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ECA/ACW/CBP/WLR.UGA/2001  
Background Paper Series:

# **Compendium of Best Practices of Land Reform Processes that Advocate for Women's Land Rights**

## ***The Case of Uganda*** **(Draft)**



United Nations Economic Commission for Africa  
Addis Ababa, Ethiopia

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## **List of Acronyms**

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ACW	African Center for Women
AFCODE	Action for Development
APFA	African Platform for Action
BPFA	Beijing Platform for Action
CBOs	Community-Based Organizations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DFID	Department for International Development
ECA	Economic Commission for Africa
FAO	Food and Agriculture Organization
FIDA	Uganda Women's Lawyers Organization
FOWODE	Forum for Women in Development
MGCD	Ministry of Gender and Community Development
NAWOU	National Association of Women's Organizations
NGOs	Non-governmental Organizations
NRM	National Resistance Movement
UGRC	Uganda Gender Resource Center
ULS	Uganda Law Society
UMWA	Uganda Media Women's Associations
USAID	United States Agency for International Development
UWONET	Uganda's Women's Network

## Part One: Overview

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Since independence, many African countries have struggled with the development of land policies in order to redistribute the resource to people and communities who were stripped of their ancestral land through colonization. Many of the land laws are the creations of colonial powers and African governments are questioning the legacies of past laws, which had entrenched within them an inequitable system of land ownership and power, with consequent impediments to social and economic development. Some countries, independent for almost forty-years, are still addressing land issues.

Over the past decade, the vast majority of countries in Sub-Saharan Africa have initiated programs of policy development, legislative reform, and administrative restructuring on issues relating to land rights and land use. In Uganda, Zambia, Zimbabwe, Tanzania, Eritrea, Namibia, Mozambique and South Africa, land policies and tenure laws are in draft or have been adopted. Over the past 5-years, the debate about land tenure, has focused on:

- ◆ The comparative advantages of formal, statutory and informal customary tenure systems and how to resolve problems resulting from, their co-existence;
- ◆ How to develop effective, legitimate institutions for land rights management at the local level;
- ◆ The effect of different tenure arrangements on investment in land and natural resource management at farm level;
- ◆ The advantages and disadvantages of encouraging the development of land markets; and
- ◆ The continuing marginalisation of various groups – in particular women, indigenous people and pastoralists.

As Wiley notes, land reforms in Africa have to deal with new concerns including the “position of women in property holding, a group widely dispossessed in the changes of the last century but at the same time much more definitively now the primary producers of agricultural wealth”<sup>1</sup>. Some African governments have promoted a visible policy of mainstreaming a gender perspective in land policies and have reviewed and developed progressive bills that seek to ensure women's ownership and control of property. These reforms have been characterized by an explicit policy commitment to gender equality as a long-term goal, which involves targeting women.

However, while individual countries have attempted to address women's rights, there is a long way to go to attaining the full empowerment of women. To date, in none of the countries in Africa, is there real gender equality in access to and control of factors of production such as land. And many African countries have proved unwilling to recognize women's rights to property as a basic individual right deriving from their rights as human beings.

This paper examines a best practice in land reform that has made efforts to advocate for women's land rights. The paper endeavors to provide a synopsis of the issues and draw out some of the lessons that need to be learned from these experiences and will suggest some recommendations which can be adopted.

## Why is Land Reform important?

Land has been acknowledged to be the source of the essential livelihood of the majority of people in Africa - "the single most important entry point for women's empowerment"<sup>2</sup>

In Africa, often 70-80% of the population relies directly on agriculture for incomes and employment, while national governments benefit from this sector for export earnings and sources of revenue. Land has been recognized as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; and it is the most significant provider of employment opportunities in rural areas. Access to water and other resources, as well as to basic services such as sanitation and electricity, is often conditioned by access to and holding rights of land. The willingness and ability to make long term investments in housing and in arable land is directly dependent on the rights of land holders.

Land also has great cultural, religious, and legal significance. There is a strong correlation in many societies between decision-making powers and the land rights one holds. Even in urban areas, the right to participate in municipal planning, in community decisions can depend on the status of the individual as a resident<sup>3</sup>. Ownership and access to land is therefore a matter of survival and a basis for sustainable development.

It has long been acknowledged that providing food for the family is primarily the responsibility of women. In Africa, women play a crucial role in agriculture as producers and providers of food. Although the

percentage of women engaged in agricultural activities varies from community to community, it is estimated that it can be as high as 90% in some areas<sup>4</sup>. They work on land more than any other category of society, providing 90-80% of the labor in subsistence production, and over 70% in cash-crop production.<sup>5</sup> However, women lack the ownership rights over the land on which they provide so much of their labor and on which they depend for their livelihood. The gender division of labor in agriculture allocates women the responsibility for production and men the responsibility for marketing<sup>6</sup>. Women's labor on family land is considered part and parcel of her marital commitment.

Current development, which places demands on the land, and increasing population pressure have added value and pressure on marketization of land. Due to land fragmentation, less land is available for food-crop production, there is increasing landlessness and food insecurity, and women have to spend a lot of time walking long distances to the farm. Of particular concern is that land reforms may further erode women's already fragile rights to land.

The important role women play in agricultural production and household management, the weaknesses of women's formal claims over land and their vulnerability to loss, as land becomes scarce make the rights of women to land an issue. Moreover, their disproportionate share of land ownership has direct implications on women's control over the products of their labor.

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<sup>1</sup> Palmer, R., 2001

<sup>2</sup> Agarawal, 1994.

<sup>3</sup> Komjathy & Nichols, 2001

<sup>4</sup> Komjathy & Nichols, 2001

<sup>5</sup> ECA, 1998

<sup>6</sup> UWONET, 1997

There is a wealth of literature confirming the close connection between poverty and food security and lack of control of resources.<sup>7</sup> The Beijing Platform for Action notes that among the primary impediments to the alleviation of poverty among rural women is women's lack of access and control over productive resources and services; exclusion of women and the poor from decision- and policy-making; and legal environments that favors men's rights over those of women.

Lands tenure and land reform issues remain firmly on the development agenda of African governments because of the importance of tenure security for the achievement of sustainable livelihoods and poverty reduction. In some countries such as South Africa, Namibia and Zimbabwe, the reforms are concerned with redistribution or resettlement, while in other parts of Africa, tenure reform is the key issue. How land tenure issues are addressed can directly impact the livelihood and security of people in urban, peri-urban, and rural settings. Failing to address the land rights of all stakeholders in land reform processes can cause inequities, and more often for the most vulnerable and disadvantaged members of society.

There are numerous benefits of providing women with legal rights to land they cultivate. It gives them an infrastructural support which could help increase output, by increasing their access to credit and to technology and information on productivity. Provision of land also reduces out migration to the cities, both of women and of family members dependent on them.

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<sup>7</sup> EASSI, 2001.

