

## **Land Tenure Regimes and Women's Land Rights in Uganda; Legality and the Land Legal Framework.**

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### **ABSTRACT**

**A review on the implications of land tenure regimes on women's land rights is relevant in the Ugandan context and other countries in Africa due to the fact that land is in many ways the most important productive resource to possess or have access to. Rights over land are associated with social identity and help to regulate what people do with that land as a source of livelihood. Despite the critical contribution of land resource, it is not equitably distributed. The position of women in land accessibility, control and ownership is still precarious under the different tenure regimes in Uganda. A literature review was conducted to assess the implications of the tenure regimes on women land rights in Uganda, with specific reference to the land legality and the legal framework. From the literature reviewed, the study indicates that women's right to land under the land holding systems are largely limited to access rights but not ownership rights. Ugandan women face significant challenges accessing justice when their rights are violated. The lack of clear distinction between legitimacy and legality of land rights makes it difficult to attain effective women's rights to land. A combination of contemporary and customary law still restricts land rights of women in that the statutory instruments in place have failed to grant women the right to land. The study recommends that the necessary change required to narrow the gender gap in land rights necessitates simultaneous struggles over the norms and legal structures governing women's land rights.**

**Keywords:** Land Tenure Regimes; Women's Land Rights; Legality; Land Legal Frame work.

### **BACKGROUND**

Land tenure infers the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and the rights individuals and communities have with regard to occupy, to use, to develop, to inherit, and to transfer land [1] . Bromley [2] argues that rights in land can be in form in of the rights of use associated by degrees of freedom to lease out, mortgage, bequeath or sell. Land rights thus can stem from inheritance on an individual or joint family basis, from community membership, from transfers by the state or from tenancy arrangements, purchase and so on. The different tenure systems present different ways in which the rights, restrictions and responsibilities that people have with respect to land are held [3] and the possession or holding of the rights associated with each parcel of land held by women [4];[5].

Similarly, land tenure implies the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land or the rights individuals and communities have with regard to occupy, to use, to develop, to inherit, and to transfer land [1]

In pre-colonial Africa, land was generally accessed and used but not owned [6]. No one, regardless of being male or female, owned land individually. It was communally owned and women were charged with tilling the gardens, planting, manning the planted gardens, managing and controlling the produce for the household [7]. This means that a woman's capacity to clear more virgin lands would expand or increase the land she was able to access. Under the Bairu<sup>20</sup> families, women had the autonomy to make economic decisions on which land to plant what and when. They managed the harvests and made sure that seeds for the next planting season were well preserved. They decided on how to manage the food for consumption, for storage and for exchange [8]. The Bahima<sup>21</sup> women were also charged with churning milk and serving it to family members in addition to exchanging ghee or milk for food items with bairu families [9]. Therefore once a family had acquired land, it had to make sure that the land was well protected and used productively to save it from reverting to the community for another interested user [10]; [7]. With the advent of the colonial era in Uganda, there were fundamental changes in the land tenure due to the cash economy that ultimately necessitated individualization of land.

Land tenure regimes in Uganda are classified under three categories namely: the legal regime governing tenure, for example, whether the regime is statutory (formal) or customary (informal). The second is in terms of the manner in which such land is used, for example, whether as private, public, or government land. The third is in terms of the quantum of rights held i.e. whether absolute (timeless bound) or time-bound [11]. The Constitution (1995) and the Land Act (1998) have classified land tenure only in terms of the first and last categories. Both legal instruments have not classified land tenure in terms of the manner nor the purpose for which such land is held whether as private, government, public, or community. Both provide that land in Uganda may be held in terms of four tenure categories, namely; customary tenure (68.6%), freehold (18.6%), Mailo (9.2%) and leasehold (3.6%) [12].

*Customary land tenure system* is the most common in Uganda and it is where land is owned and disposed of in accordance to patrilineal customs and traditions where by access to land is governed by the customs, rules, and regulations of the community [13]. According to customary tenure regulations individual ownership of land is not recognized but the rights of the individual to use and control land is subject to superintendence by her/his family, clan or community [14]. In practice customary tenure are categorized either as communal/tribal tenure where ownership of land occupied by the community or tribe is vested in the paramount tribal leader as owner, who holds it in trust for the entire group, or clan/family tenure where land is vested in the head of the group as owner or trustee for the entire group [15]. Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by parliament. In the western part of the country alone, it comprises 47% of the total land holdings [16].

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<sup>20</sup> Bairu refer to agricultural communities in Ankole. These were specifically engaged in food crop production.

<sup>21</sup> Bahima are pastoralists in Ankole and they were the ruling class of the Ankole Kingdom

*Mailo land tenure* system was introduced as a result of the 1900 Buganda Agreement. Under this agreement, 9000 sq. miles of land were divided between the King (Kabaka), other notables and the Protectorate government. This type of tenure was mainly established in Uganda to reward colonial agents who advanced British interests in many regions of the country [16]. An important feature of Mailo system is that, much of the land is used by tenants but the tenure security on the land they farm is restricted. The land cannot be subdivided or sold but passed intact from original office holder to the successor. Under this system land is held in perpetuity and a certificate of title is issued.

