

ENSURING WOMEN'S LAND ACCESS¹

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The purpose of this paper is to identify key issues and controversies or debates in ensuring women's access to land, to serve as a basis for comment and further input by the panelists. It is based largely on a report prepared for the Food and Agricultural Organization (FAO) in December 2001, entitled 'Land Reform in Southern and Eastern Africa: Key issues for strengthening women's access to and rights in land' (Walker 2002) (hence the bias towards countries in these two sub-regions in the examples cited).²

The paper is organized as follows:

- The extent of policy consensus on women's access to land;
- The general policy context;
- Additional considerations for women-centered policy development;
- Major debates;
- Policy recommendations.

The extent of policy consensus on women's access to land

The poor development record of Africa as a region throughout the 1990s has heightened concerns about food security and fueled intense debate on the most appropriate mechanisms to lift the region out of deepening poverty and arrest the growing inequality between the tiny, relatively well-off elite and the masses of poor. Given the overwhelmingly agrarian nature of most African societies, agrarian reform has been a major focus of attention, with a proliferation of land policy initiatives across the region in this time. This has been accompanied by a re-evaluation of some of the policy orthodoxies that informed earlier development prescriptions, notably individual freehold titling as implemented in Kenya, which is now widely seen not to have produced the desired results (Toulmin and Quan 2000). It has also focused increased attention on women's access to land and the elusive goal of gender equity as important mechanisms for achieving improvements in agricultural output and poverty reduction.

In an influential contribution to the debate, Agarwal (1994) identified four main reasons why women should not simply own land but, equally important, exercise control over land and its products:

¹ The views expressed in the papers and comments included in this document are those of the authors and are made available here for purposes of discussion only. They may not represent the views of the institutions they are affiliated with or the World Bank, its Board of Executive Directors, and the countries they represent.

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Welfare: Women's access to land will improve both their own and their households' poverty standing, because of the perceived correlation between an improvement in women's position in relation to land and an improvement in household food security and child nutrition.

Efficiency: Giving women rights in land will increase agricultural productivity because women will invest more in their land and the knowledge pool will be increased.

Equity: Recognizing women's rights in land is necessary for justice for women, and

Empowerment: Having land rights will empower women and strengthen their ability to fight for equality, dignity and additional economic rights.

These arguments have generally been summarized into a two-fold case for women's rights in land – the human rights argument (women's rights to equality, human dignity, non-discrimination, autonomy) and the development argument (investing in women brings society higher social and economic returns). During the course of the 1990s elements of these arguments have become commonplace in much of the literature, and gender equity in land reform is now firmly entrenched in the international discourse as an underlying principle (see, for instance, World Bank 2001: 11).

To the extent that there is a consensus on African women's access to land, it operates largely at the descriptive level and looks something like this:

Land is a major resource in women's livelihood strategies. However, in general women are discriminated against in terms of the robustness of their rights in land and this can create severe hardships for them and for those who depend on them (Nzioki 2001, WLSA 2001).

Generally, women's rights in land are secondary rights, derived through their membership in households and lineages and secured primarily through marriage. Women's weak economic and social position hinders their independent access to private freehold land and very little land is owned directly by women.³

Thus most women exercise their rights in land in the non-freehold areas (variously described as customary, communal or trust land tenure areas). Customary/communal tenure is the predominant form of tenure across the region (outside of the former settler societies of the south) and hence an important area for policy intervention in support of women's rights. (Even in a country like South Africa, where only some 13/14% of land is held under attenuated forms of communal tenure, this land remains an important arena for policy intervention, given the fact that some 30% of the population resides here.)

³ In a few countries (for instance, Lesotho and Swaziland) there are still formal legislative barriers to married women owning land in their own right, because they are regarded as legal minors.

While women make a major contribution to household well-being through their domestic and productive labor, they are generally not rewarded fully for their contribution in terms of control over the product or any income it may generate. Furthermore, their productivity is constrained by the many demands on their time and energy that they have to manage, as well as by their poverty (UNIFEM nd).

Poverty has a gendered face, not only in the causes of and responses to poverty, but also in its relative distribution between men and women. As a social category women are poorer than men - in sub-Saharan Africa as a whole the 'GDP per capita' figures in 1998 were US\$1,142 per woman and US\$2,079 per man (UNDP 2000, 161-64).

Addressing women's particular disadvantages in relation to land ownership, access and control has not been a major focus in the drafting of new land policies throughout the 1990s, although most countries now formally acknowledge gender equity as a goal at the level of principle.

There are, however, important differences in the relative prioritization allocated to the two broad claims for women's rights in land (between, for instance, those, such as gender activists, who tend to emphasize rights as a desirable goal in itself and those, such as mainstream economists, who tend to regard it as a means to an end). Furthermore, there is no ready consensus on why and how women are disadvantaged, or on the best strategies to advance women's interests in land. Here a number of sharp polarities structure the debate, for instance, the relative importance of securing independent land rights for women vis-à-vis joint rights with men within households, and the linked issue of whether women's rights are best advanced through statutory law or through reforming customary law and institutions, or some combination of both. A further question for debate involves the relationship between secure tenure (variously defined) and investment in agriculture by women. These issues are discussed further in section four below.

