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WOMEN'S RIGHTS TO DEVELOPMENT UNDER THE LAND LEGAL REGIME IN UGANDA

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ABSTRACT

The research centered on women and their rights to development under the land legal regime in Uganda. It examined the land law regime in Uganda—statutory law, policies, customary law, and government programmes aiming at promoting respect for women's rights to land. The study was conducted with an expectation of illuminating women's rights to access land in Uganda as provided for in the laws. The study therefore is as a result of observation of the superficial injustice against women in particular the denial of women to own and access land resulting from the application of the loopholes in the statutory laws in place that provide for the rights of ownership of property by women in Uganda as well as customary law that is widespread among Ugandans today. The research examined the efficacy of the laws providing for women's access to land rights in Uganda through looking at how these laws have been applied in matters concerning land. In conclusion, the issue of whether the current provisions of the law deny women access to land rights and thus affecting development are determined. Recommendations and conclusions were made basing on the findings that reflected on the rest of the search. Although the 1995 Constitution of the Republic of Uganda and other international Conventions to which Uganda ratified give protection to women against abuse of their rights, enforcement of those statutory provisions is difficult as they conflict on specific provisions towards women. The level of illiteracy is very high to the extent that women are not aware of the law and policies providing for their rights to access land. On the other hand, discrimination against women has its roots in culture and tradition as established from the research findings. Therefore, without change in the attitudes of men and women with regard to each other's rights, there is no legislation that can achieve genuine gender equality.

Keywords: *Women's Rights, Land Legal Regime, Statutory Law and Customary Law of Uganda, Republic of Uganda Constitution 1995.*

INTRODUCTION

While lack of security of tenure affects millions of people across the world, women face added risks and deprivations: in Africa and South-Asia especially, women are systematically denied their human rights to access, own, control or inherit land and property.¹

The vast majority of women cannot afford to buy land, and usually can only access land and housing through male relatives, which makes their security of tenure dependent on good marital and family relations. At the same time, millions of women in Asia, Africa and Latin America depend critically on land for a livelihood.

Evolution of statutory land tenure systems in Uganda is traced to the 1900 Buganda Agreement and other colonial agreements, namely; Toro Agreement 1900, Ankole Agreement 1901. Under the colonial agreements, the land in Uganda was taken over by the colonial Government which subdivided it between the kings, the notables and the Protectorate Government. The system of land subdivision left out women because land was divided among the notable and male chiefs. Women became landless on the land they previously were owners before the colonial interventions.

However, the 1995 Constitution of the republic of Uganda brought various changes. It recognized, for the first time, customary tenure as a legal tenure alongside the other forms of freehold, leasehold and Mailo. However, the translation of customary rules into modern law has not been straightforward as customary rules have 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 institutions to administer both has proved challenging, leaving much of the anticipated reforms on paper and not implemented.

Section 3 (1) of the Land Act Cap 227 of 1998 recognizes customary tenure as a way of owning land regulated by customary rules, limited to a particular place or group of people. Customary tenure is associated with various problems amongst which include the fact that it impedes development because it does not allow the advancement of land markets, through which, those

¹ An exception can be found among matrilineal societies of north-eastern India, where only women can own land and traditionally only the youngest daughter can inherit. From: Yariisa Richmond Lyndgdoh, *Effect of Tribal Land Tenure Systems on Urban Development: Case Study of Shillong, north-east India*, paper presented at Seminar on Tenure Security Policies, Johannesburg, July 1999. In most other matrilineal societies however, it is the male relatives of the women that inherit land.

who need land for development can acquire it; and that it discriminates against women, and does not accord them land rights due to patriarchal system which is explained by male dominance.

According to Pelum, given such challenges customary tenure leads to marginalization of women's land rights and greatly undermines agricultural production and development.²

The existing scenario is explained by some traditional customs and norms of male dominance that is explained by the patriarchy as an ideology though it has also be observed that a number of traditional African societies have a system that respect women's ownership of rights. Watto (2009) indicates opposition to gender equity, (misinterpretation of) religion orientation towards treating women as subordinate partners and approval to violence against women were identified as multiple dimensions of conventional patriarchal ideology of gender relation. It is, however, to the credit of a number of religions for example Islam that they guarantees women right to ownership of land and other properties.

The female counterparts parse has a vital role in terms of land development but they are never given an opportunity to prove their competence. Uganda has a rich legal and regulatory environment hailed for its outstanding recognition of women's rights. Policy and legal frameworks for redressing gender imbalances, harmonizing and streamlining the complex tenure regimes for equitable access to land and security of tenure exist. However, the presence of such impressive frameworks on the gender equality has not curtailed gender disparities.