*Freehold tenure* is a system whereby owners of the land have a title to their land which allows them to hold the registered land indefinitely [17]; [16]. The Land Act recognizes it as one of the four regimes through which access to land rights may be obtained. The landowner is given complete use and control rights to sell, lease, transfer, subdivide, mortgage and bequeath the land as they see fit, so long as it is done in a manner consistent with the laws of Uganda. The 1998 Uganda Land Act defines 'freehold tenure' as a land tenure that develops its legitimacy from the Constitution and the written law. Certificates of title for this tenure are pursued directly via government authorities who involve the Sub-county land office, the district land office plus the Ministry of Lands zonal offices. Though it guarantees security of tenure, it is limited to a small category of individuals, who are usually the men, who can ably go through the process of acquiring the certificates of title [18].

*Leasehold tenure* is a system where the owner of the land grants the tenant exclusive use of the land, usually for a specific period of time [19]. The leasehold owner therefore does not have control rights (rent, transfer, bequeath, sell). Land may also be leased from the state to individuals for typical lease periods of five, 45, or 99 years [17]; [16]. In return, the tenant usually pays an annual rent or service under specified terms and conditions. Leaseholders may or may not hold formal contracts with the owner. There are two types of leasehold tenure agreements, private leases given to individual landlords and official or statutory leases given to individuals and or corporate groups under public act terms. The advantage of the leasehold system is that the lesser can attach conditions to leases and has the right to revoke ownership in case of abuse [20].

Land tenure regimes are important in assessing women's land rights. According to Mamdan [21], rights over land are important where agriculture and natural resource dependent livelihoods are the mainstay of the economy. He asserts that land tenure security provide incentives for investment, provide decision making authority to make investments on that land, regulate what others do with that land and provide people with a source of livelihood and fall back options that reduce vulnerability. Mamdan [21] believes that rights to land is associated with social identity and thus empowers, gives status and this makes it critical to examine not only household level land rights but also the distribution of land rights within the household.

## METHODOLOGY

A desk research was conducted through document analysis and secondary data that helped to evaluate the implication of land tenure regimes on women's land rights in Uganda with specific assessment of the legality and the legal framework. The documents analyzed included among others; Government of Uganda legal and policy documents and reports including the Constitution

of The Republic of Uganda, 1995; The Land Act, 1998; The Land (Amendment) Act, 2004 and 2010; The National Land Policy, 2013; UBOS and FAO reports.

### **WOMEN LAND RIGHTS UNDER THE INFORMAL/NORMATIVE FRAMEWORK**

The normative/informal determinants of women's land rights refer to the values and units of socialization that act to encourage or enforce social activity and outcomes that ought to (with respect to the norms implicit in those structures) occur, while discouraging or preventing social activity that ought not occur [22]. Under customary law, all land is vested in the clan and is held in trust for future generations [23]. Land held under customary tenure system is governed by rules generally accepted as binding and authoritative by the class of persons to which it applies; and applicable to any persons acquiring land in that area in accordance with those rules [11]. Traditionally, clan leaders – elder members of the clan, and almost exclusively men – make decisions about how, to whom, and for what purposes clan land is allocated [24]. This stewardship concept is gradually giving way to match a more western concept of ownership, with (male) household heads increasingly conceiving of and disposing of household land as their own individual property [24]. This trend is reinforced by the growing privatization of land and customary land owners being encouraged to acquire certificates of ownership. This weakened custom is also likely to impede the application and enforcement of formal protections explicitly extended to women's land rights in the customary setting by the Land Act 1998 and Constitution 1995.

The customary land law in Uganda is not documented but according to practice, women's rights to land are limited use rights that depend on their relationships with male family members (usually the father or husband), while men tend to have inherent rights to land by birthright [4]. Asiimwe [4] maintains that women's rights are secondary to those of men, and can change depending on the occurrence or non-occurrence of key events, such as marriage, separation, or the death of a spouse or family member. Compared to their male relatives, women generally have access to less land, have fewer rights to the land they can access, and their land rights are less secure.

More still, custom provides that an unmarried girl living with her natal family, can access land through her father, who is normally the household head. Her right to use this land lasts as long as she remains unmarried. However, whereas male family members are allocated land upon marriage, a female loses her right to natal land when she marries. An unmarried female is typically reminded time and again to get a suitor and marry off. Traditionally, arranged marriages solved that anxiety. Marriages would be arranged by parents of the 'to-be' couple without involvement of either party. However, that practice has died out with the increase of modernity. Therefore, the longer a woman stays unmarried, the more the pressure she gets from her brothers to move off the land. A married woman may also become vulnerable if her husband takes a second wife. To provide land for the new wife, a husband will generally take land from his first wife's parcel [25].

A cohabitating woman is especially vulnerable under customary rules, under which a cohabitating woman is not allocated any rights to her partner's land [23]. Cohabitation is an arrangement where people who are not married decide to live together [26]; [27]. If such relationship falls apart, a cohabitating woman is not entitled for any share of land at her partner's home even if she has children with the partner. Hannay [23] asserts that a cohabitating woman is in most cases

forced to return to her natal home with her children, where she may find that her rights to natal land are denied by her brothers or other family members. Though cohabitation is an increasingly common practice in Uganda, cohabitation presents a serious challenge to women's land tenure security.

