP Mbarara District

⁶⁹ NGO’s intensively lobbied for Co-ownership under UWONET and Uganda Land Alliance as Network

⁷⁰ For all subsisting ownership certificates, the first principle enunciated in the provisions of Sections 56, 60 and 184 of the RTA is that a certificate of title is conclusive evidence of the particulars in it and that the person named therein as being the owner of interest is actually such owner. Save for certain exceptions, which are spelt out, the production of the certificate of title “shall be held in court to be an absolute bar and stopped to any action against the person named therein as the grantee, owner, proprietor or lessee of the land therein described, any rule of law or equity to the contrary notwithstanding”

property without fair and adequate compensation. Henceforth the concept though good collapsed in the face of its practicability and obvious unpopularity dubbed “the desire to continuously acquire land through multiple marriages by women”, to date co-ownership of land by spouses is still absent in Uganda’s statute books⁷¹.

(ii) *Doctrine of Family Land*

Section 38 of the Land Act Cap.227 introduces the concept of security of occupancy on family land. It confers the right of security of occupancy (defined as the right to have access to and live on, to use, to give or withhold consent to any transaction) for a spouse on family land during the subsistence of a marriage. This provision though progressive, requires reform of other relevant laws in order to gain from its intent and full effect, as well as coherence in implementation. In particular, section 3⁷² of the Succession Act Cap 162 and section 59⁷³ of the Registration of Titles Act.

(iii) *Principle of consent to transactions on Family Land*

Restrictions on land transactions and requirement for consent on family land from a spouse in occupation are asserted in Section 39 of the Land Act. Specific restrictions are imposed on sale, mortgage and transfer of land upon which the family lives and derives sustenance by providing for the lodgment of a caveat⁷⁴ on a certificate. The consent given by either spouse must be prior to the transaction, at spouse’s free will and must be put in writing. Considering the socialization of men and women in Uganda, it is doubtful that consent will be given without coercion or violence either from family or community. Secondly, there is a need to amend the Registration of Titles Act specifically S.64 (2) in order for consent to gain the force of law with regard to registered land⁷⁵.

(iv) *Purchaser of Family Land*

Section 136 of the Registration of Titles Act emphasizes that a purchaser in good faith for value⁷⁶ is not affected by the absence of notice⁷⁷ nor is the transaction that the purchaser enters into threaten even if it is on family land, because in the absence of consent or notice to family (spouse), the purchaser whose transaction is challenged has the option and a right to claim from any person with whom he/she has entered into the transaction any money paid or any consideration given by him/her in respect of the transaction. This purchaser is entitled to recover the consideration for the land but not to

⁷¹ A perception that strongly emerged during the parliamentary debate on the Land Act and its subsequent amendments

⁷² “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.”

⁷³ “No certificate of title issued upon an application to bring land under this Act shall be impeached or defensible by reason or on account of any informality or irregularity in the application or in the proceedings previous to the registration of the certificate and of the entry of the certificate in the register book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate is the proprietor.”

⁷⁴ S. 39(7) of the Land Act as amended provides that a spouse, not being the owner of the land (family land), may lodge a caveat on the certificate of title, certificate of occupancy or certificate of customary ownership of the person who is the owner of the land to indicate that the property is subject to the requirement of consent. This caveat is subject to the caveator’s right to security of occupancy. Thus its lifespan only extends as far as the marriage subsists. In the event of separation, divorce or death, the caveat lapses.

⁷⁵ S. 64: A proprietor of registered land holds land except for fraud, subject to encumbrances notified on the folium of the register book constituted by the certificate of title. Registered land is only subject to the reservations, exceptions, covenants, conditions and powers, if any, contained in the grant of that land, and to any rights subsisting under any adverse possession of the land

⁷⁶ In this case, a purchaser in good faith for value includes a grantee, lessee, sub-lessee, assignee, mortgagee, chargee or any person who acquires an estate or an interest or right in the land.

⁷⁷ Notice means constructive or actual notice. Various court decisions (precedents) have tended to hold that a prospective purchaser is duty bound to make ground inquiries. Uganda Posts and Telecommunications –vs.- Abraham Kitumba Peter S.C.C.A No. 36 of 1995 (Unreported).; Katarikawe –vs- Katwiremu [1977] HCB 187 it was held as follows: “If a purchaser, despite knowledge, of the occupation of the land under a contract of sale, proceeds with a transfer of the title in his name in order to defraud the occupier this would be evidence of fraud”

take possession of the land. This ensures that family land is protected from any kind of abuse and re-emphasizes the significance and strength of the requirement for spousal consent on dealings regarding family land if enforced.

(v) *Mortgages on Family Land*

Where there is transfer of family land by the mortgagee in exercise of powers under the mortgage, the requirement for spousal consent is dispensed with Section 39(3) Land Act. This means that no consent is required when a mortgagee seeks to foreclose because consent was sought at the time the mortgage was executed.

Cohabitation, Marriage, Separation and Divorce Laws

There are five types of marriage recognized by the laws of Uganda; In *Church or Christian Marriage*, unless the parties have agreed before the marriage, whatever property one owns before the marriage remains his/her property. All properties acquired during the marriage are jointly owned unless the parties make other plans. However, parties may acquire properties independent of each other during the marriage. Both husband and wife can make a will for properties not jointly owned and leave any or all of such property to the other or any other person; In a *Civil Marriage* the same principles that apply to the Christian or church marriages in relation to property rights apply to this form of marriage. In *Customary Marriage* governed by customary norms and practices property acquired during the marriage is presumed to belong to the husband, if the marriage fails, the wife goes away with nothing. In *Islamic Marriage* property, given to the wife i.e. “*Mahari*”, belongs to her since it was a gift before the marriage. Upon dissolution of the marriage, the wife retains the “*Mahari*” The law is silent on the way property acquired during the marriage. In *Hindu Marriage*, the law is silent on property acquired by spouses before and during marriage.

Cohabitation is the most common form of “marriage” though not legally recognized as marriage in Uganda. Women who are in cohabiting relationships are in a precarious legal situation because upon the death of their partners they will lose even access rights to the land if the man’s clan or relatives make a claim for it⁷⁸, this holds at the dissolution of a cohabiting relationship, unless evidence can be produced. Whatever contribution a cohabiting woman will have made on the land whether financial, or otherwise, does not entitle her to any land rights. Because the cohabitee has no *locus standi* in court, there have been no cases brought before the courts dealing with the status of cohabitants. A cohabitee is deemed to be a mere “visitor.” Hence there is no precedent to be relied upon. A cohabitee can only claim land rights if at the time the land was bought it is registered in the names of both her ‘partner’ and herself. As a joint registered proprietor, she can claim a right to land.

The Land Act, despite protecting spouses’ rights on family land does not protect the rights of spouses under separation. S. 38 A (5) of the Act provides that: “*Where there is legal separation, this section of security of occupancy does not apply*”. While the Divorce Act recognizes that spouses leaving in separation are still married until a decree for the dissolution of the marriage is issued by Court, the Land Act, which is the latter law, gives no protection to either spouse living in separation. The property a wife acquires while in separation is hers. She is presumed to be single for purposes of property.

⁷⁸ Elizabeth Eilor, Renee Giovarelli, Land Sector Analysis, February 2002.

The Divorce Act Cap 249, which is applicable to marriages under the Marriage Act, the Marriage of Africans Acts and the Hindu Marriage, makes some reference to property rights of which land rights is part. At divorce, a woman's contribution in marriage will be taken into consideration. Financial contributions and contributions through housework will be considered by the court in determining the reward granted. The Court will consider evidence of a substantial contribution. Such consideration, however, is a matter of case law as there is no written law that recognizes a wife's contribution⁷⁹. Under Islamic law, the wife takes the property in her room and the children remain with the Father.

Succession Laws

The Constitution in Article 31 mandates Parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses and to enjoy parental rights over their children. The Succession Act is such law that governs the manner in which the estate of a deceased person can be managed. There are two main problems with the Act as it now stands: first, the Act has been unsuccessful at providing protections to the majority of people in Uganda who continue to adhere to customary or religious practices that conflict with the provisions of the Act; and second, the Act contains provisions that are facially discriminatory resulting in differential treatment based on sex. These provisions make the succession act in need of amendment to bring it into conformity with the Constitution.