## **Part Two: Criteria used to select the Case Study**

This report looks at a best practice that addresses the single most important economic factor affecting women's situation, that is, access to and control over land. Learning lessons and exchanging experiences will throw light on creative ways of looking at land issues, the variety of options to be considered, and the means to carry through consultation and build consensus. The Uganda Land Reform provides an example of a best practice in the field because of the diverse lessons, both positive and negative, based on its experiences in addressing the existing barriers to women's land ownership and control. The identification of the Uganda land reform process as a best practice was guided by the following criteria:

### **2.1 Impact**

The land reform process in Uganda has to some extent produced objectively visible measurable change in gender relations and women's options and opportunities in their rights to accessing land. Decentralization of land management to local government institutions and the establishment of paralegal networks and legal aid clinics have led to expanded service delivery for women. The reforms have produced networks of interested partners and influential strategic alliances. It has also generated stakeholders who continue to learn from and apply the skills they have acquired through advocacy and training.

### **2.2 Reach**

The land Reforms have led to improvements to local and national development policies and legislation. The government of Uganda has made major strides in the developing land policy and legal frameworks which give effect to the rights of women. The Constitution

of Uganda and other policy documents have to some extent recognized and mainstreamed gender issues affecting women's access to land - an important first step. These laws have been approved and adopted and are being institutionalized through the development of the appropriate structures in a large part of the country. The creation of paralegal networks and legal clinics has proved to be an innovative and replicable approach, which can be applied in other countries and contexts.

### **2.3 Sustainability**

The land reforms in Uganda provide noteworthy examples of sustainability. The government, academia, media civil society organizations and development organizations have demonstrated their commitment thereby enabling the reforms to be subjected to debate and relatively open consultation. The reform process has brought about an attitudinal change of decision-makers and implementers at national, regional and district level as far as women's land rights are concerned. Since the reforms have emerged from a participatory process involving the collaboration of various stakeholders, there is tangible evidence of ownership of the reforms being instituted, evidenced in the time and resources invested by the different stakeholders in administration, decentralization, information raising and training programs. The reforms have also attracted resources and are being actively supported by donors like the World Bank, DFID, USAID and OXFAM.

It is important to under score that the case of land reform in Uganda was also selected because of some of its shortcomings in addressing gender issues, challenges which can provide lessons for countries as they embark on land tenure reforms.



## **Part Three: The Success Story – Uganda Land Reform.**

### **3.1 Background**

Since independence in 1962, political instability and economic stagnation have plagued Uganda. In 1986 the National Resistance Movement (NRM) assumed power and embarked on a program to reverse the economic decline. The NRM launched economic recovery reforms which encompassed liberalization of the economy, privatization of government parastatals, that created a conducive environment for private sector development and development of human capital. The government also initiated public sector reforms of the civil service, public enterprises and local government; and promotes a gender and development approach in planning, resource allocation and implementation at national, sectoral, district and local level. As a result of the reforms there has been an annual economic growth of 6.5%, improved revenue collection and a rise in educational enrolment by 20%. The government has also established more democratic governance structures, including restructuring the court system and formation of Local Government Councils through the Local Governments Act of 1997. Other important gender policy developments worth noting include the establishment of the Ministry of Women in Development in 1988 and the establishment of a Directorate of Women's Affairs within the NRM Secretariat.

Uganda's gender profile demonstrates a dichotomy between women and men as regards access to productive resources, poverty levels, education, employment opportunities, and participation in the political process. Women perform less lucrative economic roles: 47% of the working population.

(employed, self-employed, and unpaid family workers) is female, 81% of whom are agricultural workers. Only 2% of women are in administrative, managerial, and professional occupations, and only 0.05% of the senior positions in the civil service are held by women. Ugandan women have a very high illiteracy rate of 51%<sup>8</sup>.

Uganda is divided into 45 districts, 68 counties, 885 sub-counties and 4,451 parishes. Uganda's colonial legacy left the country with a dualistic land structure - indigenous and modern land tenure systems. Land management, marriage, property rights and inheritance are carried out in accordance with traditional systems and customary laws. Most of these rules and norms are conveyed and enforced by traditional authorities through various control mechanisms.

Under customary land holding systems there is a distinct gender division of control over land. Women are accorded lesser land rights than are available to men. In some districts it is taboo for women to own land<sup>9</sup>. Women's access to land is seen as rights of use obtained through and protected by marriage. They must request land from their male relatives or from customary authorities. Although men retain power to withdraw the land, in practice, women do not perceive their land rights to be insecure, as long as their household and community relations remain stable.

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<sup>8</sup> MGCD, 1995

<sup>9</sup> UWONET, 1997.

However, the decision to give women rights over land or reward them for their labor is arbitrary and subjective – dependent upon the good will of others, and there are instances where lack of secure rights creates real hardships for women. Land is registered in the man's name and they determine its use and who controls its proceeds. Women are often excluded from issues related to sale and purchase of land. In cases of divorce a woman must abandon the land, which she has been cultivating without any compensation. The fate of a widow varies according to the custom of the society, however, in many cases she is not entitled to inherit any rights to her husband's land in case she remarries and sells or passes it on.

UWONET concludes that patriarchal systems of inheritance and property ownership in societies in Uganda discriminate against women's right to land. The right of access is not accompanied by the right of control or ownership, and in spite of women's high labor input, they are reported to own only 7% of the land in Uganda. Women's labor is given free and never valued. Compared to men, women farm smaller and more dispersed plots and are less likely to hold title, secure tenure, or the same rights to use, improve or dispose of land. Values, attitudes, traditional beliefs and customs, coupled with policies and laws, operate side by side to support the imbalances on land ownership<sup>10</sup>.

Land reform began in 1989 when a study, funded by the World Bank and USAID, was carried out by the University of Wisconsin Land Tenure Center and the Makerere Institute of Social Research. DFID then financed the drafting of the of the Land Bill to look into

ways to increase security of tenure and to make land more freely available for investment.

## 3.2 Exemplary Aspects

### Policy and Legislative Context for Land Reform

A coherent national land policy is central to providing a holistic framework for dialogue on land issues. Policies and Legislation should not be seen as separate from the planning process. They should be drafted in a holistic manner, and integrated with the raising of awareness of local rights and responsibilities, so as to give greater authority to the entire process.

#### 3.2.1.1 Uganda Constitution, 1995

A new gender-sensitive Constitution was adopted in 1995. Although the national objectives of the Constitution do not create directly enforceable rights, they do oblige the government of Uganda to work towards these goals and to enact legislation and issue policy guidelines that are in accordance with these objectives

The 1995 Constitution consists of a preamble, chapter on National Objectives and State Policies, and nineteen chapters containing 288 articles. It sets down the supreme and binding law of the country. Chapters 1-6 (the Constitution) Fourteen (Bill of Human Rights), Fifteen (Local Government), Sixteen (Institution of Traditional Dispute Resolution Leaders) all contain provisions that are directly related to women's equal rights to land and other resources. Other chapters like Eleven on local government touch on the issue of women's rights to participate in governance. (Source: Benschop, 2001)

The Uganda Constitution sets the policy framework for land tenure, with a strong orientation towards the democratization of property relations. This was manifest in the removal of the title from the state and its vesting directly in landholders.