Customarily, a widow becomes the head of the household on the death of her husband. She then has the responsibility of managing the land and allocating it to male children when they become adults and get married. After her husband's death, a widow may choose to continue to live in her marital home without remarrying, return to her maiden home, or pick an inheritor within her husband's family or from outside the family [23]. When a widow remarries outside the family of the late husband, she loses her rights to the land and other property she may have been entitled to during her marriage with the deceased husband. Widow inheritance was common before the advent of HIV and other social and economic transformations in society. Currently, the practice is less common and there are few women who remarry after the death of their husbands [28].

The practice of paying bride price contributes to women's vulnerability upon divorce, since women are regarded as part of the man's acquired property [29]. According to Anderson [30], a divorced woman is expected to return to her natal land, and in order to be able to remarry, she must repay the bride price to her ex-husband's family. Unlike widows, a divorced woman is instead expected to return home and get land allocation from her father or mother if still alive or from the brother if her parents are deceased. Traditionally, this allocation would come from unallocated land set aside for such events. Matembe [31] agrees with Alupo [29] and Anderson [30] and asserts that customary rules require that a divorced woman or her family repay the bride price to the husband's family in order to formalize the divorce. These factors contribute to the fact that many women are not welcomed home in the event that they divorce, particularly if they bring their children with them.

### **THE FORMAL/STATUTORY LEGAL FRAMEWORK FOR WOMEN'S LAND RIGHTS IN UGANDA; A HISTORICAL PERSPECTIVE.**

Land use in Uganda has undergone an evolutionary transformation from food gathering and hunting to sedentary subsistence and later to commercial farming and semi-subsistence farming systems [10]; [7]; [6]; [8]. If a person settled or resided on a piece of land, then he obtained access rights [6]. This was not only for Uganda but also for other societies in Africa in that families acquired land by clearing bushes, by land transfer, inheritance or through feudal system [7]. It is realized that being an acceptable member of the community guaranteed one to acquire land irrespective of sex, religion or economic status.

During the colonial era when Uganda was declared a British protectorate, there were fundamental changes in the land tenure [32]; [33]. Individualization of land ownership became prominent because colonial states were more interested in having land being used as sources of raw materials for industrial production. This ultimately had an impact on land access and utilization in that the interests and rights of parties involved greatly depended on the activities that would be undertaken on such land. Whereas women had enjoyed autonomy on land use and control during the pre-colonial era, the cash economy could not guarantee this anymore [8]. Whereas the traditional customary tenure guaranteed Ugandan women secure use rights, the colonial policies

and direct legislation, by exerting pressure on customary tenure institutions, altered the women's land rights [33]. Family heads, dominantly male, assumed greater autonomy in decisions regarding land access, use and control, thus rendering women's use rights less secure than before [32]. The colonial legal systems left intact the in-built traditions and customs adhered to by various patriarchal societies in Uganda, which rendered it difficult for women to inherit and own land [13].

The situation was worsened by the signing of the 1900 Buganda agreement because the land structure in Buganda and beyond greatly changed. This agreement was between Buganda kingdom and the British Colonial government. Under this agreement, Mailo land was donated to the King and Chiefs. Mailo holders acquired certificates for land occupied by poor peasants who hence force turned into tenants. This system created a situation where peasants and immigrants were rendered landless and had to pay rent called "Obusulu" or "Envunjo" to the land holders [10]. Nsibambi [10] notes that these payments were later enshrined into law. In other parts of the country where traditional leadership structures were not so established, all customary land was converted into freehold without consulting indigenous leaders [34]. From the 1900 Buganda agreement up to present day, there has been transformation in the land tenure and management regimes that have had various implications on women land rights in Uganda.

### **The 1922 Crown Land (Declaration) Ordinance**

This ordinance had all the land outside Buganda converted into crown land where all the powers of management and administration were vested under the Government of Uganda [33]. Freehold and leasehold titles were issued out of customary land and the occupiers who had no documented proof of ownership either moved out of the land or remained as tenants at will [34] ; [33]. This implies that customary land holders were not recognized by this ordinance. Women's status in land rights were not protected by this ordinance since most of them could not afford to have freehold or leasehold titles and thus unable to prove ownership of land even if they may have had only access rights.

### **The 1924 Registration of Titles Act**

Uganda uses the Torrens system of titles registration, which was introduced through the Registration of Titles Act 1924 [23]. Under this act, possession of a certificate is a conclusive evidence of land ownership. The act however does not recognize customary tenure unless converted to freehold. Though section 3 of the act disclaims any intentions to limit the application of laws providing for the property of married women, it not clearly outlined how a married woman's property rights can be protected if her name does not appear on the certificate. Even if both names appear on the certificate, it is not clearly stated how the property would be handled in case of dissolution of marriage. This leaves women vulnerable in the face of societal pressures where men are presumed to be owners of land.