In Uganda, succession is categorized into *intestacy* and *testacy*. Intestacy is when a person dies intestate in respect of all property, which has not been disposed of by a valid testamentary disposition⁸⁰. Other than the residential holding, all the other property owned by the intestate forms part of the estate and distributed. Of the entire estate, the wife (wives) get only 15% when there are children and 50% where there are no children. It is however not clear according to law that the husband can inherit likewise from the deceased spouse. In case of *testacy*, a valid guides the distribution of the deceased's property. Where the deceased leaves dependants, they must be provided for. Where not provided for, court has the power to make an order for payment out of the estate of the deceased for maintenance of the dependants. This maintenance only extends until surviving spouse remarries and in the case of a daughter in the event of her marriage.

Jointly owned assets go automatically to the surviving partner at death. This is because property owned jointly has unity of title, time and possession. It cannot, therefore, be divided so that the beneficiaries of the deceased can have a share. The testator cannot give away such property by will because he/she cannot clearly ascertain his/her share of that property. However, property held in common, which means that although you hold it together, each party knows how much of that property belongs to him or her. This property is divisible and upon death, the beneficiaries of the deceased person can take over the share of the deceased. The deceased can also distribute only his share by will. It is important that friends or spouses acquiring property together such as land clearly determine how they wish to hold/own that property together.

⁷⁹ Two cases have dealt specifically with this matter; *Edita Nakiyingi v Merekidadeki* [1978] HCB 107; *Mayambala v Mayambala* Divorce Cause 3 of 1998 (unreported). . In *Edita Nakiyingi*, the court relied on the principle of equity and common law. In that case the woman made only contributions in the form of housework. The Court recognized these contributions and ruled in her favor. In *Mayambala* the court in reaching its decision, relied on the financial contributions made by the wife

⁸⁰ S. 24 of the Succession Act

It is rare that land has been registered in the name of both husband and wife. More often land is registered in the name of men only. Without having title registered in her name, a widow cannot sell or transfer the land. Few daughters inherit land and those who do usually retain only the use of land while they are living with their family and do not have the right to sell the land. Furthermore, upon the death of the husband clan elders often assume responsibility for administering the estate, sometimes in ways contrary to the intention of the deceased. Clan elders often distribute property in ways favorable to the relatives of the deceased and may even evict the widow from the matrimonial home.

3.3 LEGAL REFORMS

Reform of Family Law: Domestic Relations Bill

The DRB is an effort made to get rid of the obsolete laws governing divorce and marriages, whose object is to reform and consolidate the law relating to marriage, separation, and divorce in Uganda. The Uganda Law Reform Commission prepared a draft to consolidate and replace all the family laws namely:

- (i) the Customary Marriage (Registration) Cap 248,
- (ii) the Divorce Act (Cap 249) ,
- (iii) the Hindu Marriage and Divorce Act (Cap 250) ,
- (iv) the Marriage Act (Cap 251),
- (v) the Marriage and Divorce of Mohammedans Act (Cap 252) and
- (vi) the Marriage of Africans Act (Cap 253).

The DRB specially undertakes the following in relation to family justice:

- (i) defines ‘Matrimonial Property’ in section 65 to include the matrimonial home or homes, household property in them any property that spouses describe as such, or any jointly owned property. This overcomes ambiguity, uncertainty, misrepresentations and inconsistency that are currently in law.
- (ii) defines categories of property and interest in each i.e. property acquired before marriage, capacity to acquire property separately and jointly during marriage, the interest acquired by another through indirect contributions and the interest of parties in a polygamous union which begun to run at the time of the marriage.
- (iii) provides for ‘co-ownership of property’, recognizes the contributions whether monetary or not which a spouse makes towards improvement of property which is not matrimonial property acquired before or during marriage. Presently non-monetary contributions like labor, or maintenance are not considered, any considerations have had to rely on courts consideration.⁸¹
- (iv) provides for matrimonial property in a polygamous marriage and the capacity of any spouse to acquire his or her own separate property during the subsistence of the marriage.
- (v) provides for non-refund of marriage gifts. Customary divorces follow the practice of requiring the “refund” of the bride price. The DRB forbids the return of marriage gifts which are not by custom considered to constitute bride price, hence failing to resolve the lacuna.
- (vi) forbids widow inheritance, any body who wishes to marry his dead relative’s widow should do so through the process of the recognized marriages. In recognition of the right of a widow to marry freely and can contribute to the

⁸¹ In *Edita Nakiyingi (1978) HCB 107*, the court relied on the principle of equity and common law. In that case the woman made only contributions in the form of housework. In *Mayambala v Mayambala Divorce Case No. of 1988* (unreported) the court in reaching its decision, relied on the financial contributions made by the wife.

spread of HIV/AIDS in cases where the dead husband dies of HIV/AIDS. However, marital rape is not dealt with.

This draft bill has faced enormous opposition from several sections of the society. In terms of property, there are ill-feelings about co-ownership of marital property from the male folk, indeed the news that the bill was shelved due to insufficient consultations was welcomed by several sections of society.

The Divorce Act and the Succession Act have been subject to strategic litigation mainly by coalitions of civil society organization focusing on the rights of women in Uganda. The Constitutional Court was petitioned by the Uganda Association of Women Lawyers (FIDA)⁸²:

- (i) Under article 137 of the Constitution to hear cases which are inconsistent with the Constitution.
- (ii) Under article 274 has the specific duty to bring legislation enacted before 1995 into conformity with the new Constitution.
- (iii) Under article 50(2) to consider claims of human rights violations raised by organizations on behalf of individuals or groups.

It was argued by the petitioners that the law relating to divorce and the offence of adultery was discriminatory in nature against women and therefore was contrary to the principles of equality and equality upon, during and at the dissolution of marriage as provided in:

- (i) Article 21 (1), (2), & (3) of the Constitution which states “that all persons are equal in every respect before the law, and shall enjoy the equal protection of the law and shall not be discriminated against on the basis of sex; between sexes and;
- (ii) Article 31(1) & (2) which states that men and women aged eighteen and above have the right to marry and are entitled to equal rights in marriage, during marriage and at its dissolution.

The Divorce Act provided different grounds of divorce for the wife and husband in:

- (i) Section 4, a husband petitioning for divorce could make the alleged adulterer a correspondent whereas a wife could not.
- (ii) Section 5, husband could claim damages from any person who committed adultery with his wife.
- (iii) section 21(1), costs of the proceedings can be paid by a correspondent who commits adultery with the wife of the petitioner,
- (iv) section 22, a wife can apply for alimony whereas a husband cannot,
- (v) section 23, settlement of a wife’s property is made in the favor of her husband or the children where a decree of dissolution of marriage is made on account of her adultery,
- (vi) Section 26, the court had discretion to deny only women a right to property in case of a divorce or judicial separation as a result of their adultery.

In all the sections, above it was argued that the gender inequity is apparent, in as far as what is applicable to women, not men. The ruling declared all the discriminatory sections in the Divorce Act null and void; the ruling was considered a landmark because;

⁸² Constitutional Petition No. 2 of 2003 : Uganda Association of Women Lawyers & others Vs the Attorney General

- (i) The court asserted that men and women must be treated equally in determining property distribution, which is a constitutional right.
- (ii) Both parties especially women can obtain divorce more quickly without being burdened to prove several grounds. After this judgment Divorce in the courts is now granted on the basis of one ground, and can be granted by consent of the parties based on the pleadings filed⁸³. However, some Hon. Judges are interpreting the case to mean that the grounds of divorce are applicable to both men and women who wish to apply for divorce basing it on the minority judgment.⁸⁴
- (iii) The Uganda Law Reform Commission has to ensure that the impugned provisions are removed from the statute books and
- (iv) Parliament has to enact a law to operationalize the decision.

Succession Act Petition: The Constitutional Court was petitioned by the Law and Advocacy for Women in Uganda⁸⁵:

- (i) Under article 137 of the Constitution to hear cases which are inconsistent with the Constitution.
- (ii) Under article 274 where the Court has the specific duty to bring legislation enacted before 1995 into conformity with the new Constitution.
- (iii) Under article 50(2) to consider claims of human rights violations raised by organizations on behalf of individuals or groups.

The petitioners argued that the Succession Act imposes a discriminatory scheme based on sex on all citizens who die intestate which is a contravention of the Constitution and Uganda's obligations under international law. Especially with regard to:

- (i) Article 21 on the right to equal protection of the law,
- (ii) Article 31 (3) the entitlement to equal rights at the dissolution of marriage and the right of widowers to inherit their spouse's estate and to enjoy parental rights over children
- (iii) Article 26, on the right to property
- (iv) Article 27 on the right to be free from interference with the privacy of one's home and property and
- (v) Article 33 on the right of women to equal treatment with men.