<sup>10</sup> EASSI, 2001

Articles that are relevant to women include:

- Although women's equal rights are not explicitly stated, the Constitution is very strong in prohibiting laws, customs and practices that discriminate against women. Article 2 provides the basis for rendering laws and/or customs void to the extent that they are inconsistent with other provisions of the Constitution, for example women's equal right to own property;
- In articles 26 and 31 the Constitution implicitly recognizes women's equal rights although it does not explicitly mention property;
- Article 32(1) obliges the State to take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom; and
- Article 33 of the Constitution accords women full and equal dignity with men and calls on the State to protect women and their rights, taking into consideration their unique status and natural maternal functions in society.

The Ugandan Constitution also provides the basis for other legislation, namely the Local Government Act and the 1998 Land Act, that allow for the increased representation of women on decision-making bodies and the recognition of women's equal right to land.

Benschop notes that as the supreme law of the land, the Constitution is a powerful document that women can invoke to have discrimination against them come to a halt.<sup>11</sup> Although the Constitution does not resolve many land issues in Uganda, she notes that it provides guidance on how specific concerns should be dealt with.<sup>12</sup>

<sup>11</sup> Benschop, 2001

<sup>12</sup> Benschop, 2001

### **3.2.1.2 Uganda Land Act, 1998.**

Uganda is a prime example where a comprehensive and well intentioned Land Act was passed in 1998 following a relatively open process of consultation compared to other countries. The Act is a major step forward in equitable land tenure reform.

In 1988, a Committee was established under the Ministry of Agriculture to look into possible reform of the 1975 Land Reform Decree. Between 1993 to 1998, four Land Bills were drafted. The fourth draft Land Bill was published in 1996, but did not reflect the views of the people sufficiently, nor did it incorporate women's equal right to land as enshrined in the 1995 Constitution. The draft Land Bill was opened to public discussion in September 1997. The Bill was gazetted in early 1998<sup>13</sup>. During the debates and consultations, many issues were raised by women in relation to land:

- Disposal of land by men without consultation with and regard to the interests of women and children;
- Lack of participation of women in the distribution of the fruits of their labor on land;
- Lack of rights of women to inheritance on the death of their male spouse;
- Lack of rights in the distribution of land in divorce.

The Act is divided into 6 parts. It is supposed to adhere to the Uganda Constitution and provide for the tenure, ownership and management of land, and to amend and consolidate the law relating to tenure ownership and management of land.

Before the Land Act, women's land use rights were protected under customary law. Customary tenure presumes that women do not own land and land is not for sale. These presumptions were seen to protect

<sup>13</sup> Benschop, 2001

women's rights to access to land. However, the Act removed the presumption that land is for sale, and thus distorted the significance of customary tenure. The Act introduces individual ownership to encourage more productive use of land transforming customary ownership into formal ownership through the creation of written title deeds.

The early draft of the Land Bill implied the promotion of an entirely free market in land through the transformation of the whole country into individually owned leasehold and freehold estates. Wily described it as one of the harshest transformations into western tenure which would open the door to rapid accumulation and land speculation. However, the enacted Land Act recognizes customarily obtained land as fully legally tenured. It is crucial to recognize that customary tenure not only persists but is still by far the majority form of tenure in Africa. A large majority of poor rural women have no access to 'modern' law. It is important to analyze the extent to which women's land rights are provided in customary laws. However, the Act prohibits decisions affecting customary land which deny women and children access to ownership, occupation or use of any land or imposes conditions which violate constitutional provisions protecting such groups.

The Land Act is a major step in forward in equitable land tenure reform<sup>14</sup>. It provides women's de facto inheritance rights and for joint management.

To address these problems the Land Act provides, among other things declaratory statements as to the equality of men and women and entrenched representation of women on Land Boards.

Women's interests are reflected in several clauses of the Act:

Clause:4 states that any person or community holding land hinder customary tenure may acquire a certificate of customary ownership in accordance with the provisions of this section.

Clause:11 states that a registered owner and lawful bonafide occupant of land may mutually agree that the land which both have an interest be shared or reverts to one of them on such terms and conditions as they may agree upon.

Clause: 13 states that no person shall sell, exchange, pledge, mortgage, lease, give away land inter vivos, or enter into any other transaction on land, (a) in the case of married couples, without the prior consent of the wife or husband on occupation of the land.

### 3.2.1.3 Local Government Decentralization Policy and Program, 1992

Land rights management in Uganda has been consistent with other structural reforms. Uganda's Local Government Decentralization Policy and program has been instituted as part of a larger plan by the government to implement reforms in the public sector. The decentralization policy, ratified by the Local Government Act of 1997, represents the government's efforts to establish good governance on the basis of devolution of power from the central government to the local government. The policy aims to create a local government system that would be democratic, participatory, efficient, and development oriented. Its objectives include<sup>15</sup>:

- To transfer real power to the districts;
- To bring political and administrative control over services to improve accountability and effectiveness;
- Develop organizational structures tailored to local circumstances;
- Improve financial accountability and responsibility; and
- Improve capacity of local councils to plan, finance and manage the delivery of services to their constituents.

<sup>14</sup> DFID, 1999. Report of a workshop on Land Rights and Sustainable Development in Sub-Saharan Africa. Sunningdale, U.K.

In 1992, the government launched the decentralization policy, and by 1996 all existing districts in Uganda had been financially decentralized. The Government has undertaken a comprehensive training program to build the capacity of local government councilors and employees to handle increased responsibility. Training has ranged from financial management and budgeting, to accounting, human resource management, development planning, tendering process, records management and legal training.<sup>16</sup>

In addition to the affirmative action policy on national level, quite a decentralized and democratic system of local governance has been set up that guarantees the election of women councilors. The policy provides that one-third of all the councilor's seats should be set aside for women. In 1994, nation wide Constituent Assembly elections were held. A total of 284 delegates were elected, 51 of whom were women (39 representatives for the 39 districts elected on the basis of affirmative action policy, 1 woman out of the 22 workers' representatives, 8 women who were directly elected and 2 women out of 5 presidential nominees)<sup>17</sup>. In 1997 Local Government elections, 6,574 women councilors were elected in the District and Sub-Councils<sup>18</sup>.

### 3.2.2 Institutional Structures

Various structures and processes have been created to manage and resolve land disputes in Uganda.

The most dramatic democratization has occurred in Uganda where tenure administration and arbitration is designed to operate entirely independently of the executive and of local government. The Land Act

provides for the establishment of various institutional structures for land management including the Land Commission, District Land Boards, the Land Committees, District Land Tribunal and Sub-county Land Tribunals. The Act establishes a vast new land administration with 45 entirely new District Land Boards and nine thousand Parish level Land Committees.<sup>19</sup>

The **Land Boards** are charged with holding and managing government land, confirming certificates of customary ownership and overseeing the conversion of customary tenure into freehold tenure. The **Land Committee** is appointed by the District Council and will be responsible for the initial consideration of certificates of customary ownership, applications for grants of land in freehold, and applications to convert customary tenure to freehold tenure. Each district will have a **Land Tribunal** with jurisdiction over land disputes. At the national level a **Land Commission** will be in charge of holding and managing government land.

To ensure that new land management structures are sensitive to women's concerns, the reforms have called for women's representation in new decentralized land authorities and in dispute resolution bodies. At least one woman is appointed to each Land Tribunal although complete gender balance has not been achieved.