Briefing document for the panel discussion

The broad consensus described above can be seen at work in the briefing document that the Workshop organizers drew up for panelists in this session. Panelists are invited to comment on them, as well as on some additional assumptions informing the briefing document, which are more debatable and can be summarized as follows:

Men and women do not generally share common goals within households. The household is a site of bargaining and/or contestation between men and women around how time, labor and income should be utilized, in which women constitute the weaker partner.

Because property rights are not distributed equally between men and women, but favor men, women do not have the same incentives as men in investing in agricultural production.

Improving women's access to land and strengthening their security of tenure will thus encourage them to invest in the land, thereby leading to improvements in agricultural productivity, with concomitant benefits for household welfare, in particular through improved levels of nutrition and child welfare. This will contribute to poverty reduction strategies in the region and should thus be an important element of policies aimed at agrarian reform.

The gap between policy on women's land rights and implementation can be addressed through awareness-building and legal changes.

As the following discussion indicates, these assumptions need to be refined in a number of respects.

The general policy context

This section outlines some general contextual considerations that need to be factored into the development of more appropriately gendered land policies in the region. Panelists are asked to comment on the relative significance of the following:

- The heterogeneous and dynamic regional policy context;
- Challenges facing agriculture in the region;
- Rapid urbanization without growth;
- The ravages of HIV/AIDS;
- Limited state capacity to implement land policy.
- A heterogeneous and dynamic regional policy context

The first point to keep remembering at fora such as this is that while poverty and underdevelopment are widespread, the notion of sub-Saharan Africa as a relatively homogeneous zone, to which regional generalizations and global policy prescriptions can be readily applied, is problematic. The discourse tends to impose a certain conceptual uniformity on the region – 'customary law', 'communal tenure', 'patriarchy', 'small farmers', etc. The reality, however, is that there are marked differences between and within the sub-regions, which influence the conditions for land and tenure reform and shape the political debates at the national and local level. Apart from important ecological differences across the region, there are major social and cultural differences between, for instance, more or less urbanized societies, pastoralists and cultivators, and patrilineal and matrilineal communities. In each country land policy operates within particular historical and social contexts, which shape and constrain the policy options, including (centrally) those affecting gender relations.

Challenges facing agriculture in the region

Secondly, while agriculture is extremely important for household survival in most parts of the region, there are marked differences among countries in terms of current economic conditions as well as agricultural and economic potential. In much of southern Africa, agriculture is not the dominant economic sector, even while access to land and its resources is very important for what have been termed the

'multiple livelihoods strategies' of the poor and very poor.⁴ Furthermore, agriculture across the region faces major challenges, which need to be taken into account in any policy prescriptions for improving women's access to land as a mechanism for reducing poverty. These include the generally unfavorable international terms of trade confronting African agriculture, mounting population pressure on land, and environmental degradation. They point to the need to broaden the debate on land policy generally, and on women's land rights specifically, away from a narrow preoccupation with its relationship to agricultural development, to consider its role in non-farm rural development as well.

Thus in South Africa, where the agricultural sector is dominated by large-scale, commercial (and overwhelmingly white-owned) agriculture, global trade pressures and strong moves to deregulate the industry since 1994 have seen high levels of farm debt and farm failure in the commercial sector, which should raise questions about its attractiveness to new black recruits (Walker 2001a: 25) The pressures facing large-scale commercial agriculture in the region are also impacting negatively on small-scale commodity producers. According to Bryceson and Bank (2001: 10) 'peasant agricultural production has been experiencing a much slower and possibly more painful death [than the continent's 'embryonic industries'] as the removal of transport and crop input subsidies, especially for fertilizers, subverts farmers' returns, exhausts soils gradually and reduces yields.' They cite the declining terms of trade, subsidy cutbacks and the dismantling of parastatal marketing boards under the auspices of structural adjustment programmes as having an adverse impact on peasant production in Nigeria, Tanzania, Malawi and Zimbabwe.⁵

The problem of population pressure on the land is not uniformly distributed – in parts of Zambia, for instance, the main constraint on productivity is a shortage of labor rather than of land (Jiggins *et al* nd: 19). However, the problem is widespread and is most marked in those countries where the reliance on agriculture is at its greatest. In Malawi and Uganda, both countries with overwhelmingly rural populations, if all the land (including urban, conservation and totally marginal land) were divided equally among all residents, there would be less than one hectare per person at current population levels. Even in a country as sparsely populated as Namibia, mounting pressure on arid and fragile environments is becoming a problem for pastoral Herero communities; the enclosure of communal rangeland through fencing is exacerbating this problem for those groups and individuals excluded by that process (Twyman *et al* 2001: 12).