### **The 1975 Land Decree**

The first decade of independent Uganda (Uganda got independence in 1962) did not have any radical transformation in the land tenure and management regime apart from the Public Land Act which was passed and adopted in 1969. This Act provided protection of customary land rights [33]. The radical change in respect of land and property relations was experienced in 1975 when

the then President of the Republic of Uganda, Idi Amin, issued a decree 'The Land Reform Decree' (Decree No. 3 of 1975) which declared all land in Uganda to be public land. The Decree vested all land in the State to be held in trust for the people of Uganda and to be administered by the Uganda Land Commission on the basis of leasehold tenure system only [35]; [32]. The Land Reform Decree thus reduced the tenure systems from four (leasehold, customary, Mailo and freehold) to two (leasehold and customary). The Decree abolished all freehold interests in land except where these were vested in the State in which case these were transferred to the Land Commission. It also abolished the Mailo system of land tenure and converted them into leasehold of 99 years where these were vested in public bodies and to 999 years where these were held by individuals with effect from 1st June 1975. Consent from the Uganda Land Commission was required before one would transfer his leasehold [20]. This still left women's rights of land ownership, access and control in a precarious situation.

### **The 1995 Constitution**

In the late 1990s, other major legal reforms that took place in the country started with the promulgation of the 1995 Constitution [34]. The Government focused on the design of policies and programs all geared towards addressing the gender gap in land use and control and putting in place gender responsive legislative and policy framework to safeguard and strengthen women's rights in land [33]. Chapter 4 of the Constitution (and in particular articles 31–33) provides for equality between men and women, including in respect to the acquisition and holding of land. Under Article 31 (1) of the Constitution, men and women above the age of eighteen years are accorded equal rights in marriage, during marriage and at its dissolution [36]. These provisions on equality are further strengthened by the principles of affirmative action, provided for under Articles 21, 32 and 33 of the Constitution, which seek to remedy the historic discrimination faced by marginalized groups, including women, and redress the social imbalances that exist against them [37].

The Uganda Constitution (1995) is guided by the numerous international human rights standards and instruments that enshrine the equal rights of women to land and property. For example, the Universal Declaration of Human Rights sets the principle of non-discrimination based on sex in the enjoyment of rights it guarantees. Additional provisions and standards are highlighted in Article 3 of the International Covenant on Economic, Social and Cultural Rights. The covenant calls on states to "to ensure the equal rights of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant," and prohibits discrimination based on sex. The United Nations Committee on Economic, Social and Cultural Rights also states that "women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so." [38].

### **The 1998 Land Act**

The 1998 land Act is yet another legal instrument that provides for some protection of women's land rights by emphasizing that the consent of a spouse must be given in the event of any transaction on family land under customary tenure system [37]. The act also operationalizes the principles laid down in the country's constitution, providing for tenure, ownership, and management of land; consolidating the law relating to tenure, ownership, and management of land; and providing for other related or incidental matters [39]. While the Land Act (Cap 227)

caters for a spouse to some extent and prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land, it does not tackle the land rights of widows, divorcees and women in co-habitation [11];[40]. This provision only recognizes the wife's rights to have a say in the administration of family land as long as the marriage persists, but does not guarantee her any rights to land if the marriage should end [41]; [42].

The Land Act also requires that the Uganda Land Commission should have at least one female out of its five members, one third of the membership of the District Land Boards should be female, and land committees at the parish level should have at least one woman out of the four members [18]; [20]. This is strengthened by the Land Sector Strategic Plan 2001–2011 which is the framework for implementing sector-wide reforms and land management including the Land Act [39]. The plan facilitates the decentralization of land services and the devolution of land management.

Uganda is well-known for its 1998 Land Act debates, during which time Ugandan women's rights activists and Parliamentarians struggled to have a clause on co-ownership of land included. This clause was never realized, as it was technically omitted at the final stage of legislation and was regarded as the 'lost clause' [43]. Thus, the law on land distribution, management and accessibility in Uganda today inadequately provides for women's access, control and ownership of land. To most policy-makers and women in more privileged social positions, the current land laws accords protection to women; however, it is obvious that rural, illiterate women have not similarly benefited from the policies that are in place. Women in rural communities are still largely at the mercy of customary practices and traditional legal systems that most often look to men as sole owners of property, including land [37]. The Succession Act (2011) which provides for succession to the estates of persons dying intestate (without a written will) plus the Marriage and Divorce Bill that recognizes the rights of women in co-habitation have been contested and shelved for a long time though currently on the order paper in the 10th parliament.

### **The 2013 National land Policy**

The post-independence attempts to settle the land question by the Land Reform Decree 1975, the 1995 Constitution of Uganda, and the Land Act 1998 failed to deal with the fundamental issues in land tenure due to absence of clear land policy principles to inform the enactment of legislation that offers politically and socially acceptable and technically feasible solutions. The 2013 National Land Policy was thus approved in February 2013 by Cabinet as the framework for development and use of Uganda's land resources for the next decade [44]. The policy recognizes Government's attempts to redress women's inability to own, inherit or purchase land due to restrictive practices under customary land tenure by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use, and further requiring spousal consent to transactions involving family land in the Constitution of Uganda, 1995, and Land Act, 1998 [40]; [4]. Uganda's National Land Policy has the right recommendations including: (i) making legal provisions for spousal co-ownership of family land and matrimonial home; (ii) implementation of a matrimonial property legislation, similar to the long standing Marriage and Divorce Bill 2009, that aims to protect interests of spouses; (iii) amending the Succession Act (cap 162) to provide for the right to succession and inheritance of family land by women as was attempted in the pending Succession Act (2011); and (iv) waging formidable sensitization and public awareness campaigns on discrimination against women [44] ; [37].