### 3.2.3 Advocacy and Lobbying

#### 3.2.3.1 Role of NGOs and CBOs

In addition to the efforts of the national and local government to implement the land legislation, quite a number of NGOs and CBOs in Uganda are energetically complementing these efforts. The experience and creativity of the NGOs are examples of good practices. NGOs have established extensive

<sup>15</sup> Gopal & Salim, 1996

<sup>16</sup> Ibid.

<sup>17</sup> Benschop, M. 2001.

<sup>18</sup> Benschop, 2001.

decentralized infrastructure and grassroots programs and have networked and built coalitions to lobby for women's land rights. There are notable successes in the general sensitization of government and policy makers on women's issues as far as land rights are concerned.<sup>20</sup>

The Forum for Women in Development (FOWODE) organized a Parliamentary workshop in respect to how the Land Bill would impact upon women. The President, Parliamentarians, Ministers, key civil servants and academicians, and NGOs attended the workshop. As a result of the training, a Women's caucus which would include delegates from other marginalized groups such as workers, army, disabled persons and youth groups who supported gender issues was formed. This approach made the lobby force of the women delegates much stronger. The women's caucus operated throughout the Assembly's debate and managed to successfully lobby for provisions in the Constitution that provide for gender equality and women's equal rights.

The National Association of Women's Organizations in Uganda (NAWOU) organized "gender dialogues" that facilitated consensus building and created an exclusive environment for exchanging views among women delegates.

Several women's organizations combined their lobbying strength in the Uganda Land Alliance. The Uganda Land Alliance, a consortium of 37 committed national and international NGOs, CBOs, research institutions and individuals lobbying for fair land laws, was founded in 1995.

The Uganda Land Alliance sought to:

- Lobby for a moratorium on land acquisition and registration, pending enactment of a fairer law;
- Publicise the draft land bill for debate from the grassroots upwards and carry out education of the general public in order to further this debate; and
- Lobby to ensure that the new land tenure arrangements protect the rights of vulnerable and disadvantaged groups;
- Engage in dialogue with the Ministry of Lands and targets MPs.

The Alliance has organized a series of grassroots workshops and intends to study the implementation of the Bill. It has vigorously lobbied key donors such as the World Bank and DFID because they are engaged with the government.

### 3.2.3.2 Paralegal Networks and Legal Aid Clinics

NGOs have developed Paralegal programs throughout almost half of the country, constituting the most extensive network in East Africa. These networks in the various districts, linked to and trained by NGOs and Legal Aid Clinics are doing outstanding work in implementing, educating and raising awareness of and enforcing women's rights at the grassroots.

The Uganda Law Society (ULS) started with paralegal programs in Kabarore, Guru and Junja districts, connected to their satellite Legal Aid Clinics. ULS conducts Training of Trainers workshops and land rights workshops upon request. In 2000, some 14 Land Rights workshops had been held to inform people at grassroots level and ask them for their views on the Land Act.

<sup>19</sup> Land tenure reform and the balance of power in Eastern and Southern Africa.

<sup>20</sup> EASSI, 2001.

The Uganda Women's Lawyers Association (FIDA-U) operates Legal Aid Clinics in Kampala, Mpigi, Kamwokya and Iganga districts. FIDA has trained at least 100 male and female paralegals. The communities select persons to be trained. The selected person must be motivated, able to listen and communicate well, tolerant and incorruptible, should have completed secondary school and knows some English. The paralegals attend a one-week training to learn practical skills in counseling, mediation, problem solving and facilitation of referrals. Cases that cannot be solved through intervention of the paralegals, are referred to the Legal Aid Clinics from where the cases can be taken to court.

The Uganda Gender Resource Center (UGRC) has also set up a paralegal network and a Legal Aid Clinic. Lawyers assist their clients from the districts with their cases on inheritance and land dispute. If the client can afford the court fees, these cases are brought before court with the Legal Aid Clinic lawyer representing the client. In cases that can be solved in lower Local Council courts, the lawyer merely advises their clients as lawyers are not allowed to represent clients in these courts. Of the cases handled 85% are inheritance cases and 5% are land disputes. Of the inheritance cases, 99% are filed by women<sup>21</sup>.

UGRC has trained a total of 315 paralegals in the four districts it operates in. Training for paralegals starts after legal education workshops that are held for 3-days. The training encompasses human rights in general and women's rights in particular. A general objective of the law is to demystify law. Recurring subjects for training are related to land and property ownership, inheritance, violence against women, and marriage and divorce. Specific attention is paid to provisions in the Constitution in respect to women's and children's rights, the Divorce Act, the 1/3 quorum of

women councilors in the Local Councils and other statutory bodies.<sup>22</sup>

Some of the pressing problems that were brought up in the legal workshops were: sale of land by husband who wants to displace first wife, widow inheritance and that women were often not working together and as such had no voice to advocate for policies.

### **3.2.3.3 Information Dissemination**

Support should be concentrated on empowering women to improve their ability to negotiate their rights and influence management decisions, rather than focusing exclusively on pushing through legislation to enshrine formal rights. It is clear, however, that such reforms are unlikely to change the position of women in rural areas without parallel measures to promote awareness of these legal changes and support women to stand up for their rights.

In Uganda a Gender Information Center was set up to provide women delegates in the Assembly with facilities for research, consultancy, meeting and lobbying. The Center also ran a weekly radio program geared toward educating the people of Uganda on constitutional issues being discussed in the Constituent Assembly, particularly those affecting women. The participation of the media also facilitated the molding of public opinion and dissemination of information.

UWONET undertook a preliminary study in 6 districts to document the views and suggestions of women on the proposed Land Bill, specifically, women's land rights issues. Selection of districts was done to reflect the different tenure systems. The objectives of the study were threefold,

<sup>21</sup> Benschoop, 2001

<sup>22</sup> Ibid.

namely, to provide information and increase awareness of policy makers and the peasants, while at the same time initiate discussion on land issues at the grassroots level. UWONET has simplified the Land Act in English and has translated it into the three major languages of Uganda: Luganda, Runyakitara and Luo

### **3.2.4 Sustainability**

Given the proposed scale of the land reforms, resource management, decentralization and devolution in Uganda, the lack of attention to questions regarding financing seems likely to result in significant social and gender-related problems in the future. At a minimum, policy makers and program managers need gender and social information so as to not worsen the situation for those who already have less access to resources, including women. With proper planning, land policies and programs could be designed and implemented so that those who are currently disadvantaged have increased access to and control over productive resources

#### **3.2.4.1 Financing Land Reform**

There is increasing consensus that decentralization and subsidiarity are the best approaches to land management. However, it is important to note that decentralization costs money. The passage of the Uganda's tenure reform legislation was not proceeded by a financial and economic appraisal, all the energy went into lobbying on the Act. No provisions were made in the Government's budget for its implementation, and when the Bill became law, the responsible implementing agencies were without the necessary staff and funds to finance land titling and ownership transfer. As a result the Land Act has proved unimplementable. Under the Uganda Constitution, local authorities are obliged to fully

compensate for compulsory land acquisition. This has serious budgetary implications for municipal council, most of which do not have the necessary resources. It has become more apparent that the title registration system in Uganda must be developed alongside the customary certification system although this is not directly provided for in the Land Act.