It was highlighted that section 26 and 29 of the Succession Act, and Rules 1,7,8, and 9 of the Second Schedule to the Succession Act violates the Constitution insofar as a man, in practice, assumes full ownership of the matrimonial home on the death of his wife, whereas a woman does not. Instead she receives limited rights of occupancy burdened by numerous covenants-among which is a termination of occupancy of the matrimonial home upon remarrying by evicting her from her home, while, no such penalty exists for a widower who chooses to remarry. The law denies a wife a right to housing which includes legal security of tenure and deprives her of the ability to earn a living and maintain adequate standard of living for herself and her family.

It was further argued that, the limited occupancy rights undermine a widow's ability to provide for herself and her family and impede the maintenance of a secure home environment by granting the legal heir rights to interfere with the family home. The

⁸³ Irene Mulyagonja Kakooza: Report on Background Study for Re-Strategizing for the Enactment of an equitable family law for Uganda : Domestic Bill Coalition (2006)

⁸⁴ Report on Workshop on strategic Litigation by Law and Advocacy for Women in Uganda 2007

⁸⁵ Constitutional Petition Nos. 13/05 & 06 :Law and Advocacy for Women in Uganda Vs the Attorney General

definition of 'legal heir'⁸⁶ contained in section 2(n) (i) and (ii) prefers male ancestors to female who ultimately takes over the matrimonial home in case the widow remarries. Contribution in the property over the course of the marriage is ignored. Furthermore, the section terminates a daughter's right to occupancy upon marriage but impose no such limitation on a son's occupancy.

The petition also challenged:

- (i) Sections 43-46 of the Succession Act which grant only the father and not a mother the right to appoint a guardian for his children and if no guardian has been appointed this diminishes parental rights of widowed mothers and not widowed fathers by requiring widowed mothers to share authority over their children with guardians.
- (ii) Section 27(3) of the Succession Act gives legal recognition to customary and Islamic law *arrangements*, which in most cases, provides for distribution of property on the death of a male intestate, and grants a wife or wives with only 15% of the property accumulated jointly with their husband over the course of their marriage, while granting the widower the entirety of his and his wife's joint property. In effect the distribution scheme denies the wives property which they have contributed to during the subsistence of the marriage; it is silent on the distribution of the property of a *wife* who dies intestate. The Act only refers to surviving "wife," not "husband," "spouse", or "cohabitant" are static and discriminate against women.
- (iii) Sections 14 and 15 of the Succession Act, a woman is automatically deemed to have the domicile of her husband, while a man's domicile does not depend on his wife undermining her authority. This legal provision demonstrates the intrusive manner in which the laws inserts itself into the most private spheres of a woman's life and violates her right to dignity in contravention of Articles 33(4) and (6) of he Constitution.

All the sections referred to above and Rules 1, 7, 8 and 9 of the Schedule 2 to the Succession Act were declared null and void by Constitutional Court. These the court ruled contravened articles 20, 21, 24, 26, 31, 33 and 44 of the Constitution. In the same Petition, the Constitutional Court declared section 154⁸⁷ of the Penal Code of no legal consequence. Since the law did not penalize a married man who has sexual intercourse with an unmarried women, but penalized a married woman who had sexual intercourse with any man. The penalties for the offence upon conviction were different for a man and for a woman. The law also treated a married woman whose husband has committed adultery differently from a married woman.

Other legislative reforms that directly impact on gender and land include;

- (i) *The Equal Opportunities Commission Act 2007*, this was pursuant to Article 32(3) and 32(4) and other relevant articles in the Constitution to eliminate discrimination and inequalities against any individual or group of persons

⁸⁶ It should be noted that a "customary heir is defined as "the person recognized by rites and customs of the tribe or community of a deceased person as being the customary heir of that person" and "legal heir" means the living relative nearest in degree to an intestate...a paternal ancestor shall be preferred to a maternal ancestor... a male shall be preferred to a female (Succession Act, Section 3).

⁸⁷ 154 (1) provides that any man who has sexual intercourse with any married women not being his wife commits adultery and is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding 200 shillings and in addition the court shall order any such man on first conviction to pay the aggrieved party compensation of 600 shillings and on subsequent conviction compensation not exceeding 1200 shillings as may be so ordered. 154 (2) Any married women who has sexual intercourse with any man not being her husband commits adultery and is liable on the first conviction to a caution by court and on subsequent conviction to imprisonment for a term not exceeding 6 months.

and to take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history for purposes of redressing imbalances which exist against them.

(ii) *Succession (Amendment) Bill 2003* which attempts to emulate the principles of equality of sexes in matters of Succession⁸⁸. However, the Bill still does not address some of the informal or customary practices that impede women's rights. For example, a common practice exists whereby relatives of the late husband evict the widow from the home through force or coerced submission on the pretext that such action would benefit the children. With regard to the devolution of the matrimonial home, the Bill provides that the widow or widower shall be entitled to one half of the matrimonial home normally occupied by the testator prior to his/her death including the household chattels,⁸⁹ and where there is more than one wife, the wives shall share equally in one half of the matrimonial home⁹⁰. The proposed amendment also provides that the rights of a widow or widower to inherit the matrimonial home shall not be effected by his or her remarriage. The proposal removes the usufruct rights that the current law gives to widows and children as far as the matrimonial home is concerned.

(iii) *Draft Domestic Violence Bill, 2006*

At the international level, Uganda ranks high in the prevalence of domestic violence. The delay in passing the law of domestic relations, absence of a national policy on domestic violence, a weak legislative framework and a slow disposal rate of family cases renders considerable injustice to the claimants particularly women. By November 2005, a total number of 1645 family cases remained pending with a total of 1043 cases registered while the Administrator General had a caseload of 2372 pending cases with a total of 1616 registered cases⁹¹. Violations of family rights are often hidden within the home and community setting and include domestic violence, lack of maintenance, child neglect, denial of inheritance.

Analysis of the legal system shows that there exist inequalities due to discriminatory laws and gaps related to laws that are not gender responsive. Thus, *de facto*, inequality is often not addressed by existing legislation that on the surface may appear to be gender neutral. Such gender neutral laws include, in particular property and land laws, which *prima-facie* may not appear to be discriminatory but in effect enable *de facto* discrimination against females to continue by failing to cater for women's gendered realities and experiences.

3.4 CRITIQUE

In many countries different legal regimes are functioning in parallel. Women's access to land cannot be understood without considering inheritance laws and family relations in

⁸⁸ Regarding the devolution of the matrimonial home the Bill provides that the widow or widower shall be entitled to one half of the matrimonial home normally occupied by the intestate prior to his/her death including the house hold chattels. (Clause 26) and where there are more than one wife, the wives shall share equally the one half of the matrimonial home.(Clause 26(1b)). The proposal removes the usufruct rights that the law gave to widows prior the Petition to the Constitutional court. The proposed amendment also provides that a widow or widow's right to the matrimonial home shall not be affected by his or her remarriage. Hence women who loose their husbands will be able to own the matrimonial home. According to clause 30(1) a separated spouse will be able to inherit/share property which was acquired during the period of marriage prior to separation and ht welfare principle shall be paramount in determining the issues where minor children are involved(Clause 202A)

⁸⁹ The Succession (Amendment) Bill 2003, proposed amendment to section 26

⁹⁰ Section 26 b

⁹¹ Justice Law and Order Sector (JLOS), 2007 Strategic Investment Plan II 2006/7- 2010/11

the communities. Differentiation between state law, religious law, customary law and the interplay between them, coupled with the dynamics in the adaptation to change, can at times be extremely complex. A simple example is the gap, which can be found in many cases between official law and general practice. Laws may simply not be known or implemented, or the legal system can be out of reach for a major part of society. Although gender neutral legislation makes the legal situation of women's access to land rather favourable, the World Bank recommends that extensive information campaigns on women's rights to land to be conducted for administrators, dispute resolution groups and local communities. (See Deininger K. Binswanger H. (2001, p.8))

Often the measure for understanding legal and policy changes is the use of an objective measure of households' knowledge of provisions reformed in the law or policy, which can be used to approximate the "value" of the legal changes. Results from Deininger et al. (2006) point towards a large potential impact, much of which is not realized due to limited information dissemination. It implies that efforts to inform households about their rights and obligations under the new law could lead to large benefits. However, where human and fiscal resources to implement land administration programs are limited, well-disseminated legal reform can be an important and far-reaching first step to reap the benefits of higher tenure security⁹².