⁴ The percentage of the workforce employed in agriculture, fishing and forestry in selected countries is as follows; Namibia: 44%, South Africa: 13%, Zimbabwe: 67%, Botswana: 44,8%, Lesotho: 39%, Mozambique: *1%, Swaziland: 32%, Zambia: 50%. Agriculture as a percentage of GDP in these countries is as follows:

⁵ A study by Devereux (1997) on Malawi suggests that agricultural liberalization benefited those households cultivating relatively large plots while hurting the majority of householders cultivating very small pieces of land.

The enclosure or fragmentation of land into sub-economic units is placing strain on customary systems (which evolved historically in situations of land abundance) and is a serious problem for those advocating equality between men and women in terms of inheritance rights under customary law. At a conference organized by EASSI (East African Sub-Regional Support Initiative for Women) in October 2001, the issue of land fragmentation was a contentious one for some delegates, who were concerned that raising it in the debate on gender equity would retard progress towards women's rights.⁶ However, further subdivision of land in the absence of accompanying initiatives to support its more intensive use, or provide economic alternatives to farming or incentives for people not to take up their inheritance, must surely only compound the problem of land fragmentation.

Urbanization without growth

Too many analyses work with a static or time-bound view of an essentially unchanging rural sector, whereas the reality is far more dynamic, requiring a more integrated account of both rural and urban land issues. While in most countries the great bulk of the population is rural, in three countries in the south (Botswana, South Africa and Zambia), this is no longer the case. Furthermore, the regional trend is towards rapidly increasing levels of urbanization. Between 1970 and 1995 the average growth in urban population in African countries was 4,7% per annum, with 32% of the population in sub-Saharan Africa classified as urban by 1999 (World Bank 1999: 130, 170). This World Bank study also highlighted the disturbing trend of 'urbanization without growth', inasmuch as the boom in urbanization between 1970 and 1995 saw per capita GDP in the region dropping by 0,7% per annum (ibid: 130).

It is also important to understand the nature of urban-rural linkages better. Across the region a rural base remains a significant component of livelihood strategies for many urban poor. In southern Africa urbanization has historically taken the form of oscillating migration by different members of households between urban and rural bases. The pattern of migration and urbanization has been profoundly gendered, with female migration taking place on a far smaller scale than male, and the impact of this continues to resonate in both rural and urban communities today (Walker 1990). A recent study on migration patterns between rural and peri-urban areas in Malawi concludes that 'frequent rural-urban migration ... rarely leads to permanent urbanization' (Englund 2001: 9) but has profound implications for tenure systems, gender relations and the role and status of traditional authorities. At the same time, the growing of food crops within urban and peri-urban areas is also an important source of urban livelihood strategies, particularly in the current context of poor opportunities for formal employment.

⁶ This account is based on the author's observations of discussion during the conference in question, at which she was present.

There are thus major land policy challenges around urban tenure reform, land administration, and the prospects for urban agriculture, as well as for the development of an overall urban strategy within national macroeconomic policies.

The ravages of HIV/AIDS

A fourth issue that has to be confronted as a matter of extreme urgency is the impact of HIV/AIDS on the region. The impact of the pandemic on both household economies and national development prospects is slowly beginning to be acknowledged. In Botswana, where the HIV/AIDS rate is at its very highest, one model projects a decline in *per capita* income of 13% in the poorest households and 8% overall, over a ten-year period starting in 1998. In Kenya it is predicted that GDP will be reduced by 14,5% by the year 2015, with one study estimating that households experience a decline in income of between 48% and 78% when a member dies from AIDS, excluding the cost of funerals. In Zimbabwe a 1997 survey by the Zimbabwe Farmers' Union found a reduction in smallholder production of 50% in households that had suffered an AIDS death (UNAIDS and ECA 2000: 24, 110, 236). The impact of HIV/AIDS is felt most acutely at the household level, with the burden weighing most heavily on the poorest households, those with the fewest resources with which to cushion the economic impact (Barnett *et al* 2001: 158).

Given the disproportionate degree to which women are affected by the spread of the virus in Africa, the need for policy interventions to be gendered is especially critical. 55% of the infections in sub-Saharan Africa occur among women (Collins and Rau 2000: 1) – the only region in the world where female infection rates are higher than among men. There are a number of interlocking reasons why women are more vulnerable than men, including female physiology, women's lack of power to negotiate sexual relationships with male partners, especially in marriage, and the gendered nature of poverty, with poor women particularly vulnerable. Obbo (1995) has also drawn attention to the link between the spread of HIV/AIDS and social instability and conflict, such as was found in Uganda during the 1970s and 1980s. High levels of rape and the breakdown of traditional sexual mores are associated with military destabilization, refugee crises and civil war.