A systematic calculation of the costs and benefits of the land reform is important. It is also crucial to monitor the impact of land reforms on women over time to gauge whether the reforms are reducing inequality in access to land and contributing to poverty alleviation or whether the implementation outweighs the envisaged economic benefits of the reform<sup>23</sup>.

#### **3.2.4.2 Participation of Stakeholders**

Comprehensive information and education program on the law is especially critical because the centerpiece of the new tenure laws is the devolution of a great deal of authority and administration over land to the district level institutions. A contradiction between rhetoric and practice permeates much experience with participation in Africa.

It has been argued that the process of reform has been centrally driven, defined and delivered, and as such popular participation as has occurred has been in the vein of 'consultation'. It is true that there was limited consultation until the land bill was gazetted in March 1998. The draft land bill was declared a public document and was open to comment.

The Land Reform consultation process led by NGOs in Uganda provides a good model of how to persuade

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<sup>23</sup> Palmer, 1997



governments to widen the land debate and get the gender dimensions of land rights into the debate. NGOs have formed land alliances in Uganda to press for meaningful consultation and debate before land laws are passed. NGOs have lobbied against the inclusion of customary laws that discriminate against women in the Constitution. They have also lobbied for women to be represented on all decentralized land management bodies to be created.

The Uganda Land Alliance, referred to as the leading light in the advocacy for women's rights<sup>24</sup>, has succeeded in changing the very nature of what was to become the Land Act of 1998 and in persuading the government to widen the consultation process. Of particular concern to the Alliance was the lack of public discussion and debate on the need for protecting women's secure access to land. This was spurned by the invisibility of women's concerns and lack of information from women reflected in the Act. "Because of the lack of information on women and land rights, there was no serious effort to engage policy and public discussion on the obvious problem of women's lack of ownership rights over land in spite of the fact that they are constantly referred to as: "the backbone" of Uganda's agriculture"<sup>25</sup>. The Alliance produced information for the Members of Parliament in the form of issue briefs, pamphlets to lobby on women's different land needs, preferences and priorities to men. Regardless of their marital status, NGOs advocated that they should be entitled to independent land rights including an expansion of enforceable legal rights of access to and control and ownership of land and property, increased

inheritance rights, access to loans and co-registration in leasehold systems<sup>26</sup>.

The role of donors has been a critical one. They have actively engaged in land issues, stressing the need for accountability, transparency and a poverty focus. DFID, Oxfam and the World Bank have become increasingly engaged in land reform processes in Uganda with supporting advocacy, sponsoring training and the drafting and implementation of the Land Act. The World Bank loaned the Government of Uganda for initial studies on land reform in 1989. USAID supported research into tenure systems. DFID a major donor, played important roles at different times. It provided the Uganda Land alliance with assistance to broaden the land debate by lobbying the government on land issues. Oxfam, World Vision, Action Aid also commissioned studies on specific land issues.

Donors have opportunities to influence national policy on poverty and land issues through the Ministry of Planning; bring extensive experience in land issues; wide advocacy experience; political sensitivity and money. However, donors have seen the necessity of allowing civil society organizations to determine their own style of advocacy in response to their sensitive understanding of local dynamics.

### **3.4 Challenges and ways of overcoming them**

As Uganda endeavors to implement its land reforms and recognize women's rights to purchase, lease or rent land it has been confronted with numerous challenges. Research points to the negative impacts on women and gender relations of increasing land privatization. Individualized tenure is leading to

<sup>24</sup> Palmer, 1989

<sup>25</sup> UWONET, 1997

<sup>26</sup> Palmer, 1997

greater concentration of wealth, increased social and economic stratification and more hardship for women. In practice women still do not have equal and independent access to the land. Although women are active at the micro-level in deciding how to respond to economic reforms, land reforms are constrained by both existing patterns of gender inequality and some dimensions of the reforms themselves.

This section of the report examines some of these challenges and the proposals put forward to address them.

### 3.4.1 Policy related constraints

The absence of a National Land Policy in Uganda has been identified as central to the piecemeal approach to discussions around women's land rights. The issues, which impact on women's land rights, continue to be scattered in different legislations.

Although decentralization policy creates significant opportunities for women's empowerment, the realization of these opportunities must be reflected in the political and legal frameworks to enable women to take advantage of these opportunities. The devolution of powers to local government will not automatically result in the empowerment of women. A majority of women are unaware of the political opportunities and government efforts to inform women of these changes in local government structures have been minimal. Coupled with the unawareness, is the inability and gender insensitivity of women elected to these posts to handle the demanding responsibility of challenging the customary practices that discriminate against women<sup>27</sup>.

### 3.4.2 Legal Constraints

The role of law is to provide a conducive framework for equitable development and guarantee gender equality. However, the law can be used as a tool to legitimize and sanction discrimination against women's rights to land. Perhaps the most burdensome economic discrimination of all derives from laws limiting access to productive resources<sup>28</sup>. The substantive legal constraints include deficiencies in the provisions of the Constitution, the Land Act and Customary law.

The vague provisions of the Constitution do not address women's rights in reality,<sup>29</sup> and despite the considerable effort made to provide women's views and suggestions in the Land Bill and how their interests could be promoted and protected by the new law, their interests were not wholly taken onboard. For example, the Constitution has its disadvantages because most property already titled and registered has been registered in men's name, and that men's right to this previously acquired property is now guaranteed by the Constitution.

The Land Act will also need amendments to allow more flexibility in implementation. The Act still marginalizes women's concerns and interests<sup>30</sup>. For example, Clause 13 of the Act does not address the unequal gender-based power relationship in a marriage, and ignores that a woman's consent is presumed automatic once the husband has made the decision. Wives who withhold their consent risk being abused or abandoned<sup>31</sup>. Moreover, by referring to "wife", the co-ownership clause excludes "wives" in

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<sup>27</sup> Gopal & Salim, 1998

<sup>28</sup> Nzioki, 2001

<sup>29</sup> EASSI, 2001

<sup>30</sup> Kaharono, 1998

polygamous marriages, single or young women and the majority of rural women in co-habitation unions<sup>32</sup>. Other weaknesses emanate from the use of the word "written" consent. This curtails a majority of illiterate Ugandans, many of whom are women from exercising their right due to illiteracy<sup>33</sup>.

In many communities, access to resources is governed by both written and customary laws. Customary law continues to play a significant role in determining women's rights. Patriarchal systems of inheritance and property ownership perceives women in terms of their relationship to a male. This system places a lot of responsibility for production on women, but denies them the right to control land. There are still opportunities within the customary system to demote women to the status of children, promoting the perception that women are dependents and informing official policies and plans. In societies following customary rules, women's direct access to land through purchase or inheritance is often limited. Under these customary laws women have no secure and independent rights to land, and governments are often reluctant to intervene to curb the powers of traditional authorities accorded to them by customary practices. As a result, women find themselves more vulnerable due to entrenched cultural practices, beliefs and ideologies that accord insecure usufruct rights that can come to an abrupt end on divorce or widowhood. The application of customary laws continues to deny women their rights to own property independently, enter into contracts, sue and to obtain credit. Moreover, traditional systems deny women rights to represent themselves in land claims.