Responding to gender equity in property rights and land reforms requires radical shifts both in tenure relations and in land administration systems. Evidence based arguments for such shifts often do not address the likely potential welfare benefits in the forms of an 'enhanced well-being' and a reduction in land disputes because of defined rights for all persons⁹³.

Pilot studies using Poverty and Social Impact Analysis (PSIA)⁹⁴ have also been undertaken in Uganda⁹⁵ in the area of gender and land use. The objective of PSIA is to promote evidence-based policy choices by explicitly including poverty and social impacts in the analysis of policy reforms and to build country ownership of policies by informing a public debate on the trade offs between policy options. It attempts to make linkages between poverty analysis and policy making. There is interest in PSIA as a means of strengthening the evidence base at its disposal to improve policymaking processes and analysis. At government and civil society level, there is a limitation in understanding on what PSIA is and what it is meant to achieve in policy making.

Our experience in Uganda is that a lot is done at the level of descriptive statistics; which have limitations on the extent to which inferences can be made in the period after policy implementation. There is need to appreciate and practice a lot more econometric analysis because policy is about ameliorating certain conditions to have effect on others. Therefore if PSIAs are concerned with promotion of evidence based policy choices, then ex-post impact analysis has to go beyond what we are accustomed to in Uganda. Through the policy implementation cycle; data has to be accumulated such that at ex post stage there is time series analysis; cross-sectional measures may not help much but

⁹² Klaus Deininger, Daniel Ayalew, Takashi Yamano, 2006

⁹³ Adams, 2000:92

⁹⁴ Refers to the analysis of intended and unintended consequences of policy interventions on the well being or welfare of different groups, with specific focus on the vulnerable and poor. PSIA can be undertaken ex ante (before policy implementation), mid-term (implementation) and ex post (after policy implementation).

⁹⁵ By DFID, MFED and World Bank, 2007

changes over time are critical; baselines followed by sporadic often mutually exclusive studies driven by different motives create inconsistencies in the evidence gathered⁹⁶.

Legal principles underlying property rights, which are based on title, vest ownership of land in a person, to whom it is registered. Yet, in other jurisdictions some concepts have been formulated to ensure that the law does not promote inequity. Legal regime discriminates against women and perpetuates women's subordinate position in society. In Uganda, women only get a life interest in their deceased husband's property and are not allowed to control this property. Land is usually bequeathed to a male heir, and the heir has the right to decide the use of the land. The customary norm or ideal is that widows enjoy continued lifetime rights in their marital land (both residential and fields), which passes onto the male heirs after their death. In practice, this ideal is not necessarily adhered to. It appears that as land acquires a value, also because of increased pressure on land, widows are more vulnerable to being forced off the land by their in-laws, or by their sons⁹⁷. Widowhood presents one of the crisis moments in a woman's life when her structural vulnerability and her dependence on her male relatives, natal and marital, becomes exposed, most studies are not able to capture this dimension.

4. EMPOWERMENT

Empowerment is the process through which women and men are mobilized to identify, understand and overcome the structural and underlying causes of under development and thereby achieve equality of welfare and equal access to and control over resources. Gender gaps at this level refer to gaps in the fulfillment of those basic needs and conditions that directly affect people's welfare. Common factors affecting women's welfare include their heavy often unremunerated work loads and their low nutritional intake leading to poor health and reduced quality of life⁹⁸. Gaps in the welfare of women and men can only be reduced when there are equal opportunities and access to resources between men and women.

Women's empowerment is defined as the process of enhancing women's capacity to take charge of their own development. The process involves enabling women to make their choices, have a say in decisions that affect them⁹⁹, ability to initiate actions for development, change in attitudes and increased consciousness of equal access to and control of resources and services in order to take charge of their opportunities. Access, defined by Sara Longwe Hlupekile (1994) as the right or means to obtain sources, products or commodities is another key factor affecting women empowerment. In order to reduce gender gaps in access, it is important that conventional attitudes and beliefs are examined and re-assessed.

Access to justice can influence the extent of women's empowerment. In many communities, wife battery that does not result in serious injury is tolerated and considered a normal part of marriage. MoFPED (2006) estimates that more than 40% of

⁹⁶ Kamusiime Herbert and Rugadya Margaret, 2007

⁹⁷ Margaret Rugadya, 2007, Gender in Uganda's National Land Policy

⁹⁸ Balancing the scales: Addressing gender concerns in the collection, analysis and dissemination of Development Statistics – Trainers' Manual.

⁹⁹ The gender equality and empowerment framework identifies participation as having a share or taking a part in how things are done and resources allocated, therefore achieving gender equality in decision making. Empowerment will mean greater representation of women in decision making processes, greater participation in water and sanitation chores and share workloads at the household and country levels. This will in turn give women more time to spend on other development related activities. To reach this level, concerted mobilization is critical; only by working collectively will women be empowered to gain increased representation and ultimately greater control.

Ugandan women have suffered domestic violence. Data indicates that many women (70%) have accepted domestic violence and cannot report because the offenders are their partners. According to the Uganda Bureau of Statistics, 38% of Uganda's population live below the poverty¹⁰⁰ and these are mainly women therefore they are financially constrained to access representation in courts of law, due to poverty women fear being divorced, fear paying back bride price and bread winner. This is a sign of disempowerment. At the local level there is community pressure against enforcement of legal rights, adherence to communal and cultural practices and beliefs which conflict with formal legal rights and which are disadvantageous to the vulnerable groups especially women¹⁰¹.

It is widely believed that participation and empowerment are positively related. The gender equality and empowerment framework identifies participation as having a share or taking a part in how things are done and resources allocated, therefore achieving gender equality in decision making. Empowerment will mean greater representation of women in decision making processes, greater participation in water and sanitation chores and share workloads at the household and country levels. This will in turn give women more time to spend on other development related activities. To reach this level, concerted mobilization is critical; only by working collectively will women be empowered to gain increased representation and ultimately greater control¹⁰².

Available literature reveals that conscientisation directs a high level of empowerment. This is the process of becoming aware of the extent to which problems arise not so much from individuals' inadequacies but from the systematic discrimination against a social group which puts all members of that group at a disadvantage. Obstacles to conscientisation include beliefs that women may fail to give birth if they ride bicycles that a man will become weak if he cooks food, that women's fertility will suffer if they eat too much high protein food. To bridge the gaps, there is a need to re-examine prevailing beliefs and practices and to realize that a transformation of roles need not necessarily result in the disruption of society. Such understandings are fundamental to the increase of women's participation in development.

At the ultimate level of equality and empowerment, there is control. Control has been defined as the "ability to direct or influence events so that one's own interests are taken care of and protected." At such a level, women play an active role in the development process and resources and benefits are shared equally between women and men. Gender gaps at this stage are looked at in terms of control over resources and decision making; greater control means the ability to acquire appropriate technology, have control over resources, and enjoy equal access to opportunities. Control of livelihoods assets is a key factor affecting women's empowerment.

Some cultural norms and values often condone gender discrimination. Coupled with low levels of education and limited access to information, norms and values instill fear on the part of the victims of abuse resultant of this, abuse of rights continues and become socially "acceptable". Conservative cultures have been proved to have a negative impact on women empowerment. In Uganda, culture dictates that women are economically dependent on men; women have no control over sexuality; leadership is a preserve of

¹⁰⁰ The proportion of people living below the poverty line in Uganda dropped from 56% to 31% in 2005/06. The PEAP 2004 categorizes the poor and marginalized to include juveniles, women, people in conflict affected or remote areas, HIV/AIDS patients.