A recent study on the impact of HIV/AIDS on female microfinance clients in Kenya and Uganda, found that there was a clear sequence of 'asset liquidation' among AIDS caregivers in order to cope with the economic impact - first liquidating savings, then business income, then household assets, then productive assets and, finally, disposing of land (Kabbucho *et al* nd: ii). Land disposal is, however, seen as a last resort – the consequences for people driven to that point are disastrous in terms of the loss of their economic base. Those who sell land are likely to be those with fewest options – those who were most vulnerable to start with. This study highlighted the importance of community networks and knowledge of

resources in women's coping strategies, as well as the mitigating role played by a high awareness of HIV/AIDS and low levels of stigma in communities.

HIV/AIDS impacts particularly severely on women not only in terms of infection rates, but also in terms of their primary responsibility for taking care of the sick and orphans. In addition to the emotional burdens this imposes on them, it further limits the time women can devote to productive work, including agriculture, and to participating in social networks and community affairs (including those relating to land reform) – this at a time when such networks assume even greater significance. There is also mounting evidence that women's secondary land rights may become increasingly vulnerable - a study by Sebina-Zziwa on inheritance and succession in Uganda, for instance, reported on the increased susceptibility of AIDS widows to land-grabbing (1998: 12).

In the longer term, of course, AIDS is decimating the next generation of caregivers – with particularly sobering implications for the as yet unborn children of today's generation of orphans, who will not have a cohort of grandmothers to care for them. AIDS orphans are themselves vulnerable to the loss of family land rights. Barnett *et al* point out that the negative physical, emotional and welfare impacts of being orphaned are gendered 'and there is some evidence that the effects on girls are even greater than those on boys' (ibid), (for instance, in terms of loss of access to education and vulnerability to sexual abuse).

It is now widely recognized that all spheres of public policy, including land, have to be rethought in relation to this devastating crisis, although few countries have made much progress in translating that awareness into concrete policy interventions. Most of the thinking has focused on the implications for agricultural and food production (IFAD 2000). However, the pandemic also has implications for the types of land tenure and land reform projects that are most appropriate, for beneficiary selection in land reform projects, for the functioning of local committees and legal entities, for the land rights of women and of orphans as well as of the poor generally, and for inheritance practices and norms. It will also impact negatively on government's capacity to implement its programmes, because of loss of personnel and the overall cost to the national economy. The likelihood of AIDS exacerbating already observed trends towards increased landlessness on the one hand and accumulation of land in the hands of wealthier members of society on the other is considerable.

Clearly, the challenges of AIDS for gendered land reform policy are enormous. Given that so many countries are reviewing or embarking on land tenure reform policies at the moment (Kenya, Malawi, South Africa, Namibia, Lesotho, Uganda, Tanzania), it is urgent that HIV/AIDS is identified as a major policy issue in that process. The available evidence indicates that land policies that aggravate tenure insecurity, ignore the rights and/or interests of women and of children, make it easier for individuals or families to enter distress sales, promote crops that depend on a heavy investment of time, labor and

financial resources in order to get a return, are not addressing appropriately the impact of AIDS on poor, rural people.

Limited capacity to implement land policies

The final issue to raise in this brief contextual discussion relates to state capacity. A number of recent studies comment on the lack of capacity of governments to implement the ambitious land reform policies they have set for themselves, and the implications of this for policy development (Adams 2000; Manji 2001; Toulmin and Quan 2000). These weaknesses are even more pronounced in relation to gender policy. In a recent report on gender policy and land reform in South Africa I point to serious weaknesses in the state's capacity to give content to its policy commitments to gender equity and the targeting of women at the level of principle, including institutional, operational, conceptual and management problems (Walker 2001a). A major problem is that high-level policy commitments have not been complemented by the development of middle-level or 'second-tier' policies at the operational level, so that government officials have very little guidance in the field.

Additional considerations for women-centered policy development

In addition to these general contextual issues, there are a number of considerations specific to the position of women, which also need to be taken into account in the development of policy. These include:

- Stratification and differences among women;
- Social change, patriarchal power relations and the question of political will;
- Limitations of policies targeted at 'female-headed households';
- Women's land rights in situations of war and social disruption.

Stratification and differences among women

Firstly, debates on women's access to land need to avoid the traps of assuming that all women are landless and poor, and that there are no poor men who also have strong (gendered) interests in land as a source of livelihood. Small numbers of generally elite women have been able to access land through the market and also invest in land and agricultural production in the communal areas, at times very successfully. They are the women best placed to influence the terms of the national policy debate (Busingye 2001: 9); thus there is a danger that policies that target a simple construct of 'women', without considering class and other aspects of social stratification, may bypass the majority of women altogether. Factors that impact on women's access to land in addition to class include, most significantly, their marital status, their age, and how lineage land is inherited. While all policy necessarily requires a level of generalization about the social composition of the target group, it is important that the generalizations are not so crude as to undermine the purpose of the intervention.