<sup>31</sup> UWONET, 1997

<sup>32</sup> EASSI, 2001

Legislation has to be more explicit concerning the rights of women. They should be written in more intelligible language and translated into local languages to make them user friendly. Recognizing that the legal text can prove a barrier due to the high illiteracy rate, non-written means of communication such as radio, public meetings were used to inform all stakeholders of the changes in legal rights.

These customary rights are always vulnerable to reinterpretation and seizure by more powerful groups. In instances when conflicts exist between traditional norms and national laws, as is often the case when women's rights are considered, local norms generally prevail and are enforced by the community<sup>34</sup>.

Since women are the major producers of household food supply there are usually customary provisions for indirect access to land in terms of use rights as community member, wives, mothers, sisters or daughters. These user rights however, do not grant enough security for women when traditional family structures dissolve. The economic and social well being of women and their children are at increased risk when women face widowhood and divorce, or when the male head of household does not or cannot exercise his traditional responsibilities to his family. Registration of land in the name of women (as defacto head of household or spouse) is still out of reach for most women. Only women who can afford to buy land.

There are also some institutional legal constraints to women's land rights. Another constraint that women face is the inequitable access to the legal system.

<sup>33</sup> UWONET, 1997

<sup>34</sup> Komjathy & Nichols, 2001

While women are increasingly using the legal system to exercise their rights, they lack of information about their basic land rights is an obstacle that prevents women from fully enjoying their rights. Women's land rights are often frustrated by the insensitive and lengthy judicial process. The rights and opportunities that result from reform processes can only be used by a very small percentage of educated and well paid women. For a majority of the rural and urban poor women, the plurality of legal systems and the complex language and drafting styles of the law make these rights unattainable.

### Recommendations:

- Written national laws granting women equal access are essential but for these rights to be legitimate and adhered to it is necessary to secure the support of the local community. The Law must build on social values and should be drafted in consultation with relevant stakeholders not in a vacuum. It is necessary to ensure that the Constitution and other laws explicitly address women's rights. Constitutional recognition of women's land rights provides subsequent legislative initiative and room for court interpretation.
- Other ways to promote and protect women's rights include an unequivocal equality clause in the constitution that gives women's land rights precedence over customary law in case of conflict.
- Land reforms need to develop modern property laws that recognize the diversity of family and household arrangements, and acknowledges both modern and traditionally dominant household patterns. Legislative reforms should clearly define

the entities in relation to property rights e.g. family, spouse.

- Legislation should make reference to other laws that have an impact on women's property rights that should be reviewed.
- It is proposed that the co-ownership clause in the Land Act should apply to all women in marriage unions that are socially accepted and not only those that are legally recognized.
- UWONET proposes that the Act should state that it is an offence to coerce, force or use undue influence to effect transfer of land; and should make it mandatory for witnesses to be present to prove that the transfer of land is legally binding.
- Moreover, in the case of polygamous marriages, UWONET suggests that each wife should have a portion of land allotted to her formalized with an agreement and indicating her entitlements.
- Despite the problems surrounding the paralegal networks, the work of the paralegals to ensure implementation of national legislation and policies at grassroots level is very useful indeed. Benschop notes that, if a solid reporting system would be designed, combined with regular follow-up training and the supply of the materials the paralegals need in order to carry out their work, these networks could truly become the link between customary and statutory law and greatly assist in bridging the existing gap between the two.<sup>35</sup> Identify areas in national and customary laws pertinent to women's access to and benefits from

<sup>35</sup> Benschop, 2001.

land and encourage changes to protect women's rights to land and its resources.

### 3.4.3 Financial Constraints

The cost implications of the Uganda Land Reforms were not thought through, as all energies went into lobbying on the Land bill. Consequently, resources have been limited and sporadic and the reforms are beyond the financial capacity of the both central and local government budgets. This lack of funds hampers the implementation of the national legislation that recognizes women's equal rights to land.

The land market remains inaccessible to women due to their lack of purchasing power. Women continue to face gender specific barriers in accessing financial services, including the lack of collateral to raise loans. Current qualifications for acquiring a loan to purchase land in terms of education, security and certification also discriminate against women. This raises some critical questions for women's access and control of resources. Land reform programs are designed to open up land to market forces and attract foreign investors. These reforms often run the risk of ultimately serving the interest of large investors since safeguards that are instituted to protect the interests of the local community are usually relegated to definitions according to customary law and practice.

#### Recommendations:

- The Land Act needs to be revised to accommodate the establishment of administrative land management structures on a smaller-scale.
- In order to assess the impact on women, reform programs need to institute some measurement system for evaluating access to land. A set of qualitative and quantitative indicators should be

developed to facilitate monitoring of progress made in women's quantitative rights (e.g. the ability to transfer rights) and qualitative rights (e.g. legal security of rights)<sup>36</sup>. Indicators that may be used to collect gender-disaggregated information to measure qualitative and quantitative access include:

#### INDICATORS:

- Percentage of arable land;
- Documents of land rights or land registry records;
- Rights granted by written laws for inheritance, divorce, or customary rights;
- Implementation and enforcement of rights intended to promote women's equality;
- Women's access to the local customary decision-making bodies and their real roles in these bodies;
- Percentage of women and men holding secure and insecure title to land;
- Women's participation in formal and informal land transactions;
- Resource allocation within the household;
- Land use patterns: average size of holdings for women and men;
- Traditional land related responsibilities;
- Proportion of food crops and cash-crops produced directly by women;
- The number of female headed households – de facto and de jure;
- Access to creditworthy land parcel.

### 3.4.4 Institutional Structures

Trying to create a whole new set of institutions is problematic. The Uganda Land reform process was characterized by a rigorous timetable for establishing the new institutional framework for new land management and dispute resolution and a funding mechanism to support the capacity of local people. The Act covered the establishment of the administrative structures, more than 7,000 new institutions, each needing financing and servicing in

<sup>36</sup> Komjathy & Nichols, 2001

the whole country in one swoop. The new regime of District Land Boards is in place but few are operational. The 4,000 Parish Land Committees have not been formed, and the statutorily required Land Fund is not yet operational<sup>37</sup>.

Previous 'unconventional' forms of rural tenure administration were neglected and a vacuum in land administration was created, especially, in land dispute resolution. Disputes which had previously been settled quickly at local level were persisting with consequent hardship, and in some cases, violence. Moreover, no attention was paid to the very significant regional difference in land tenure and use, which in turn called for different implementation strategies and arrangements.

Another constraint was that criteria and eligibility to serve on Land Committees was not specified. As a result, women who are competent to serve are likely to be disqualified because of their education.<sup>38</sup>

Democratization was to be furthered through the removal of authority over property titling and transfer from government to district level autonomous Land Boards. Dispute resolution was to be removed from the government-supported judiciary into a regime of independent land tribunals. The main question facing the reform is the extent to which political will and central government willingness to release powers as suggested in the new laws will be realized. It is acknowledged that real commitment to land reform is jeopardized by institutional resistance to let go. The bureaucrats like those in the Ministry of Lands in Uganda have gone along with rhetoric while clearly

being reluctant in practice to embark on the road leading toward subsidiarity. State land administration bureaucracies have been vigorous in their opposition to relinquishing control, and it is clear that it will not be easy politically to vest power over the development of tenure in local communities. The vested interests of politicians, especially of those in the Ministry of Land is one of the biggest stumbling blocks. The Ministry is proving resistant to letting go of its powers and setting up the Agencies required by the Land Act. It is important to build the capacity of the Ministry of Lands to the task of implementing the Land of the Act.