¹⁰¹ See , Human Rights Watch, *Just die Quietly : Domestic Violence and Women's Vulnerability to HIV in Uganda*, August 2003

¹⁰² Margaret Rugadya, 2007, *Gender in Uganda's National Land Policy*

men; land is for men; among others. The table below summarizes the cultural characteristics that pose a threat to women empowerment:

Table 12: Cultural and Gender disparities in Uganda

KEY GENDER AREA	GENDER DISPARITIES		“CULTURE INFLUENCE”
	Women	Men	
Ownership of registered land	7%	93%	<ul style="list-style-type: none"> • Women economically dependent on men • Land inheritance mainly patrilineal
Formal labour force participation	12%	88%	<ul style="list-style-type: none"> • women exist mainly in the domestic sphere and have limited opportunities • Training culturally slaved to appropriate fields
Wages of <40,000 / month	51%	44%	<ul style="list-style-type: none"> • Less value placed on women’s work
Literacy rates for Population aged 10 years and above	63%	77%	<ul style="list-style-type: none"> • Grooming women for marriage • Gender allocation of roles affect girls
Shares of total enrollment at tertiary level	38%	62%	<ul style="list-style-type: none"> • Investing in girls’ education is to benefit a different family or clan
MMR / 100,000 live birth	506		<ul style="list-style-type: none"> • No control over sexuality and Resources • Limited access to information • early marriages
PLW HIV/AIDS	51%	49%	<ul style="list-style-type: none"> • Women have no control over sexuality and their bodies
Livelihood of adults being	31.8%	41.3 %	<ul style="list-style-type: none"> • Workload, exposure to hazardous conditions.
Members of parliament and limited participation in governance and development structures	24.4%	75.6 %	<ul style="list-style-type: none"> • leadership is a preserve of men • Negative socialization for the role, limited skills, and low value of women
Applications for processing land certificate titles	6%	94%	<ul style="list-style-type: none"> • Lack of exposure to land issues, limited opportunity to inherit; land grabbing grow • Limited knowledge of land rights and information
Men and women chairpersons of district land Boards	3.6%	96.4 %	<ul style="list-style-type: none"> • limited participation in governance structures; • land is a male preserve • public life as preserve of men

Source: Gender Inequality in Uganda: The Status, Causes and Effects (August 2006) MOFPED (Used data from UNHS 1992, 99, 2003; census UPPAP and researches)

The Participatory Poverty Assessment (2002) reveals that women’s inadequate control over livelihood assets such as land, labour, skills and information, networks, technology and financial capital; remains one of the root causes of poverty. For instance, although 83% of women are engaged in agricultural production, only 25.5% control the land they cultivate (UDHS, 2001/01). This scenario creates enormous challenges for the women as they are increasingly taking on the burden of family provisioning thus seriously undermining the sustainability of livelihoods. Therefore gender inequality is a key area that has to be tackled through systematic renewal of the constraints to women and men’s livelihood.

The Gender Empowerment Measure (GEM)

The Uganda Human Development Report (2005) presents the Gender Empowerment Measure (GEM) to determine the magnitude of empowerment of a given society. Over the last decades, the UNDP has been developing frameworks and tools to further the cause of gender equality and human development (Niemanis, J and A. Tortisyn 2003).

The Women in Development (WID) approach was adopted in the 1970s. Increasingly women were regarded as key to economic agents, contributing to the development of household, communities and countries.

Later, the category ‘men’ were recognized as an important sex in the analysis of social relations. This led to the development of the Gender and Development concepts. This is because men and women in society have different access to and control over resources and participation in decision making. The GEM captures gender inequalities in terms of their political participation and decision-making power over economic resources as measured by women’s and men’s estimated income.

Table 13: Gender Empowerment Measure, 2005

Serial No.	Equally Distributed Equivalent Percentage (EDEP)	2001 GEM Index	2003 GEM Index	2005 GEM Index
1	Parliamentary Representation	0.5981	0.736	0.844
2	Economic Participation	0.6274	0.875	0.868
3	Income	0.0267	0.0348	0.0382
4	Gender Empowerment Measure	0.417	0.549	0.583

Source: Human Development Report 2007

The **GEM** focuses on participation and decision making rather than capabilities and captures inequality in three areas:

- (i) Political participation and decision making power as measured by women’s and men’s percentage shares of parliamentary seats
- (ii) Economic participation and decision making as measured by two indicators- women’s and men’s percentage share of positions as legislators, senior Officials, managers and women’s and men’s percentage shares of professional and technical positions
- (iii) Power of economic resources, as measured by women’s and men’s estimated earned income

For each of the three dimensions, an equally distributed equivalent percentage (EDEP) is computed as a population weighted average, and a GEM is obtained as a simple average of the three EDEP indices as illustrated in the table above.

Table 14: Women in Positions of Governance

SECTOR	NO. OF TOP DECISION MAKERS	NO. OF WOMEN	% OF WOMEN
Civil service	2600	308	12%
Judicial service	73	16	22%
Foreign service	63	7	11%
Education	50	5	10%
Prisons	137	7	4%
District caring service	1028	101	10%
RDCs	110	20	18%
Inspector of Government	5	0	0%
Constitution commission	46	16	35%

Source: compiled statistics from MGLSF and UBOS 2000

Using this methodology, the GEM for Uganda is estimated to have improved from 0.417 in 2001 to 0.549 in 2003 mainly because of the increase in the number of parliamentary seats for women (from 18.6% in 2000 to 24.6% in 2003) and the improvement in the percentage of women in senior as well in professional positions (about 30% of the

professions and legislators, professionals and managers). The table below shows the numbers and proportions of women in positions of governance. UNDP on Rediscovering Agriculture for Human Development in the Uganda Human Development Report (2007) developed the Gender Development Index (GDI). This reflects the inequalities between men and women in terms of a long and healthy life, functional literacy and a decent standard of living.

Whereas the GEM seems to be a good measure of empowerment, by considering representation of women in terms of numbers and proportions in elected offices of power like the Parliament, it tends to ignore the quality of such representatives. For instance do such women have the capacity to articulate the gender issues in presence of their male counterparts? Can they defend and win a position of gender concern? Participation should therefore not be in terms of numbers alone, but also the extent to which the women contribute to the existing debates in Parliament, Local Governments and Councils.

The GEM measures women empowerment in terms of economic resources, as measured by women's and men's estimated earned income. Data from the Uganda Human Development Report 2007- Rediscovering Agriculture for Human Development reveal that women constitute the majority of the estimated 70% of smallholder subsistence farmers and contribute 70-75 percent of agricultural production; an average 55 percent of labour for land preparation; 65 % for planting; 85-90 % for weeding; and over 95% for food processing. However, in Uganda, there is no mechanism to include all this enormous contribution in the National Accounts Systems and therefore not regarded as earnings by women.

The emancipation of the Ugandan women seems not to have reached the household level. Most men still take charge over how the domestic income is spent. This has led to marginalization of women's vital contribution to family welfare. The drop out rate of pupils and students from school is skewed towards the girls and most women remain unemployed since they drop out of school in primary. Similarly most men still control reproductive health decisions hence subjecting women to increased reproductive roles even when the latter would have preferred producing fewer children. Most cultural taboos, arti-crafts and beliefs such as polygamy, inheritance and sharing productive resources continue to be skewed against women. These factors frustrate the achievement of total women emancipation.

Table 15: Percentage distribution of currently married women age 15 – 49 by person who usually makes decisions about four issues, Uganda 2006.

Decision	Mainly wife	Mainly husband / partner	Wife and husband / partner jointly	Some one else	Other / missing	No. Women
Own health care	21.9	38.7	38.7	0.4	0.3	5,337
Major HH purchases	14.9	48.5	35.8	0.4	0.3	5,337
Purchases of daily HH needs	34.5	34.2	30.7	0.4	0.2	5,337
Visits to her family or relatives	20.3	35.8	43.4	0.2	0.2	5,337

Source: UDHS, 2006

The extent to which women participate in households decisions depicts the magnitude of their empowerment. The Demographic and Health Survey (2006) measured women's participation in household decision making on four major decisions i.e. Own health care;

Making major HH purchases ; Making HH purchases for daily needs and On visiting her family or relatives . The findings are presented below:

The results indicate that close to 22 per 100 married women make decisions on own health care; about 15 % make decisions on major purchase; 35% on purchases of daily HH needs while 20% make decisions to their families. In all the four areas except the decisions on daily purchases of household needs, the rest were determined by their husbands/partners. The UDHS also asked currently married men who they think should have a greater say in making decisions about five difficult issues and the results are as follows:

Table 16: Percentage distribution of currently married men age 15 – 49 by person they think should have a greater say in making five specific decisions, Uganda 2006.

Decision	Mainly husband	Mainly wife	Husband and wife jointly	Don't know / depends	No. men
Major HH purchases	70.4	2.8	26.6	0.3	1,343
Purchases of daily HH needs	26.5	60.2	12.7	0.5	1,343
Visits to wife's family / relatives	58.9	13.1	27.2	0.7	1,343
What to do with the money wife earns	29.5	41.5	28.0	1.0	1,343
How many children to have	47.0	4.6	44.9	3.5	1,343

Source: UDHS, 2006

Majority of the men, that is 70% were reported to have preferred themselves have a greater say on major household purchases. A small proportion of only about 30 per cent of the men reported that they should have a greater say on what to do with the women earnings whereas close to 26 % of the men preferred to have a greater say on the purchases of daily household needs. In many cases men make the decisions because they are the bread winners. However, in a lot of cases where women were the bread winners, they were forced to spend it all on domestic expenditure, in order that they did not become economically active and increase their level of independence.