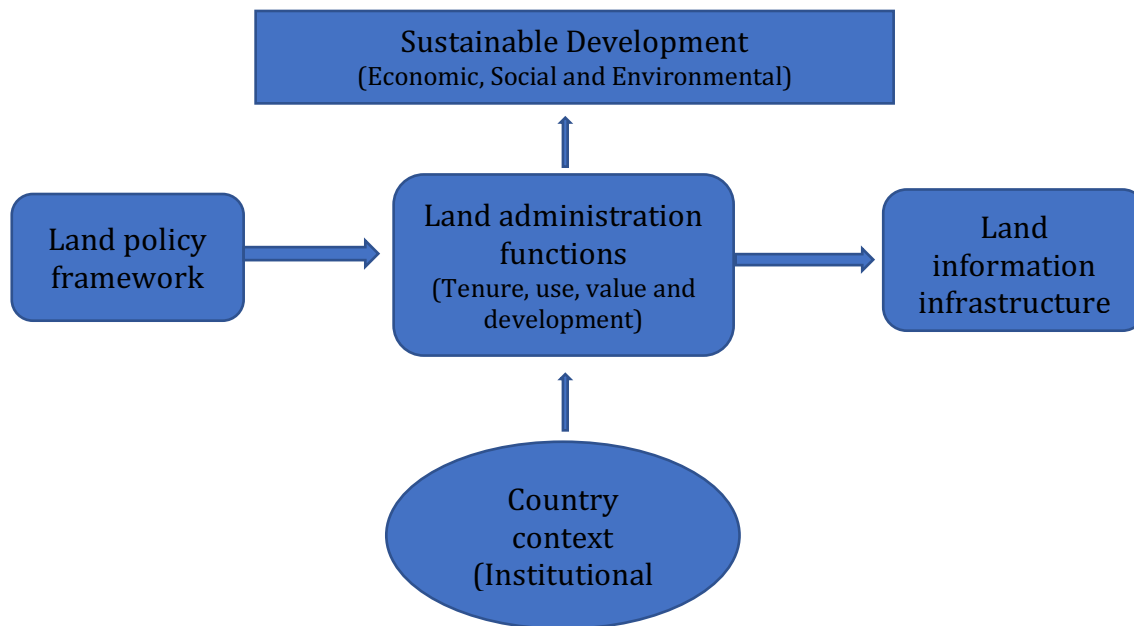


This policy also proposes measures to overhaul the dysfunctional land administration and land management system and structures through the creation of a National Land Agency or Authority and thus, divesting most of the land administration functions [40]; [45]. It recommends for the re-institution of Land Tribunals and creation of a special division in the Magistrates Courts, and the High Court, for handling land disputes. The policy presupposes that the pressure for resolution of disputes would be relieved by the formal acceptance of the dual operation of both customary system and statutory system in land rights administration, land dispute resolution and land management by legally empowering customary authorities to perform these functions [40]; [45]. However, in practice, the power of state administration has overtaken customary authorities in that people prefer to involve LCs in land sales and land disputes because they are considered to be more legitimate than customary institutions [24].

### **ANALYSIS OF THE LAND ADMINISTRATION SYSTEM IN UGANDA**

Land administration is “the way in which the rules of land tenure are applied and made operational” [46]. Land administration covers institutions and processes associated with land rights regulation, among which the recording of rights is prominent [47]. Wily [47] looks at land administration as processes of determining, recording, and disseminating information about tenure, value, and use of land when implementing land management policies. In RoU [11], land administration entails the mobilization of institutional mechanisms and personnel for land delivery, registration and titling, demarcation and survey, land information and inventory services and land market regulations. FAO [46] clarifies that the processes of land administration ought to include the transfer of rights in land from one party to another through sale, lease, loan, gift and inheritance and the resolving of conflicts concerning the ownership and the use of land. Therefore, land administration systems act within adopted land policies that define the legal regulatory pattern for dealing with land issues [48]. They also act within an institutional framework that imposes mandates roles and responsibilities on the various agencies and organizations [45]. Byamugisha [45] maintains that the benefits that arise from proper land administration systems translate into guarantee ownership, security of tenure and facilitate efficient land transfers and administrative processes (ibid).