### Recommendations

- Land reforms should examine the strengths and weaknesses of existing institutions and mechanisms for tenure administration in rural areas prior to reforms. It is crucial for local systems of environmental governance and authority to be clarified and articulated to all stakeholders and to be enforced with transparency. It is also important to establish land administration procedures that accommodate regional differences and all segments of the population. Pilot programs should be established to test new methods being proposed.
- It is important to develop clear policy guidelines for the functions of land management structures to ensure objective decisions.
- It is necessary to ensure the participation of women in community decisions about land access and management; in local and national government structures affecting land allocation and land policy implementation; and in customary or statutory commissions that address disputes with respect to land.

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<sup>37</sup> Palmer, 1997

<sup>38</sup> UWONET, 1997

- Members of the local government committees should be trained in practical methodologies for incorporating gender perspectives into aspects of policy-making, program development, and implementation. The capacity and confidence building of women councilors is still necessary<sup>39</sup>. The planning of the training should take into consideration women's specific life situations; for example it is difficult for women to attend a weeklong training course away from her family.
- Donors should aim at strengthening capacities at national and especially local levels.

### 3.4.5 Participation, Awareness creation and Information dissemination

The Ugandan experience demonstrates the advantage of informed public discourse, however, Wiley concludes that the Uganda government has failed to ensure socio-political legitimacy of land reforms among the majority, the poor and rural<sup>40</sup>. She argues that the process of reform has been centrally driven, defined and delivered, and such popular participation that has occurred, has been in the vein of 'consultation'.

In order for women to participate in the land debate, and take advantage of opportunities created by the Constitution and the decentralization policy, they must be aware of the new political opportunities and aware of the contents of the policies. The reality is however, that a majority of Ugandan women have little or no access to information relating to politics or law. Low levels of literacy and lack of fluency in English influence the involvement of women in decision-making. Women generally have lower levels of

education than men, and they are often shy and unclear on their roles in decision-making bodies. For many women, access to information, particularly information relating to what is perceived as the "public sphere" - work and politics, is extremely limited<sup>41</sup>.

As a result of this inadequate legal and civic awareness, only a small percentage of women can make informed choices, a majority are not aware of beneficial provisions and do not understand issues of ownership of land, registration of titles or how to contest land rights. No concerted efforts were taken by the government to inform voters about the change in local government,<sup>42</sup> or to build the capacity of women so as to empower them to participate in the reform process and take advantage of new opportunities.

Programs to build the capacity of local government have been found to be lacking in gender sensitivity with respect to both content and participation of women. Approaches to land reforms are largely derived from a planning paradigm and community stakeholders are identified on the basis of how they use resources.

As discussed earlier, NGOs have been active in raising awareness. However, research findings note that advocacy has focused on legal reforms than other structural social and economic constraints that hinder women from securing their land rights.<sup>43</sup> The lobbying process has been protracted and as a result there is a lack of politicization of women's land rights. Moreover, not all the results of consultative processes were taken onboard by the government, particularly where the

<sup>39</sup> UWONET, 1998.

<sup>40</sup> Palmer, 2001.

<sup>41</sup> Gopal & Salim, 1998.

<sup>42</sup> Gopal and Salim, 1998

views were politically inconvenient. Although there may be differences in access to resources, needs and priorities within stakeholder groups based on gender, they are not usually identified or addressed by stakeholder approaches or employ gender analysis. Policy makers generally have faith in public participation but community members are usually lumped together as stakeholders without mention of gender or other social variables

### Recommendations:

- Calls for legal reform are all the more effective if there is a groundswell of opinion backing the advocates for change. Public participation is now essential for satisfactory land policy reform and the agrarian public should ideally be engaged throughout.
- Consultation is difficult and time- and resource consuming, as it involves thinking things through in detail in advance, involving governments and broadly-based, representative groups, and guiding and structuring in ways that ensure that a clear message is sent. However, localizing land reform has numerous advantages. It tackles issues of social legitimacy, commitment and costs – all crucial elements in land reforms.
- It is crucial to broaden practitioners' understanding and appreciation of the circumstances that limit women's participation in land related matters, and the importance of finding alternative means to include women in those decisions. Ensuring the participation of women leads to women-based solutions to women's land issues. Women's access to critical information on the procedures for accessing land is important to foster their participation in the reform process. The

medium of dissemination should be favorable to the majority of women who are illiterate or semi illiterate.

- It is essential to raise the awareness and disseminate information to policy makers in various strategic government ministries such as Agriculture, Finance and Economic Planning. Availing information to decision-makers ensures that women's land rights are put on the agenda as they design policies of land reforms, agricultural modernization, food security and poverty eradication<sup>44</sup>. Gender-related and social data on households and organizations (i.e., the divisions of labor, access and control rights over productive resources, household and community responsibilities, trends in gender relations over time) will improve local, regional and national decision- and policy-making.
- NGOs, CBOs and paralegal networks play a very important role, since they question and discuss social and cultural attitudes hindering implementation of women's equal rights on the ground. NGOs in Uganda have endeavored to help communities become more aware of their rights – and determine how best to demand and defend them.

<sup>43</sup> EASSI, 2001.

<sup>44</sup> EASSI, 2001.



## Part Four: Conclusion

Access to land remains for many people, especially women, the ultimate form of social security. This security is coming under threat from excessive liberalization, the search for foreign investment, often-blind faith in market solutions, land privatization, the cash economy, population pressure and disintegrating social relations. This increasing land tenure insecurity for women is resulting in a lack of credit collateral and greater economic dependence on men by women. This is particularly the case for land held by people under some form of customary tenure.

Throughout most of Africa, women's access to land is regulated through male relations. The law presumes co-ownership of family land as well as the right of women to acquire and register title. Ensuring women's access to land is therefore not enough; secure ownership or co-ownership should be the aim. Current economic recovery initiatives to provide a strong foundation for long-term sustained growth and food security of African countries must urgently address the issue of land tenure especially as it relates to women's access and rights.

Discussions in this report have underscored that existing land tenure systems discriminate against women because women's access to land is governed by male-biased customary laws related to inheritance, allocation, purchase and right of occupancy. In most African countries, women's access to land is mediated by their relationship to men as daughters, wives and sisters. Most women do not own the land upon which they work. However, The value of the ongoing reforms lies in the processes that have been started

and level of commitment and ownership of the land reform issues. The reforms have also provided a better understanding and appreciation of the complexities of gender issues regarding property rights. Governments need to understand and monitor, among other things, whether ongoing reforms are being gender responsive, whether they present a better paradigm of economic empowerment than traditional usufruct rights and whether laws and reforms can play a catalytic role in transforming gender relations.

Women's rights to property are a basic individual right deriving from their rights as human beings. Access to land affects nearly all areas of policy development. It has direct relationship to agricultural production and ensuring long term food security, and it is a basic component of achieving sustainable development. Given the importance of land for economic and social development, good governance and environmental sustainability, the centrality of access to land for poverty reduction needs to be fully articulated in land reform initiatives.