Whereas the 1995 Constitution of the Republic of Uganda and international human rights conventions to which Uganda is a party give protection to women among others against abuse of their rights, enforcement of these statutory provisions is difficult. There is a conflict between the rights under statutory law and culture and traditions deeply rooted in the Ugandan societies. It is common practice under the ideology of patriarchy for property to be owned by men exclusively.

Consequently, there are few women land owners in Uganda, yet the country's backbone depends on women's production. The laws and policies regarding land tend to discourage production and this can be indicated by the degrees in production on cultivation land (UBOS Report, 2010).

² PELUM Uganda is a network of 34 civil society organizations involved in rural development. Since 1995, PELUM Uganda has been working to improve the livelihoods of small-scale farmers and the sustainability of farming communities by fostering ecological land use management.

There is little if any, attempt to unveil experience that women might have over and above men through understanding women issues. According to Bottomley and Lim (2007), feminism land and development offer many possible transformations, but it all must start with the material conditions which impact on women's access to land and in turn impact on development. It is thus established that there exists a relatively positive policy environment for women's empowerment at the national and international levels. Government itself has made a number of commitments. However, the translation of this policy environment to benefit the grassroots women has been a challenge. Government needs to do more to align its constitutional commitments to other laws and the development plans of the country. More work needs to be done for women to fully benefit and have the quality of their lives improved.

LITERATURE REVIEW

Concepts, Ideas and Opinions from Authors and Experts

Land is the most important resource in Uganda because people depend on it for cultivation and therefore their livelihoods. In Uganda, as elsewhere in the world, unequal access to land is one of the most important forms of economic inequality between men and women and has consequences for women as social and political actors (Agarwal 1995).

According to Agarwal (1995), women provide 70-80% of all agricultural labour and 90% of all labour involving food production in Uganda, yet they only own a fraction of land. Women are generally responsible for providing for the household; therefore, their access to land for food production is critical to the welfare of the entire household.

Economically, women produce over 70% of the total agricultural output but ownership, and control over land, their labour, technological innovations and above all the benefits thereof is minimal or non-existent. That is why women are the poorest of the poor (World Bank, 1995). Traditional restrictions to women's rights to own land reduce their ability to negotiate within the household.

The Uganda Plan for Modernisation of Agriculture states that women have limited economic opportunities due to their societal roles and responsibilities, their low social status, relationships with men, lack of ownership and access to productive resources, low participation in decision making and high workload (PMA, 2000). The allocation of time within the household is an

important gender issue in many parts of Uganda. There is evidence in rural areas that women work considerably longer hours than men when domestic work is taken into account (PEAP, 2000).

Women through their triple roles provide a critical though often unacknowledged contribution to economic growth (Stein, 1997). Economically rural women are the poorest. The need for capital is acute for women whose dependence on male relatives leaves them without land of their own or other property to use as collateral for credit in the formal banking system.

Accessing a loan is not easy for women no matter what their marital status holds. There are limited micro finance institutions in rural settings, which marginalize the small holder sector at the grassroots. In order to cope, women have established community based organizations as support systems both economically and socially (Snyder, 2000).

Land has a wide variety of uses in the organization of livelihoods and is also the basis of social and political power, and therefore at the heart of gender inequalities in the control of resources (Afonja, 2005). If the provisions relating to land law and policy in Africa are changed and the changes implemented, it would reduce gender inequalities in access to, control and ownership of land and enable women to leverage their labour investment in land and other reproductive duties in their families (Feminist Africa 12 2009).

According to Mugambwa (2002), whereas on one hand the Land Act deal mainly with land ownership, administration and resolution of land disputes, the registration of titles Act mainly considers registration and transfer of titles to land. On the other hand customary law constitutes an important source of land for it basically applies to land held under customary land tenure.

According to (Obaikol, 2009) the risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has direct access to income and productive assets such as land, and not just access mediated through her husband or other male family members.

Governments play an important role by determining how property rights are defined, how they can be enforced, and how they evolve in line with changing economic conditions. This, in turn provides a basis for the level of tenure security enjoyed by individual landowners and their ability and willingness to exchange such rights with others. All this suggests that access to land rights is a

social construct. Land is not merely the asset itself, but consensus between people about how the land should be held, used, and exchanged.

The domestic relations review report says that men dominate women and are regarded by society as heads of households, decision-makers and resource owners. This dominance is found in both the public arena and private sphere (UWONET, 2001).

The Plan for Modernisation of Agriculture points out that women face barriers to participation in community activities that include refusal by husbands, discrimination, subordinate roles, weak leaders, lack of mobilisation, lack of time and failure to see the benefit of their participation (PMA, 2000).