Social change, patriarchal power relations and the question of political will

In relation to the above, a further complexity to consider is that while patriarchal attitudes and institutions are deeply entrenched across the region, social attitudes are neither static nor monolithic and the current interaction of social and political forces with regard to the position of women is dynamic rather than stable. Although resistance to women gaining stronger rights in land is evident in many quarters, there is also evidence of a softening of attitudes on some issues, notably the inheritance rights of daughters on natal land (Twyman *et al* 2001: 19; Whitehead and Tsikata 2001, Walker 2001a). However, overall in the current context of rapid social change and economic crisis, the institution of marriage appears to be becoming increasingly unstable and the rights in land that women acquire through marriage are thus vulnerable to forfeiture or erosion of various kinds (Jacobs 1999; Nzioki 2001, Sebina-Zziwa 1998, WLSA 2001). Women's vulnerability becomes most exposed during times of crisis – when the household breaks up either through marital conflict leading to divorce or separation, or upon the death of the husband.

The available evidence thus points to the importance of social policies that strengthen women's rights in marriage and inheritance and secure their rights to common property and any property that they bring into or acquire themselves during marriage. It also suggests that the gap between the principle of gender equity and *de facto* implementation cannot be bridged simply by awareness campaigns, as suggested by the briefing document for this panel discussion. Power relations and struggles over the control of often scarce resources, including control over women's labor, are involved. The absence of political will shown by many governments towards the implementation of women-friendly land policies cannot be attributed simply to a lack of awareness or problems of capacity - reluctance to tamper with vested interests in patriarchal gender relations also plays a part. Where this is the case, it is unlikely to be shifted in the absence of strong organization and the political mobilization of women in support of their rights.

Limitations of policies targeted at 'female-headed households'

The problems with targeting policy interventions at 'female-headed households' have by now been thoroughly discussed in much of the literature on gender and development, but the use of female-headed households as a 'proxy' for women (Budlender 1997) persists in land reform. Thus in South Africa in the first phase of redistributive land reform between 1994 and 1999, one of the few measures used to gauge women's participation was the number of female-headed households registered on project lists (Walker 2001b).

The problem is not simply that this focus excludes women in male-headed households or that there are substantial variations in terms of income and wealth within the category of female-headed households, not all of which are poor. The way in which the household and headship are understood, as fixed and stable

entities, is also problematic. Peters (1995: 101) makes the important point that one needs 'to enquire simultaneously into both *units* and *processes*' and 'build in *time*' to the analysis (emphases in original). She reminds us that gender relations do not refer only to relations between husbands and wives but also embrace wider kin and non-kin relationships, and stresses the importance of the other social relationships and networks within which households are embedded (ibid: 98).

The assumption that headship denotes a single locus of power and control of resources within households is overly simplistic. However abandoning the notion of households as a key unit for policy does not make sense either. Households and families remain basic components of social organization, even if their variety, mutability and structure are more complex than is often thought. Women (and men) do not operate as purely autonomous and isolated individuals but live out their lives within a complex of attachments and commitments, which are both material and emotional. Again, this points to the importance of working with flexible notions of 'households' while also looking at the impact of policy on different categories of people and of need within and across households.

Women's land rights in situations of war and social disruption

A final issue to raise for discussion here is the impact on women's land rights of violence and civil strife, which have plagued so many parts of the region in recent decades. In a recent collection of writings on 'Women's Land and Property Rights in Situations of Conflict and Reconstruction', Chaloka Beyani (1998: 1) argues that women's land rights are 'further weakened by both conflicts and the ensuing reconstruction process' – the 'breakdown in social stability and in law and order leaves a socio-economic vacuum in which the subordinate position of women, their social support systems and their access to land and property are compromised by traditional and customary laws.' In Mozambique, for instance, previously displaced women have found it difficult to reassert claims to land in their former villages, especially when they no longer have male kin to identify them and to assist them assert their claims; furthermore, single women – numerous in the aftermath of war - 'face particularly severe labor and capital constraints' (Waterhouse 1998: 46).

Major debates

This section reviews three important areas for debate:

- Independent rights in land and/or joint rights in households for women;
- The value of statutory and/or customary law for protecting women's land rights;
- The correlation between tenure systems, investment in land by women and enhanced food security.

Independent rights in land and/or joint rights in households

Agarwal (1998) has argued strongly that women are best served by programmes that extend independent rights to them, rather than programmes that continue to locate them within restrictive and inequalitarian

household structures. Her thesis has been extremely influential in South Africa where the Department of Land Affairs has incorporated it into its gender policy documents and many gender activists have echoed the call for women's independent rights in land. (See the discussion in Hargreaves and Meer 1999, and Walker 2001b) The call for independent rights for women is also strongly articulated in the recent set of research reports commissioned by EASSI (Nzioki 2001) and WLSA (2001), although both reports combine this with proposals to give women joint title to household land with their husbands as well. The call for independent rights in land overlaps with an emphasis on the importance of investing in what is called 'own-account' farming for women, i.e. farming in which women control both the decisions around production and the disposal of the product at the end.