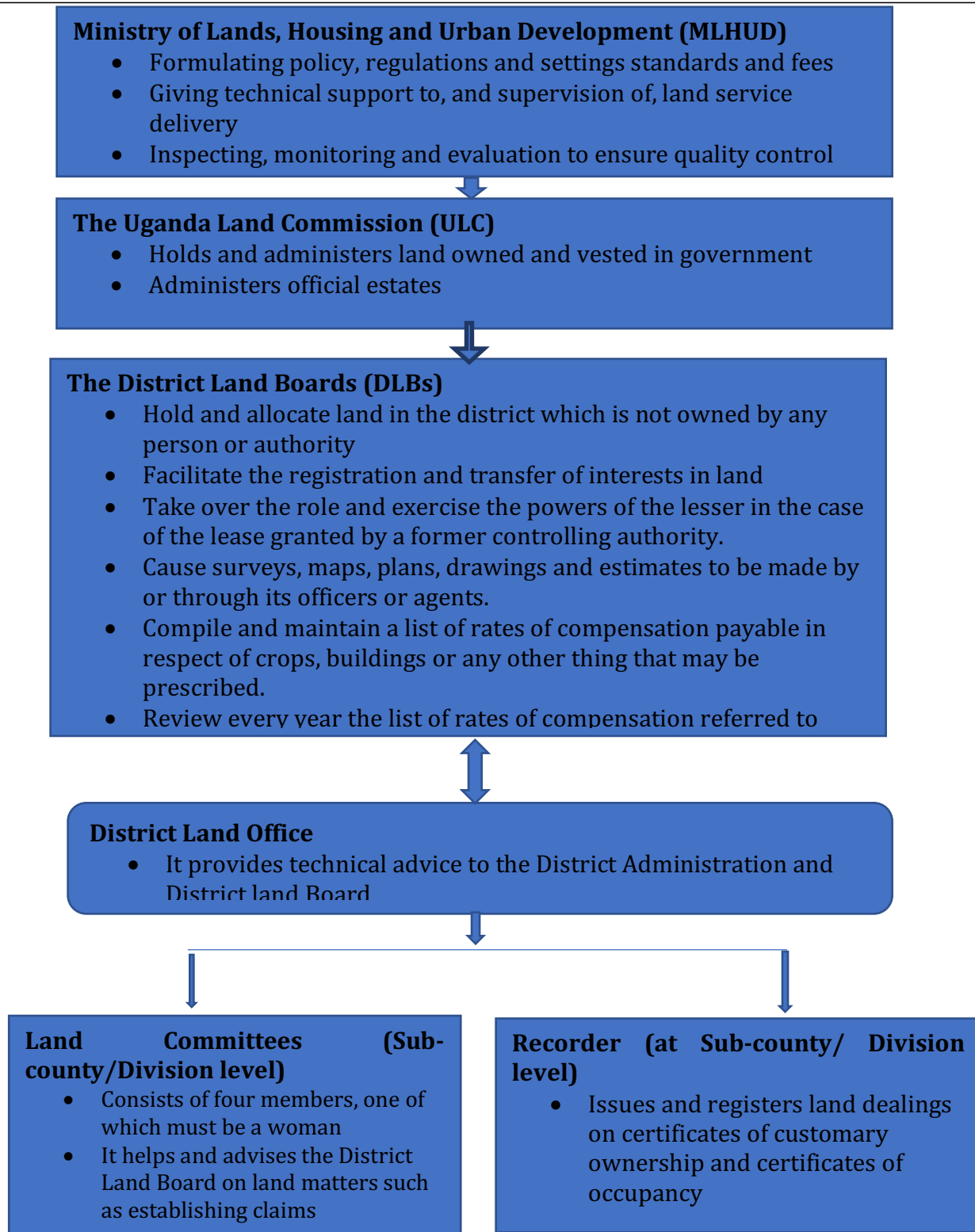
Enemark [48] emphasizes that land management, and especially the central land administration component, should aim at delivering efficient land markets and effective management of the use of its land in support of economic, social, and environmental sustainability. According to him, good land administration institutions should relate to the historical circumstances of a country and its policy decisions and should integrate new needs into traditionally organized systems without disturbing the fundamental security these systems provide. In his submission, Enemark [48] emphasizes the element of sustainability in all aspects that are outcomes of good land administration systems. He presents the land administration paradigm as below.



**Figure1: The land administration paradigm  
Adopted from Enemark [48]**

In the Enemark's land administration paradigm, all the elements presented are inter-related and inter-dependent. The paradigm illustrates that the land policy framework within a certain country influences how the land administration functions of land tenure, land value, land use and development will be effectively carried out. Not only that but also the infrastructure for receiving, recording and disseminating land related information need to be streamlined. This implies that each attribute of land needs to be carefully managed and this is only achieved if there are good land records of ownership to ensure tenure security.

According to Daudi Migereko's (the former Minister for Lands, Housing and Urban Development in Uganda) presentation in 2016 to the World Bank on land policy in Africa specifically on 'Good governance; lessons from Uganda', land administration concerns the rules, processes and structures through which decisions are made about land ownership and its utilization plus the manner in which these decisions are implemented and enforced. He maintained that good land administration ensures that land rights are recognized and protected. Not only that, but also, creates the necessary and conducive environment for production and the realization of several Sustainable Development Goals (SDGs). He mentioned some principles of good land administration that Uganda was pursuing such as equitable access to land, security of tenure to all members of the society with specific measures to enhance security of tenure to all members of the society and property rights of women. These principles are provided for in the 1995 Uganda Constitution and the 1998 Land Act (amended in 2010). Figure 2 below presents a structure of the different institutions as mandated by law to provide land administration services in Uganda.