5. GENDER BASED VIOLENCE

According to the UDHS(2006), World Health Organization defines violence as ‘the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, mal development or deprivation’.

Violence against women is often referred to as gender-based violence. Gender based violence in its various forms (domestic violence, sexual harassment, trafficking, rape and defilement) is a critical concern.

Table 17: Types of Violence

Phase	Type of Violence
Prenatal	Prenatal sex selection, battering during pregnancy, coerced pregnancy (rape during war)
Infancy	Female infanticide, emotional and physical abuse, differential access to food and medical care
Childhood	Genital cutting; incest and sexual abuse; differential access to food, medical care, and education; child prostitution
Adolescence	Dating and courtship violence, economically coerced sex, sexual abuse in the workplace, rape, sexual harassment, forced prostitution

Reproductive	Abuse of women by intimate partners, marital rape, dowry abuse and murders, partner homicide, psychological abuse, sexual abuse in the workplace, sexual harassment, rape, abuse of women with disabilities
Old Age	Abuse of widows, elder abuse (which affects mostly women)

Source: Heise, L. 1994. *Violence Against Women: The Hidden Health Burden*.
World Bank Discussion Paper. Washington, D.C. The World Bank

UN data reveals that more than 40% of Uganda women have suffered domestic violence. The 2006 UDHS indicates that 60% of women and 53% of men aged 15 – 49 Yrs experienced physical violence, 38% of women experienced sexual violence while 16% experience violence during pregnancies. 48% of ever married women reported physical violence by their husbands or former husbands. Violence against women has serious consequences for their mental and physical well being including reducing their productivity. The UDHS also cites evidence that gender based violence has been shown to have a direct impact on women’s reproductive health and child bearing¹⁰³.

The 2006 UDHS measures violence by spouses and by other household members. Accordingly, information was obtained from every married women and men on violence by spouses and by others, and from never-married women and men on violence by anyone, including boy/girl friends. Spousal violence was measured using the following set of questions: Does / did your (last) husband/partner ever do any of the following things to you?

Slap you?; Twist your arm or pull your hair?; Push you, shake you, or throw something that could hurt you?; Punch you with his fist or with something that could hurt you?; Kick you, drag you or beat you up?; Try to choke you or burn you on purpose?; Threaten or attack you with a knife, gun or any other weapon?; Physically force you to have sexual intercourse with him even when you did not want to?; Force you to perform any sexual acts you did not want to? . In case of a “yes”, women were asked the frequency of occurrence in the 12 months preceding the survey.

Emotional violence among ever-married women was measured using the following: Does/did your (last) husband ever: *say or do something to humiliate you in front of others?; threaten to harm you or someone close to you?; insult you or make you feel bad about yourself?* The men were also asked similar questions to establish whether they also faced emotional violence. Detailed results are contained in the UDHS (2006) Report

"Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms... In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture." Beijing Declaration and Platform for Action, paragraph 112

Findings from the UDHS (2006) present that 16% of women in Uganda experience physical violence while pregnant. Results further indicate that the likelihood of having experienced violence during pregnancy increases with the number of living children, from 6 % of women who have ever been pregnant and have no living children to 18 % among women who have five or more children. In contrast, only 4% of never-married

¹⁰³ UDHS, 2006

women who have ever been pregnant are physically abused during pregnancy. In terms of urban/rural dimensions, 7% of urban women experience physical violence while pregnant compared with 17% of rural women.

In terms of lifetime sexual violence almost one in four (i.e. 24%) of women of age 15-49 report that their first sexual intercourse was forced against their will compared with less than 1 percent of men.

Results further indicate that for women age 15-49, 48.5% have ever experienced physical violence; 36% have ever experienced sexual violence; and 49% have ever experienced emotional violence at the hands of their husbands or partners. Overall, more than two-thirds of ever married women (68%) have experienced any kind of violence (physical, sexual, or emotional) by a husband or other intimate partner. Rates of spousal or intimate partner violence against men are lower than for women. One in five men report they have ever experienced physical violence by their wives or partners. Seven percent experienced sexual violence, and 35% emotional violence.

Gender-based violence both reflects and reinforces inequities between men and women and compromises the health, dignity, security and autonomy of its victims. It encompasses a wide range of human rights violations, including sexual abuse of children, rape, domestic violence, sexual assault and harassment, trafficking of women and girls and several harmful traditional practices. Any one of these abuses can leave deep psychological scars, damage the health of women and girls in general, including their reproductive and sexual health, and in some instances, results in death.

Violence may have profound effects – direct and indirect – on a woman's reproductive health, including:

- i. Unwanted pregnancies and restricted access to family planning information and contraceptives
- ii. Unsafe abortion or injuries sustained during a legal abortion after an unwanted pregnancy
- iii. Complications from frequent, high-risk pregnancies and lack of follow-up care
- iv. Sexually transmitted infections, including HIV/AIDS
- v. Persistent gynecological problems
- vi. Psychological problems

Heise (1994) contends that most domestic violence involves male anger directed against their women partners. This gender difference appears to be rooted in the way boys and men are socialized -- biological factors do not seem to account for the dramatic differences in behavior in this regard between men and women. Cross-cultural studies of wife abuse have found that nearly a fifth of peasant and small-scale societies are essentially free of family violence. The existence of such cultures proves that male violence against women is not the inevitable result of male biology or sexuality, but more a matter of how society views masculinity.

Many studies have found that certain demographic characteristics are significant risk factors for domestic violence, with several studies finding that higher age (Schuler 1996, WHO 2005), larger numbers of children, especially boys (Schuler 1996, Panda and Agarwal 2005), and longer duration of marriage (Panda and Agarwal 2005) are associated with a reduced risk of violence. Martin (1999) found that an increased number

of children actually raises the risk of domestic violence. Separated or divorced women are associated with higher levels of domestic violence than currently married women, however, the authors warn that this association may be due to these women being more open with admitting domestic violence since they are no longer with their spouse. In addition, women living with a man, but not married, reported higher levels of domestic violence than married women (WHO 2005).

There is also a strong link between socioeconomic status and domestic violence, with indicators of household wealth, occupational prestige, or education of the male partner significantly inversely associated with the risk of violence (Jejeebhoy 1997, Martin 1999, Hoffman 1994). Employment of the male partner, especially regular employment also decreases the incidence of domestic violence (Panda and Agarwal 2005). While violence occurs in all socioeconomic classes, women living in poverty seem to be disproportionately affected (Ellsburg 1999, Hoffman 1994, WHO 2002, Martin 1999). Rao (1997) finds that wife abuse is more likely in Southern India when dowries are perceived as inadequate.

Societal factors can also influence the prevalence of domestic violence. Counts, Brown & Campbell (1992) found that societies with the lowest levels of partner violence were those that had community sanctions against partner violence. This finding is collaborated by WHO (2005), who find that domestic violence is highest in societies that have norms condoning violence or restricting female mobility. Domestic violence also decreases in societies where abused women have access to sanctuary, either in the form of shelters or family support (Panda and Agarwal 2005, Counts, Brown and Campbell 1992). Levinson (1989) finds that wife beating occurs more often in societies in which men have economic and decision-making power in the household, where women do not have easy access to divorce and in societies with an absence of all-women workgroups. Other literature has found that domestic violence is more prevalent in regions that are at war, in conflict or had recent social upheaval (WHO 2002).

Marital conflict and instability has also been found to be predictive of partner violence in a study of women and men in South Africa (Jewkes 2001) and a sample of married men in Bangkok (Hoffman 1994). Hoffman 1994 finds a substantial increase in violence when a marriage is unstable, as measured by thoughts, suggestions or discussion of divorce. They also find that verbal marital conflict is positively associated with physical abuse. Several studies in developing countries have also found a strong positive association between consumption of alcohol or drugs and the risk of violence (Panda and Agarwal 2005, Koenig et. al. 2003, Rao 1997).

A positive link between HIV status or perceived HIV risk and domestic violence has also been recognized. In a study in Tanzania, Maman et al. (2002) found that HIV-positive women are more likely to experience intimate partner violence than HIV negative women. Koenig et al. (2003) found a positive link between the male partners' perceived human immunodeficiency virus (HIV) risk and intimate partner violence in rural Uganda. In South Africa, Jewkes et al. (2006) found that intimate partner violence is strongly associated with most of the HIV risk factors. Evidence also highlights the role of intergenerational transmission of domestic violence; studies have shown that children who witness family violence are more likely to become perpetrators or victims of violence in adulthood (Panda and Agarwal 2005, Ellsberg 1999). In addition, women who have had violence in their childhood are more likely to be in a violent relationship (Jewkes 2003).