However, while the call for separate and independent rights in land for women has resonated strongly with many gender activists, there is also a body of literature, which directs our attention to the value of common property resources and kin and other networks for women in sub-Saharan Africa. This literature reminds us of the real problems women face in production with regard to both time and labor, with all the attendant negative implications for women's 'own account' farming across the region. Thus O'Laughlin (1995: 76) draws on field work in Tchad and Mozambique to argue against what she terms 'the concept of relative autonomy' and the 'methodological individualism which begins with women's interests, rather than the ways in which different gender interests are socially and historically shaped.' In a recent analysis of three land reform projects in the province of KwaZulu Natal, South Africa, I argue along similar lines that 'the women in the case studies are also signaling ... that they have a strong interest in household and community rights in themselves, which needs to be respected' (Walker 2001a 62).

Given that for most poor, rural women marriage is the main way through which they access land, given the instability of the contemporary institution of marriage, as well as women's lack of economic resources, given also the constraints on most governments' ability to implement land reform and the huge threat of HIV/AIDS, serious consideration must surely be given to securing joint rights for women in household land to which they already have access as a priority for strengthening their rights to land. Statutory co-ownership (Uganda), joint registration of spouses as rights holders (South Africa), as well as spousal consent for the disposal of land (Uganda and Tanzania) are some of the mechanisms that have been put forward to achieve this to date.

However, the relative merits of individual versus joint rights in land need not be an either/or debate. Legislative reform and land access programmes that remove obstacles to women's independent rights in land can also play an important part. Land tenure policies need to cater for a range of outcomes, attuned to a variety of needs and circumstances on the ground, including the promotion of women's rights to acquire land independently of male kin.

Statutory and/or customary law

The place of customary tenure and traditional leadership, which is currently receiving more favorable attention in the literature than in the past (Toulmin and Quan 2000; Whitehead and Tsikata 2001), raises very complex issues with regard to the status of women.

A distinguishing feature of customary tenure in its pre-market form is the operation of layers of overlapping rights and multiple uses of land by members of the household, lineage or community on the land identified as theirs. Furthermore, because land was not regarded as private or personal property, it could not be sold by those in power to the detriment of the land users. Many advocates of customary systems of tenure regard these characteristics as particularly positive for poor people, including poor women.

However, what is important for policy makers today is not how systems may or may not have operated in the past, but what prevails currently under the rubric of 'the customary' and how appropriate that is for current conditions. Customary systems of tenure have undergone many changes and adaptations throughout the colonial and post-colonial period, with strong pressures towards more individualized interpretations of custom and the commodification of land, along with major changes in the functioning of households in the modern economy and complex patterns of stratification among rural households. It is now widely accepted that, certainly in southern Africa, the interpretation of 'customary' law by colonial administrators and magistrates served to strengthen, not weaken, patriarchal controls over women and to freeze a level of subordination to male kin (father, husband, brother-in-law, son) that was unknown in precolonial societies. It is also argued that this project involved not simply the imposition of eurocentric views and prejudices on the part of the colonizers, but also the collusion of male patriarchs within African society, who were anxious to shore up their diminishing control over female reproductive and productive power (Walker 1990).

Today, as a result, contemporary customary law generally sanctions male authority over women and limits women's rights in land to secondary rights derived through their membership in patriarchal households. It also underpins a system of traditional authority that tends to disadvantage women who challenge their subordinate role in society (WLSA 2001). Land is no longer a relatively abundant, non-market resource. Increasingly lineage land has become imbued with concepts of individual ownership, in the hands of men. This has exacerbated the insecurity of women's land rights at times of crisis. Even in matrilineal societies, a trend has been observed whereby patrilineal norms have infused earlier practices and weakened women's relative advantages as transmitters of lineage membership and property rights (WLSA 2001).

Thus the extent to which women stand to gain from the 'turn to the customary' that has already been described is a matter of considerable debate. The evidence from the region is contradictory. A recent WLSA report (2001: 6) acknowledges that historically women were afforded a level of protection as members of the group, within a system which was 'well suited to agricultural subsistence economies', but suggests that these conditions no longer apply. A number of national Constitutions are ambiguous on the relationship between constitutional commitments to equality for all citizens and constitutional protection for customary systems of law that continue to discriminate against women. In South Africa the Women's National Coalition won a major victory during the constitutional negotiations in 1993/94 when they succeeded in entrenching the 'equality clause' as pre-eminent in the hierarchy of rights, and blocked an attempt by traditional leaders to exempt customary law from the provisions of that clause (Walker 2001b). In Zambia, Lesotho and Zimbabwe, however, the authority of the equivalent equality or non-discrimination clause is not as far-reaching, and the formal commitment to equality and non-discrimination is more circumscribed. A celebrated case in Zimbabwe in 1999 highlights the threat this poses for women: in *Magaya vs Magaya* the Supreme Court ruled that a woman, the eldest child of her deceased father's first wife, could not inherit her father's estate, even though she had been appointed heiress by the community court, because customary law did not permit women to inherit property when there were adult males in the family (WLSA 2001: 41).