**Figure 1I: Land administration structure in Uganda**  
**Source: Ministry of Lands, Housing and Urban Development Structure**

The structure comprises of different organs and departments mandated to provide a variety of functions in land administration as shown in the figure above. The Ministry of Lands, Housing and Urban Development (MLHUD) oversees land administration and land management system in Uganda. MLHUD is responsible for providing policy direction, national standards and coordination for all matters concerning land in the country to ensure sustainable land management [11].

The Land Act 1998 sets out a number of institutions concerned with the management of land tenure and settlement of land disputes in Uganda. The Uganda Land Commission which is charged with managing land vested in or acquired by the State according to the 1995 Constitution has powers to purchase land or other interests in land, erect or demolish buildings, sell or lease land held by it, survey government-owned land and carry out other activities as necessary. The Government Minister responsible for Lands, Housing and Urban Development Ministry may issue policy directives to the Commission. Another institution is the District Land Boards whose establishments in every district is provided for by the 1995 Constitution and the Land Act (1998) that specifies their membership, qualification and experience (including that at least a third of the members must be women) as well as their general functions [49].

The Land Act 1998 also provides for the creation of a Land Tribunal in every district in Uganda. Each tribunal should consist of a chairperson, who must be a lawyer and two other members who are not required to possess formal qualifications but should have knowledge and experience of land matters. The District Land Tribunals which are the highest authority for appeal in the District after which cases can be taken to the High Court in Kampala, the central metropolitan capital of the country. Although the Land Tribunals have powers equivalent to a court of law, the Land Act 1998 envisaged that they would follow different rules of procedure from ordinary courts. By being less formal but legalistic, the District land Tribunals are assumed to be more accessible to ordinary people and bring justice closer to the community [47].

The Area Land Committees are appointed in each parish and they are intended to comprise of four people (at least one of whom should be a woman) drawn from the locality and with some knowledge of local land matters. The main function of each committee is to determine, verify and mark the boundaries of customary land within the locality when an application for a Certificate of Customary Ownership is made. The committee is expected to carry out its tasks in collaboration with traditional institutions and also to advise members of the district land board on the applicable customary law in the area. The recorders are also appointed at the sub-county level and are charged with issuing and registering any land dealings on customary ownership and certificates of ownership [50]. The membership to these committees and organs ideally indicates that, in principle, gender issues are taken into consideration. For example, 1/3 of the members on the District land boards should be women. 1 out of the 4 members on the Land committees at sub-county levels should also be a woman. The principles that the country has set to guide land policy implementers also show that equity in land access and security of land tenure by all should lead to increased women land rights in Uganda. However, the Land (Amendment) Act, 2004 reduced the number of prescribed land administration institutions from land committees at the parish level to the sub county and scrapped sub county and village land boards [11]. It is however noted that the composition of these boards and committees are male dominated yet women's livelihood is dependent on land as a key productive resource in rural communities in Uganda [50].

## **IMPLICATION OF LAND TENURE REGIMES AND LAND ADMINISTRATION ON WOMEN LAND RIGHTS IN UGANDA.**

As noted above, major reforms relating to the land question have been made but women land rights are still limited. Land holding in Uganda, which is primarily under customary tenure, sideline women in that women's right to land under the vast majority of customary land holding systems are largely limited to access rights [51]. It is noted that with the introduction of the cash economy, modern, sedentary and commercial land use practices were diffused [7]. Several authors emphasize that with land being privately purchased, owned and sold by men or utilized for men's cash crops, women's autonomy to land access, use and control was undermined together with the economic power they commanded through food crop production and management [6].

Whereas these land administrative structures seem to be geared towards strengthening land rights in Uganda, their establishment raises questions of under what conditions are these institutions being created and maintained and whose interests are they likely to serve? [18]. Okuku [18] notes that power relations determine land rights. At the operational level, they are still marred by corruption, inefficiencies, understaffing and poor land dispute handling mechanisms that do not help women to claim their rights to land. Many Ugandan women face significant challenges accessing justice when their rights are violated. The high costs of pursuing claims in the formal legal system, combined with institutional discrimination and a high level of inefficiency in the court system, create additional barriers to women's ability to exercise their land rights [23].

According to Deininger *et al.* [52], majority of the women do not know the costs or even procedures for registering land in case that land has changed hands through transaction, inheritance or gift. It is also very difficult to get land information from the registry due to bureaucratic procedures. Further still, there is staffing problems facing offices in which land records are kept [53]; [45]. In most offices it is either that the number of staff recruited is less than the required number or the recruited staff do not have the required skills and the education levels for the positions they are occupying. This has led to too much pressure and backlog of work. The end result is that the staff becomes inefficient and the whole process becomes slow. To make the situation worse, the staff are often lowly motivated [54]; [55].

Existence of land administration policies and structures may not necessarily mean that women land rights are guaranteed. This is because, inadequate land administration characterized by inadequate, poorly motivated and ineffective personnel culminate into ineffective land registries, and conflict resolution mechanisms. This may escalate into civil unrest where the vulnerable groups (mainly women) become victims [53].