Another notable determinant of domestic violence is asset and land engagement, however, there has been little research done on the links between secure property rights and domestic violence. In a study in Kerala, India, Panda and Agarwal (2005) found that women who owned immovable property in the form of either land or the household home were considerably less likely to experience domestic violence than women with no property. Relevant literature has found that women with higher levels of empowerment, as measured by their educational attainment or control over resources, are less likely to experience domestic violence.

Polygamy

Polygamy¹⁰⁴ in Africa today typically involves one husband who marries an additional wife without the first wife's consent so the man can gain status and/or additional labor. These marriages contain an unequal balance of power between the man and women. Polygamy has been the most hotly debated issue in domestic relations law reform in Uganda, it initially dominated - and nearly derailed - religious groups protesting the imposition of a limit of one man to two wives¹⁰⁵. According to research done by the Association of Women Lawyers (FIDA) in 1999, about 85% of women interviewed in Uganda said they would not be in a polygamous marriage if they had a choice.

Polygamy violates a person's right "to the enjoyment of the highest attainable standard of physical and mental health,"¹⁰⁶ because of its negative impact on its participants' well being. Women's health suffers in many different ways from the institution of polygamy. Domestic violence may leave them physically injured from beatings and assault. Women in polygamous unions become sterile far more frequently than monogamous women in their first relationships¹⁰⁷. Even more ominously, polygamy contributes to the spread of AIDS, a critical health risk in Uganda. Studies have shown that women in polygamous unions face a higher risk of being HIV-infected¹⁰⁸.

Polygamy, Violence, and HIV/AIDS

In August 2003, Human Rights Watch published a report over the increase in cases of new infection with HIV in Uganda linked to domestic violence and spousal rape¹⁰⁹. Two issues that UNAIDS recognized need urgent action by governments are property and inheritance rights. When a woman's husband or father dies, as described above, other relatives may seize all property and evict orphans and widows. Women in this situation are sometimes stripped of their possession¹¹⁰. The Human Rights Watch Report focusing on Uganda, *Just Die Quietly*, reached similar conclusions with similar stories.

Ugandan scholar Esther Mayambala Kisakaye believes in view of the AIDS epidemic immediate action should be taken, she discusses three options: first to allow polygamy to coexist with monogamy, the second option could give a wife right to divorce a

¹⁰⁴ The term "polygamy" refers to multiple marriages for both men and women, in contrast to "polygyny" (multiple wives only) and "polyandry" (multiple husbands only).

¹⁰⁵ Muslim community criticised the bill, saying it goes against the teachings of Islam. To express their anger, thousands of Muslims from various parts of the country (police estimated 7,000), held a demonstration in Uganda's capital Kampala

¹⁰⁶ Esther Mayambala, "Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda," East African Journal of Peace & Human Rights Vol. 3(2): 200-239 (1996).

¹⁰⁷ Esther Mayambala, "Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda," East African Journal of Peace & Human Rights Vol. 3(2): 200-239 (1996).

¹⁰⁸ UNAIDS, National Responses to AIDS: More Action Needed, available at http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_00_en.htm.

¹⁰⁹ Human Rights Watch, *Just Die Quietly Domestic Violence and Women's Vulnerability to HIV in Uganda* (August 13, 2004)

¹¹⁰ UNAIDS, National Responses to AIDS: More Action Needed, available at http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_00_en.htm

polygamous husband if she can prove actual or potential injury to her health or her husband's inability to support two households and the third approach completely outlaws polygamy. She believes offenders should be sanctioned. Children should still be allowed to inherit from the estate whether in or out of marriage and that the debate should not be distracted by playing off rights of other wives against first wife. She recommends that cases can be decided on a case-by-case basis¹¹¹.

Bride Price

Bride price is a contract between a bride's father and her groom, in which consideration is paid by the groom to the bride's father in exchange for the bride, her labor and her reproductive capacity¹¹². In Uganda, the courts have taken the additional step of stating that a marriage is not valid under customary law if bride price has not been exchanged. In fact, the institution of bride price is so "deeply entrenched in Ugandan society that ... in practice, [even] a civil marriage will not be regarded as valid by all concerned parties unless it has been preceded by bride price." Under Sharia Law, which governs all marriages between Muslims, the concept of bride price has fractured into two customs. While most Muslim marriages occur with the traditional bride price as described above, a Muslim man may also pay what is called *mahr* or *mahari* to his prospective wife. Mahr are bridal gifts that become the property of the wife as a result of the marriage contract. Without *mahr* a Muslim marriage is null and void¹¹³.

In Africa, women are literally 'bought' and 'sold' through the institution of bride price. In a typical African setting, bride price consists of a contract where material items (for example, cows, goats, sheep) or money are paid by the groom to the bride's father in exchange for the bride, her labour, and reproductive capacity. If the bride or wife wants to divorce, the material items or money paid to the bride or wife's father must be returned to the husband. If the wife's family is unable to pay the husband, the wife cannot get a divorce.

The Mifumi Project (in Tororo, Eastern Uganda), which works with women on violence and abuse, emphasizes¹¹⁴ the fact that bride price is a major contributing factor to violence and abuse in the home. Bride price, dowry and other related marriage gifts undermine women's status, their rights and the rights of their families. Bride price reduces marriage to a form of property in the eyes of many men in today's Uganda; men "have interpreted the payment of bride price as giving them ownership of their wives. This attitude has been thought to encourage wife beating."¹¹⁵

Sylvia Tamale¹¹⁶ a lecturer at Makerere University concludes that:

"Whatever virtues the institution of bride wealth carried in the past, they have been lost in the present. Rather than cementing the relationship between the families concerned, and providing stability to the marriage, the customary payment of bride price now gives the husband proprietary rights over his wife, allowing him to treat her more or less like a chattel. This is especially so because

¹¹¹ Esther Mayambala, "Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda," East African Journal of Peace & Human Rights Vol. 3(2): 200-239 (1996).

¹¹² Sylvia Tamale, Law Reform and Women's Rights in Uganda, 1 East Afr. J. Peace & Human Rts. 164, 171 (1993)

¹¹³ Sylvia Tamale, Law Reform and Women's Rights in Uganda, 1 East Afr. J. Peace & Human Rts. 164, 171 (1993)

¹¹⁴ International Conference on Bride Price and Development February 16th - 18th, 2004, Makerere University, Kampala, Uganda all papers available at <http://www.mifumi.org/index.htm>

¹¹⁵ Alice Armstrong et al., Uncovering Reality: Excavating Women's Rights in African Family Law 30 (1992)

¹¹⁶ Tamale, Law Reform and Women's Rights, 1993

it equates a woman's status in marriage with the amount of bride price exchanged and not with her skills and abilities”.

Critique of the methodologies

The available literature on gender-based violence informs that most of the data collected is from intimate partners i.e. the spouses. This poses great challenges on the following grounds: a) what constitutes violence or abuse varies across cultures and individuals b) a culture of silence surrounds gender –based domestic violence that could have affected the reporting c) the sensitivity of the topic, concerns for the safety of respondents and interviewers when asking about gender based violence in a familial setting could have posed a threat to data accuracy d) the protection of women who disclose violence.

Secondly, the inconstancies in the measurement and conceptualization of domestic violence in the literature have made findings from different studies difficult to compare or generalize. For example, Panda and Agarwal (2005) focus on physical and emotional violence, while Jewkes (2003) also includes sexual violence. Different studies may measure lifetime violence or violence with a current partner. Studies also differ on their criteria for selection of the target population, including different age ranges and partnership statuses. WHO (2002) has made a large stride to overcome this problem through their multi-country study, where they utilized a standard measurement system to quantify physical and sexual violence against women in ten diverse countries (WHO 2005).

Particularly highlighted by this review is the need for more information on the relationship between assets and violence. Very few studies have measured this link, and those that have are focused on the association of ownership and violence, rather than describing the relationship with a continuum of engagement with assets, which also includes use and control. Part of this gap is due to the scarcity of data on women's asset holdings, but another concern is the difficulty in unpacking the relationship between violence and asset holdings. Panda and Agarwal (2005) argue that asset holdings decrease violence through empowering the women within the household. However, it is also possible that women in violence-free relationships feel more empowered in the household and thus more willing to assert their control over certain assets.