On the other hand, it has also been argued that local level customary courts and authority systems are not necessarily hostile to women and may in fact be more effective arenas where they can defend or claim their rights – because they are accessible and cheap (Mwebaza, cited in Toulmin and Quan 2000: 243) and because they are made up of people who are well informed about local household dynamics and able to use this knowledge to support women in particular cases, including those related to land. Thus favorable interpretations of an individual woman's needs and character may override considerations of male authority or concerns about precedent. Whitehead and Tsikata (2001) review a number of case studies of actual dispute resolution around land issues, where traditional institutions have ruled in support of women defendants or claimants, against the claims of men, and make a strong case for the flexibility of customary law and its ability to respond to the merits of specific cases. In commenting on the Uganda Land Act, Mwebaza (op cit) suggests that a reformist and incremental approach to existing institutions, rather than the wholesale displacement of traditional institutions at the local level, would have worked better.

Once again, it seems that an either/or approach is not appropriate. There is certainly evidence for the importance of constitutional and statutory provisions at the national level to provide an enabling environment for gender equity, within which local level negotiations over power, rights and changing

social values can be accommodated and directed towards more equitable outcomes. However, it also seems there are advantages for women, including for rural women, in harnessing the relative flexibility, responsiveness and accessibility of 'local-level' systems of land management that are rooted in local, 'customary' institutions. A major political and policy challenge, then, is to define the most beneficial fit between statutory law that entrenches gender equality as a fundamental principle and reformed systems of customary rights allocation and conflict resolution.

No simple correlation between any one tenure system, investment in land by women and enhanced food security.

Despite the widespread assumption that giving women secure rights in land will lead to improvements in production and national food security, the evidence suggests that there is no simple correlation between these variables, and that the testing of that hypothesis is in any case extraordinarily difficult to achieve. Security of tenure is one element in the equation, but access to sufficient labor to work the land, to resources to invest in the land, and to extension and support services are very important for improved productivity as well. So are the quality and size of the land. Unless there are additional inputs – credit, extension services, labor, access to markets – secure tenure rights may offer women little more than residential security, i.e. provide benefits in terms of welfare and possibly empowerment but not guarantee an 'efficiency' outcome directly.

Furthermore, defining what tenure system constitutes tenure security is not a simple task, with many variables and cultural assumptions at play. The available evidence suggests again that there are no simple correlations between different types of tenure (for instance individual title, as has been tested in Kenya, or customary certification as is currently being introduced in Uganda) and levels of productivity. With regard to Uganda's 1998 Land Act, Adams (2000: 92) concludes that there was no evidence of 'widespread lack of investment in customary tenure stemming from uncertainty relating to land rights'; interestingly, he also refers to an unforeseen negative response of banks to the family consent requirement, inasmuch as commercial banks are 'reportedly unhappy' about this because of its perceived 'adverse impact ... on the value of land as collateral' (ibid: 91).

Nor has it been established that women are necessarily likely to invest more in land that they own independently than in household land. Many other variables intervene in shaping such choices and calculations, including how secure women feel in marriage, what alternatives they have, and the levels of support available to them in their farming activities. In Jacobs' study of resettlement area in Zimbabwe, for instance, women 'were more likely to express the insecurity of their position not in terms of landholding, but in terms of the lack of security in marriage ' (1999: 10).

Furthermore, as already noted, both commercial and small-scale agriculture in sub-Saharan Africa are under heavy pressure in the global market and this is impacting negatively on the viability of the agricultural sector as a whole. While in the absence of economic alternatives, access to land on which to grow food and gather natural resources is critically important for the livelihood strategies of the poor, economic policies that develop off-farm sources of income for men and women are also needed to address rural poverty.

Policy recommendations

The following recommendations are proposed as providing a broad policy framework for promoting women's rights in and access to land within the region, which would need to be adapted to the particular circumstances of each country in terms of their relevance and the strategies required for implementation; it is recognized that achieving such a framework lies within the realm of the political and that there are also fiscal and capacity constraints on governments' abilities to implement policy:

An unequivocal Constitutional commitment to gender equality as a fundamental principle, to which commitments to cultural rights and customary institutions must be subordinated. The fundamental principle of gender equality and non-discrimination should be re-affirmed in all national land policy documents as well.

The unqualified ratification of CEDAW by those countries, which have not yet done so.

The review and repeal of all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as the review and repeal of any other legislation that prevents women from owning land or entering into contracts in their own right.

Statutory provision for joint registration of customary household land rights for spouses and the adoption or retention of the spousal consent requirement in the case of land transfers.

Investment in agricultural support services, which target both women and men.

Investment in saving-saving domestic and agricultural devices which address women's needs with regard to their time/time famine.

The protection against privatization of remaining communal land.