Accordingly, the new land law contained within the 1995 Constitution and 1998 Land Act aims to facilitate the gradual transition from customary to freehold tenure through the formalization of informal customary land rights. The Land Act (1998) specifically renders void any provision of customary rule or practice that denies women, children or disabled persons access to ownership or use of land [20]. To most policy-makers and women in more privileged social positions, the current land laws accords protection to women; however, the rural, illiterate women have not similarly benefited from the policies that are in place because they are still largely at the mercy of customary practices and traditional legal systems that most often look to men as sole owners of

property, including land [41]; [37]. The indigenous and customary land inheritance systems driven by patriarchal norms persist, and women's claims to land are made primarily through husbands or male kin [29].

The Uganda's 1995 Constitution also provides all holders of customary land with the right to obtain a Certificate of Customary Ownership (CCO) that gives owners legal proof of ownership. In support of that, the Land Act 1998 specifies the procedure for how such certificates should be issued. Despite the fact that the certificate acts as conclusive evidence of the customary rights and interests endorsed, it does not, however, change the nature of the land tenure system governing the land in question, which continues to be regulated by customary law which is male biased [20]. Rugadya & Busingye [20] note that the legal environment is not favourable nor is it satisfactory for women as individualization of customary land grants more rights to men (family heads) to be listed on the certificates as the legal land owners.

Even though there is considerable debate about whether customary or statutory systems are more gender equitable [56], a combination of contemporary and customary law still restricts land rights of women [11]. According to the US legal dictionary, contemporary law means the present and prevailing law while customary law is the long-established customs (unofficial law) of a particular place or locale that the general law regards as a legal practice. Agarwal [57] & Matembe [43] argue that the statutory instruments in place have failed to grant women the right to have control over land and to make decisions on how it is used, its produce disposed of and whether it can be sold, bequeathed or mortgaged. [58] & Asiimwe [4] hold a view that many poor rural women have access to land and use it, but they are generally far less likely than men to neither own it nor control its proceeds. They augment that women's attempt to own property is not only constrained but also resisted and sanctioned by the community and the clan as misbehavior. It is regarded as a breach of social norms for a woman to purchase land and such a woman is deemed deviant and improper and thus preparing to leave marriage.

Uganda follows a pluralistic legal framework that recognizes both customary and statutory laws [4]. The conflict between customary and statutory law imposes constraints over women's land security [59]. There are many socio-cultural practices that discriminate against women most especially in land inheritance, donations and transfers. In practice, statutory law is less utilized especially in rural areas due to high illiteracy rates and inaccessible land courts compounded with ignorance of statutory law on both the implementers and the beneficiaries (ibid). There is a considerable range of customary laws among Uganda's more than 60 ethnic groups. Given the multiplicity of systems and the undocumented nature of customary land rules, most policymakers likely have limited knowledge about specific rules and authorities governing land rights under these systems. All these pose challenges to women's land rights in Uganda.

A significant barrier to realizing women's land rights is that current marriage laws do not clearly spell out the land rights of married men and women. Common law, carried over from the British system, provides some guidance for marital property in Uganda, but there remains a gap in the existing law relating to marital property. In the absence of clear legislation defining women's property rights, courts continue to apply outdated laws that impede women's rights. For example, in 1993, the High Court established as legal precedent the subordination of women's property

rights to those of a male head of household [60]. However, in a 2007 landmark case, the High Court ruled that women's non-monetary contribution should be considered when computing settlements in divorce matters.

Despite the above mentioned different tenure regimes, legislations and provisions, a combination of customary and contemporary law restricts land rights of women in Uganda as elsewhere in Africa [23]. For the 87.7 % of the Ugandan population, customary law is much more within reach than the formal justice system which is expensive, geared toward the literate and complicated in every way [58] ; [16]. This situation is not different from what is happening throughout sub-Saharan Africa. In Zimbabwe, for example, the 1998 Draft Land Policy allows married women to register land jointly as husband and wife, but in practice when married women purchase land, they are still asked to register only their husbands' names [51]. In Uganda, the situation is comparatively similar. From a survey that was conducted in Kapchorwa District in 2009 by Women Land Link Africa (WLLA), findings revealed that only 8 percent of married women owned land in their own right. Among the six women who reported that they owned land, five inherited it from their parents, while one purchased it using her savings from her small business. The majority of women did not have land in their own right because in most cases, even when they saved money to purchase land, land agreements were written in their husband's names and the women had to sign only as witnesses [37].

### CONCLUSION

The position of women on land ownership and control in Uganda as well other parts of Africa is still precarious though the land tenure has undergone transformation right from the pre-colonial era, through colonial era and the post-colonial regimes [8]. Despite the fact that women's land rights seem to be better protected by national laws, literature reveals that women are still entangled between legal and social recognition of their claim to land [57] ; [43]; [58]; [4]; [16]. Lack of clear distinction between legitimacy and legality of land rights makes it difficult to attain effective women's rights to land. The literature recognizes that the existing rights to land in Uganda including customary rights is part of a new wave of land reforms but the implementation of these land reforms has been partial and slow due to the conflicting interests between the state and customary institutions. Even though there is considerable debate about whether customary or statutory systems are more gender equitable [56]. The strategies for narrowing the gender gap in land rights need a consideration of the different cultural beliefs and attitudes that govern land ownership and control in Uganda. Security of tenure as evidenced by this study is a major determinant of the ability of women to improve the productivity of the land they use, to rebalance decision making power within the household, and to raise their status in the household, the community, and as citizens.

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