The Action Aid Uganda Gender Policy states that men and women, regardless of age and class go through unequal power and social relations. These are some of the major causes of poverty in the country. That in Uganda, poverty whether among women or men goes beyond lack of access and control over resources, it is also influenced by beliefs, attitudes and cultural practices that tie the people down and influence their progress and participation in decision making. The policy further states that the unequal social relations accord to girls and women a subordinate and low status in comparison to boys and men and that it is a major constraint towards the overall development of the country.

Lastly the policy states that poverty is brought about and is seen differently in girl/women and boys/men and has a more negative impact on the former than the

According to Jackson, (1996), the concept of poverty cannot be taken as a proxy for the subordinate status of women and is no substitute for gender analysis which transcends class divisions and material definitions of deprivation. This does not rule out the fact that there is some relationship between economic development and women empowerment. Kabeer, (1996) argued that doing something about women is good for economic development or even more narrowly, economic growth. It is by empowering women that poverty will be eradicated but it is not necessarily that if we fight poverty, we will do a lot for women (Kharono, 1998).

Theoretical Perspectives

According to Afonja (2005), the basic principle underlying feminist theory is bridging of the gap between male and female dominance by advocating for equality. The gaps amongst others include exclusion of women from decision making process, opposition to gender equality, treatment of women as subordinate partners and denying them access and ownership of property rights amongst which include land.

To achieve their objectives, a shift from traditional customs and norms is reflected through legislative and judicial systems, women emancipation programs and so many other developments. However, the question of contention is whether female involvement would contribute towards development of land or not.

According to Feminist Africa 12 (2009), in the process of developing jurisprudence, African legal feminist has drawn inspiration from the contribution of western ideological movements and when they make use of such theories originating in the west, attempts are made to interrogate their context, find differences and similarities with the local contexts and engage with the extent they can be usefully applied (Feminist Africa 12, 2009). However, caution must be taken to avoid superimposition of such paradigms onto the condition of African women a consequence of which might be disastrous.

For instance, in Uganda, attempts to gain co-ownership right for married women were dropped upon establishing that it was not that what women need but effective control of Land they tilled and security of tenure. Thus the amended law carries guaranteed security of occupation of the matrimonial home of the married (<http://www.gwsafrica.org/teaching-resources/gender-law/african-activism>).

The Land Act under Section 39 provides for protection of family land by restricting transfer of land by family members. In relation to women, the act is to the effect that a person is not permitted to transfer land without prior consent of the spouse.

The issue of consent was further highlighted in a presentation by the (Programme Officer 2011; Lands Use, Uganda Land Alliance (ULA) in which it was observed that the Land Act provides for consent for protection of family land.

Rugadya (2007), observes that despite the presence of a firm constitutional base and clearly state legal requirements, “the consent to transactions on land has been routinely ignored and are, in any

event, not applicable to widows and divorcees, because the implementers that are in charge of ensuring compliance are not aware or intentionally ignore what they feel does not to adhere to customs. They are not gender sensitive in their understanding of rights over land therefore cannot be expected to enforce”.

However, regardless of the consent provision, Uganda as country still lags behinds in terms of development. The female counterparts parse have a vital role in terms of land development but they are never given an opportunity to prove their competence. The provisions of consent have not been observed at any point and land has been transferred or even mortgaged for purposes of development but the proceeds of such transaction are never realized simply because the funds meant for development are diverted to non-developmental areas without knowledge of the women.

In addition to the above, there is existence of vulnerability that stems from power imbalances and possible domestic violence within a marital home. Although Uganda’s Land Act (1998) establishes restrictions on the transfer of land by a spouse without the written consent of a wife, not all women know of these rights or have the power or access to justice to fight against their husbands’ decisions. Should a woman disagree with her husband’s desire to sell family land, her husband may use violence or coercion to subdue her.

Related Studies

Beginning in the early 1970s, the World Bank, which has been a major influence on Africa macroeconomic policies as well as land policy, initially pushed for land reforms with a strong emphasis on individual ownership through registered freehold titled land. The bank funded a series of land registration and titling projects in the 1980s. Their aim was to promote development by eliminating communal tenure systems through more efficient land use and more secure land ownership.

As the World Bank policies were implemented, a key study in 1994 found that security of title was not sufficient to invest in land and increase production due to other exogenous factors like land abundance, farm size, and access to credit and water. Moreover pastoralists and other seasonal users of land were losing out as land became titled and registered. These findings led to policies that involve the more selective and gradual introduction of titling deregistration.

One strand in the Bank works on issues of gender, growth, and poverty and looks at how women's lack access to inputs and resources like land, as well as their disadvantages bargaining position within the household, result in negative development outcomes. In the contemporary context, some policy makers see legal reforms regarding land as serving little purpose in the absence of women's education and economic independence.