Fundamental contradictions inherent in Uganda's legal systems—the coexistence of modern, statutory laws with Islamic and traditional customary laws and practices—has created a complex and confusing legal regime under which women are denied legal rights. Few widows attempt to make use of the formal, legal, judicial system. Widows rarely challenge the legality of prevailing customary rules of inheritance or raise the question of discrimination inherent in these rules¹¹⁷. Few have filed complaints with the police and fewer have attempted challenging the constitutionality of oppressive customary rules and practices. Men can marry wives under civil law, then add a few more under custom or start the other way around and then marry a wife under general law. Although such combinations and “juggling” of wives may cause complications during the life of the man, the real problem arises when he dies and the resources of the family have to be allocated among the various competing “groups” within the family¹¹⁸. So complex is the web of relationships and interests that it has been impossible for studies to comprehensively and exhaustively explore all inherent variables effectively.

¹¹⁷ Eva Luswata-Kawuma, Innovations Around The World On Harmful Socio-Cultural Practices, A Paper Presented At The International Conference On Bride Price, International Conference on Bride Price and Development February 16th - 18th, 2004

¹¹⁸ Ibid

6. FOOD SECURITY

Uganda's main food crops have been plantains, cassava, sweet potatoes, millet, sorghum, corn, beans, and groundnuts. Major cash crops have been coffee, cotton, tea, and tobacco, although in the 1980s many farmers sold food crops to meet short-term expenses. The production of cotton, tea, and tobacco virtually collapsed during the late 1970s and early 1980s. In the late 1980s, the government was attempting to encourage diversification in commercial agriculture that would lead to a variety of nontraditional exports. The Uganda Development Bank and several other institutions supplied credit to local farmers, although small farmers also received credit directly from the government through agricultural cooperatives. For most small farmers, the main source of short-term credit was the policy of allowing farmers to delay payments for seeds and other agricultural inputs provided by cooperatives.

The major economic activity in Masaka District in general and Butenga Sub county in particular is agriculture with food crops (bananas, pineapples, and tomatoes), cash crops (coffee and cotton), cattle Ranching, and fishing on Lake Victoria. The staple food is millet and Matooke. Non- agricultural activities include Industries for coffee processing, soft drinks factories, metal works, and cotton ginning.

Over 98% of Apac's population is rural based with over 80% of the population involved in some form of subsistence production. A wide variety of tropical, sub tropical and some temperate crops are produced in the area. The main types of crops produced are food crops (Millet, Maize, Sorghum, Cassava, Peas, Beans and traditional vegetables). Cash crops include: - Cotton, tobacco, legumes and non-traditional cash crops such as simsim, rice and vegetables are also grown.. The main agricultural activities are growing of food and a few cash crops, some vegetable growing, wild fish hunting in wetlands and rural ponds and the keeping of traditional livestock and poultry.

In Aduku, the basic type of farm management system is the family farm, with an average land holdings of 2+ hectares. Labour for cultivation is provided by the family and traditional communal labour provided by the local population on rational basis. Market limitations constitute the most important limitation on expanded commercial production. Agricultural productivity is constrained by a limited supply and the high costs of agricultural input including improved and new seeds, and limited knowledge of women and men farmers about improved agronomic practices. At the moment, agriculture productivity or growth within the district, or the rate of adoption of agronomic practices extended by the department has gone low due to insecurity, which made farmers to be displaced in camps.

Food crop production utilizes considerable labour and land resources of the farmers. More than 60 percent of agriculture labour is devoted to food crops, and in the vast majority of households over 75% of the family labour is devoted to food crop production. Over 80% of this labour is contributed by women (NARO, 2001). About 90% of the total national planted area is devoted to food crops. Despite the fact that women provide the bulk of labour for agricultural production, they have not benefited as much as men from the decreases in absolute poverty observed in the recent years.

The poor performance of the food sub sector has resulted in continued problems of malnutrition and pockets of famine and hunger in the country. The prevailing levels of childhood under-nutrition and malnutrition are high, accounting for 40 percent of all

deaths of children before age of five. The UDHS (2006) reveals that nearly two-fifths (38 %) of children under five are stunted or too short for their age. Six percent are wasted or too thin for their height, and 16 % are underweight. Twelve percent of women have a Body Mass Index (BMI) below 18.5 and are considered clinically undernourished, while 17% are either overweight or obese. Nineteen percent of Ugandan women and 20% of children have vitamin A deficiency (VAD), with higher levels in rural areas. Interestingly, VAD is higher among children whose mothers have secondary or higher education. It is lower in women and in mothers of children from the lowest wealth quintile, UDHS, 2006. The UDHS (2006) established that 62% of the youngest children consumed foods rich in Vitamin A in the 24-hour period preceding the survey. More than a third of Ugandan Children age 6-59 months (36 percent) received a Vitamin A supplement in the six months before the survey. Thirty percent of children consume foods rich in iron, which helps prevent anemia. Nearly all children and women live in households using adequately iodized salt.

The UNHS 2006 also reveals that 8 % of the households took one meal a day, while in 10% of the households' children aged less than 5 years do not take breakfast. Food insecurity and vulnerability remain worse in north and eastern Uganda. Although some incidents of food shortage occur in some parts of the country, the country as a whole is self-sufficient in food staples, and is not heavily dependent on the import of grain staples (such as rice or wheat) to ensure food security.

Inequalities in access to productive land correlate with rural household food insecurity and poverty. Poorer farmers are either unable to access land or can only do so on very unfavorable terms. Specific concerns about land vary widely between regions, districts, communities and individuals, but the issue impacts on poverty through unequal land distribution, land tenure insecurity, and inequitable land structures, systems and processes. Even when farmers have some access to productive land, insecurity of tenure or the structure of tenure rights may inhibit investments

Women play important roles as producers of food, managers of natural resources, income earners, and caretakers of household food and nutrition security. In Uganda, rural women work between 12 and 18 hours per day compared to men's 8 to 10 hours and thus experience time poverty (HHS, 1992). Seventy percent of all the marketed produce in the country is transported by head-loading, a task that is predominantly undertaken by women. Most of this work involves travel on foot and head-or back loading.

Giving women the same access to physical and human resources as men could increase agricultural productivity, just as increases in women's education and improvements in women's status over the past quarter century have contributed to more than half of the reduction in the rate of child malnutrition. In many countries, increasing assets that women control also has a positive impact on the next generation, particularly on education and health. Despite improvements in building women's capabilities, gender gaps in entitlements—the resources that women can command through available legal means—continue to persist. Improvements have been greatest in increasing opportunities to invest in and make use of human capital, but smallest in assuring women's rights to natural and physical capital. These disparities have serious consequences for wellbeing, not only for women themselves, but also for their families and for society. Empowering women is key to achieving food security¹¹⁹

¹¹⁹ Agnes R. Quisumbing and Ruth S. Meinzen-Dick (2001) in *Empowering Women to achieve food security*

7. NATURAL AND HUMAN CAPITAL

Natural capital (land, water, trees, livestock, and other natural resources) and physical capital (buildings, houses, infrastructure such as roads and electricity, transportation, and various technologies) are the most tangible forms of assets. They play a major role not only in economic production, but also in providing security against difficult times. Rights to land and houses, in particular, also convey status and power within a community. Yet these assets are unequally distributed between men and women. Even where women are primarily responsible for food production (as in many African societies), land is owned or controlled by men. Women acquire use rights through relationships to a man—usually a husband or father; maintaining those rights depends on continuing the relationship. As a result, women’s productivity is often constrained because they do not have rights to make decisions, and often cannot get credit without land rights. Just as significantly, women’s dependence on men for use rights reduces their security because they can lose the right to use land if they are widowed or divorced. Thus, measures to increase women’s control over land are important strategies to empower rural women.

There have been dramatic improvements in women’s human capital capabilities in the last few decades. Such investment in women’s human capital is important, since women are both agents of and beneficiaries of development. Investment in their human capital, more than any other form of investment, increases women’s capabilities, expands opportunities available to them, and empowers them to exercise their choices. And there is evidence that women, their families, and their countries—and the world, by extension—will benefit in terms of improved food and nutrition security. Improving women’s education is probably the single most important policy instrument to increase agricultural productivity and reduce poverty. Improving women’s education is probably the single most important policy instrument to increase agricultural productivity and reduce poverty. Women’s education also leads to lower fertility and child mortality, as well as better health, nutrition, and educational outcomes for children.

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