Without specific attention to gender inclusiveness, an important segment of society will be excluded from the benefits of land administration, management, and development. In a context of limited non-farm opportunities as in most rural Africa, land serves as a security against poverty – a means to meet basic needs. Direct advantages of accessing land stems from the possibilities of growing crops, trees or keeping livestock. The indirect advantages include the possibility to mortgage, sell or rent land in times of

crises. Exclusive male rights to land will not automatically render the household less susceptible to poverty and protect all its member's especially female members. There is a strong case for protecting, ensuring and supporting women's rights to land independently from men<sup>45</sup>.

#### 4.1 What are the Future Prospects

1. Land reform initiatives that seek to promote women's access to land must consider the gender dynamics that result from the legal, cultural, economic, political and social issues that govern women's access to, control, ownership and utilization of productive resources. Land reform is not achievable in a quick fix. It is a long-term iterative process, with open and hidden struggles needing feedback, learning and involvement of many stakeholders. If land reform is to work it needs a greater vision, practical goals and targets.
2. The importance of detailed planning before commencing with land reforms has been noted as one of the main lessons from the land reform process in Uganda. To produce credible land policy recommendations policy-makers need to consider the resources and time available and the procedures and feedback from consultation.
3. For reforms to be successful, it is important to engender national constitutions and reform laws. However, it is also crucial to note that legislation alone is not enough. The law needs to agree broadly with what people feel is right and fair, if it is to work. Equally people need not only access to land but also the means to tap into credit, technology, input supplies and markets if they are

to make use of the opportunities which land can provide. Legislation may exist and may even have provisions for protecting women in cases of inheritance and divorce. However, what real access do many poor women have to legal assistance and procedures, especially if they are acting against traditional family or community interests? One without the other is not enough.

4. Wider changes in social and cultural attitudes are necessary for legislation to reach all stakeholders including women. Governments need to foster fuller, genuine and more informed debate about the different options and interests. Broad-based participation adds up to more genuine reform in property relations than a nationally designed and imposed 'big-bang' transformation may ever achieve<sup>46</sup>.
5. Innovative thought has to be given to the institutional arrangements so as to achieve broader goals. The support of legal, customary and family institutions are fundamental if women's access to land is to be preserved and improved. It is important that reforms are consistent with governance structures. Women must have access to and real roles in local customary decision-making bodies.
6. Synthesis research on thematic issues should be conducted to inform the land reform process. The design of the tenure reforms should be based upon a thorough understanding of the livelihood strategies and objectives of local people, and women's realities on land.

<sup>45</sup> Nzioki, 2001

<sup>46</sup> Plamer, 2000.

7. To ensure gender mainstreaming in land reforms it is important to ensure gender training for relevant decision-makers and policy implementers; and providing legal literacy programs, creating media strategies and public forums on women's land rights<sup>47</sup>. Decision-makers, who help establish how land rights are allocated, adjudicated, and protected, need to be more aware that gender inclusive land policies, legislation and land institutions are critical. It is important to raise awareness of some of the most critical issues that threaten women's access to benefits from land.
8. Land tenure programs targeting equitable gender inclusion also need to include monitoring and evaluating components. The indicators assessing the quality and quantity of access to land before, during and after an intervention are essential to make informed decisions about future actions.

## 4.2 The Potential Opportunities

1. Tenure reform is an intensely political area of intervention. Currently reforms appear to be based on a political agenda instead of a process to address poverty and injustice, and gender is not a main priority in land distribution programs. Egalitarian patterns of land ownership generate a different mosaic of economic opportunities and would not only empower women economically but also strengthen their ability to challenge social and political gender inequalities. The linkage between access and ownership of land and poverty alleviation requires more emphasis in Poverty Reduction Strategy Programs.

2. It is crucial for reforms to focus on the needs of women farmers. If women are currently the major food producers, then their productivity will depend not only on improving the basic resource (land) which they use in production, but will also be determined by how much access to and control they have of these resources.
3. The focus of land reforms should be not only be on the process of debating and passing laws and policies, but also to anticipate the problems that will arise from implementing them.
4. It is shown that legislation does little to safeguard women's land rights if it is not created in a participatory planning process that reflects the interests of the local community. Such a process is resource intensive and requires a commitment to long term participatory methods.
5. Legislation is often the end result of a planning process and is intended to enforce the agreements made within the plan. The planning process is meant to increase local participation in land management decisions and help to resolve outstanding conflicts. The resulting laws are a local management statement that should help communities to better participate in land use decision making.
6. Civil society organizations including women's organizations should take interest in policy and legislation pertaining to land to ensure that women's interests are taken into consideration. These organizations can pressure the government to establish awareness raising programs about the policy and legislation and document and bring to

<sup>47</sup> Nzioki, 2001.

the attention of policy-makers and legislators the views of the poor and marginalized, and particularly women, how the policies or laws will impact on women and customary land holders.

These organizations can also network with other land reform processes that have successfully addressed gender issues.

Based on the above, it is recommended that the focus of any initiatives that promote women's equal ownership of, access to and control over land should address the following issues:

- Development of land policies which take into consideration the needs and rights of women.
- Reforms of legal and regulatory frameworks that undermine the status of women and discriminate against women regarding inheritance, ownership and control of land and participation
- Establish a consultative mechanism that would ensure broad based participation and that gender issues are firmly on the agenda.
- Address issues of costs of legal assistance and access to credit to enable women to acquire land and housing through mobilizing resources to set up Funds.
- Set up national commissions to review property and land redistribution issues, institute practical mechanisms and pro-active efforts to inform and permit women to exercise their rights and monitor the enforcement of gender sensitive laws.
- Build Governments capacity to design and implement gender sensitive policies and laws by providing technical and policy advisory support to policy makers and practitioner, and conduct campaigns to impress upon policy makers the importance of linking land rights to productivity.
- Initiate and implement functional literacy programs and Information, Education and Education (IEC) strategies in order to sensitize women on their rights and to change the attitudes of men and young people.
- Create more opportunities for Gender and Land experts to come together to share their work in order to build capacity for gender-aware land reform processes.
- Translate the tenants of gender equality into practice by conducting systematic public awareness campaigns, especially of the media, and advocacy for laws and customary practices that foster women's access to land and housing. Legal provisions should be developed to ensure that the public is educated about the spirit and intent of the law.
- Popularize and disseminate information to enhance knowledge about the impediments to gender sensitive land development and best practices in gender sensitive, inclusive and equitable land policy making and mechanisms through the videos, posters, radio transmission and the internet.
- Forge partnerships between the government, civil society groups and the private sector. Identify and partner with international agencies already working on the issues regarding women's property rights so as avoid duplication and build economies of scale

For a significant majority of rural households, arable land is likely to remain for a long time the single most important source of security against poverty in rural Africa. Land defines social status and political power in the village and structures relationships both within and outside the household. Yet for many women

effective rights to land remain elusive, even as their marital and kin support erodes and female headed households multiply<sup>48</sup>.

It is necessary to strategically focussed interventions are needed - beyond generic principles there are no universally applicable approaches and solutions. There are no guarantees of easy successes. Land reforms are demand time and capacity.

<sup>48</sup> Nzioki

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