Legal measures were seen as a way to diminish the importance of clan and communal control over land and instead placed individual men in ownership of land parcels. Women were in this way side-lined, without the necessary legal claims of land. Their ability to inherit land was diminished by male elders who gained in importance as legal land owners. It should be pointed out that the nation of individual rights was not new one.

Informal land sales have a long history in Africa dating at least back to the early colonial period, but the individual rights of indigenous tenure systems were not the equivalent of contemporary notions of private property. For example, the Bakiga in Uganda, Land rights are embedded in concrete local practices, social relations, obligations and responsibilities and they don't have much meaning in the abstract Land ownership as a concept similarly does not have the same meaning as we might think of when we think of individual property ownership (Bosworth, 1995).

With the privatization of land, women not only lost their legal claims to Land , but they also did not have control over the cash that men did in order to purchase the land moreover, they did not own land that would have permitted them to accumulate capital with which to purchase land. They generally did not control the additional labour to work the field, nor the animals and farms tools, nor did they control the income from the sale of crops- all of which made it difficult for them to access capital with which to purchase land of their own. In other instances women's purchase of land was predicted upon the approval and signature of male relative. There was also outright discrimination on the part of land administrators against the sale of land to women (Lastarria-Cornhiel, 1997).

Literature shows that women's rights to land were curtailed by the onset of colonialism, not just through the titling and registration of land but also through dramatically changed patterns of land use and occupancy. The emphasis on cash crop production diminished the importance of women's subsistence production, and sharpened gender segregation in the division of labour in way that

disadvantaged women. Land security and increase in land value made it even more difficult for women to access land (Davison, 1988).

Debate surrounding how to strengthen women's land rights in Uganda has gone on for a long time. Because of the underlying assumption that under patrilineal customary systems of land tenure men have individualized land rights, the women's land rights debate tends to centre on the conception that customary systems are discriminatory against women (Adoko and Akin, 2011).

In the case of **Babiruga V. Karegyesa**³, Karokora J, as he then was argued that customs which provided that land formally cultivated by the mother automatically reverted to the children upon her death were repugnant for they deprived a man as a head of a family of his powers to control the family property. Such inclination would restrict decision relating to land development to being made by men hence under looking women ideas which could be vital in development. In her book entitled "The Law of Succession in Uganda, Women Inheritance Law and Practices," Okumu-Wengi gives examples of customary succession laws among the Buganda, Madi, Toro, and the Lugbara and concludes that customary laws of those tribes do not recognize any trust or equitable contribution of a wife to matrimonial property other than chattels. That the family property is presumed to belong to husband and that it is in a rare case that courts or law have applied the doctrine of equality to protect the contributing interest of women to the family property.

Judicial decisions may annul or limit customary norms. In Nigeria, the Enugu Court of Appeal invalidated norms providing for inheritance by male family members only (**Mojekwu v. Mojekwu, 1997, 7 NWLR 283**) and subjecting inheritance by daughters to their undertaking to remain unmarried and raise their brothers (**Mojekwu v. Ejikeme, 2000, 5 NWLR 402**). On the other hand, the courts of

some countries have upheld rigid and discriminatory interpretations of customary law. For instance, the Supreme Court of Zimbabwe upheld a customary norm excluding women from intestate succession, naming as the heir the second male child instead of the eldest female child (**Magaya v. Magaya, 1998**)

Judicial decisions have also played an important role in determining women's land rights, particularly by invalidating discriminatory norms on constitutional grounds. A landmark case is

³ Unreported

Ephrahim v. Pastory and Another (Mwanza PC, Civil Appeal No. 70 of 1989), decided by the High Court of the United Republic of Tanzania. There, a Haya woman who had inherited land from her father sold it outside the clan. A male clan member brought an action to declare the sale void, as women could not sell land under Haya customary law (as codified in the Declaration of Customary Law of 1963). The Tanzanian High Court invalidated the norm on the basis of the principle of non-discrimination (affirmed in the amended Tanzanian Constitution and in international human rights treaties ratified by the United Republic of Tanzania). The court stated therefore that Haya women could sell land on the same conditions as Haya men, and held the disputed land sale valid.

To ensure appropriate solutions, policy makers and women's rights activists must endeavour to understand customary land laws correctly. As described above, land rights for all categories of women are already provided for under customary tenure laws. Once customary laws strengthening women's land rights and underlining men's responsibilities to protect and defend women's and children's land rights are adopted by consensus of customary leaders and written down, then customary laws can no longer be manipulated by land grabbers to legitimize their bad faith actions

In Uganda where customary laws are not yet documented, policymakers and women activists should promote efforts to have them codified. This is already proposed in the new National Land Policy (NLP)

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