Government investment in non-farm rural development, basic public health (water, sanitation, etc.) and rural social services such as schools and clinics.

Training on gender issues and women's rights for government officials tasked with the implementation of land policies.

Strengthening the capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way, through the recruitment of women personnel, the training of personnel, and the review of existing practices.

The development of national and local-level indicators that would measure progress towards equity for women in land rights.

The widespread dissemination of information on women's rights and on remedies if they are violated through local government offices, schools, the media, clinics, advice offices, etc.

Provision of legal aid to support women secure their rights through the courts if necessary.

A major review of all land policy in the light of HIV/AIDS, that looks at district-level demographic, economic and social impacts on land access and land use, and at housing and support projects for AIDS orphans in communities.

Finally, at the macroeconomic and global level, addressing the unequal terms of trade for African agriculture and industry.

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ENSURING WOMEN'S LAND ACCESS

COMMENTS: HARRIET BUSINGYE

Contextual background

Land is one of the most important factors of production in Uganda and access to and control of land are an essential aspect of its utilization and productivity. Women provide 70%-80% of all time in Agriculture and 90% in food production and processing.⁷ Given this central role women play in agriculture production, it's without doubt that lack of protection of their rights on land and secure access to land has direct implications for investments in agriculture and efforts to promote agricultural productivity. Women play a key role on the development of national economies all over the world. Their contribution to the time force and providing the backbone to the agricultural sector has to be recognized. Many countries in the world have noted the contributions made by women on land. In sub-Saharan Africa, there is a general land policy reform process which among other issues has clearly shown that women form a vital economic link to effective land use and Development.⁸

Promoting women in land legislation is more than an issue of human rights but a move to tackle the main constraint to economic development, which land reform sets out to achieve. In Uganda the contribution of women to the market economy can be assessed from the extent of their role in agriculture but because of their lack of control over land, women's contribution in agricultural production is invisible; this further makes them vulnerable to arbitrary and subjective decisions regarding returns on their time in the short and long run. In all these cases culture is invoked to justify the different forms of decisions and discriminatory practices. It's only through the male relations that women gain access to land, but this access is not accompanied by rights of control or ownership over land, which extends to lack or limited control and ownership over what is produced on the land.⁹

In Uganda, 93% of women do not own land; all this undermines women's security over land and acts as a disincentive to their investment in land. It is quite apparent that a direct link exists between women's lack of, or limited control over land, and their readiness to invest in land. Because control over land is in the hands of men, they are the ones who determine its use and who control its proceeds. Women have always felt insecure when it comes to long-term investment on land because of fear of losing out in case of

⁷ Uganda Land Alliance (2000) Co-ownership of Land by Women, PACE Kampala

⁸ Irene Ovonji Odida 1999. Land Law Reform Challenges and Opportunities for Securing Women's land Rights: the Uganda Case.

⁹ Abby Sebina-Ziwa, Customary Practices and Women's Land Ownership Rights

divorce, separation or polygamy. Men feel that the hard time provided by the women is part of their marital obligation and commitment.

The Uganda Land Alliance, an NGO set up to lobby and advocate for fair land laws and policies for the protection of land rights of the poor men, women, children and other marginalized groups on land, has found it necessary to bring the issues of women on land to the fore front. The realization that women's dependence on men has hindered their economic empowerment has made the lobby and advocacy process a necessity. It has been found that 'to uphold the land rights of women especially ownership and access and enforce responsibilities in marriage of both men and women, women's land rights must be written into major laws and efforts made for their enforcement.'¹⁰

Legal Provisions on Women's Land Rights

When the NRM government came to power in 1986, it put women's issues on the agenda. The government through the 1995 Constitution clearly demonstrated that it was willing to deal with the gender imbalances and address all forms of unfairness in Society with regard to rights of women and girls by introducing progressive articles in the Constitution to wit;

Article 21 confirms equal treatment of in all spheres of life under the law regardless of sex.

Article 32(1), mandates government to take affirmative action in favor of marginalized groups on the basis of sex, or any other injustice created by history, traditions or custom.

33(5) accords affirmative action to women for the purpose of redressing the imbalances created by history, tradition or custom, and

33(6), stops the enforcement of any laws, customs/traditions that are against the dignity, welfare and/or interests of women and undermine their status.

These very progressive articles have not been fully translated into subsidiary legislation and there is an apparent failure by policymakers to sufficiently legislate for women's land rights so as to make a real difference on the ground. Efforts to pass legislation on Domestic Relations are still very minute. What could be the problem? Is it the Uganda Government that is not committed enough? Or is it the reluctance to change the status quo as far as culture and traditions are concerned on women's issues. The only serious legislation to talk about so far is the Land Act 1998, which has some progressive clauses on women's rights;

¹⁰ The Justification for Co-ownership; A qualitative Perspective. A research carried out by Makerere Institute of social Research for The Uganda Land Alliance. To be Published in May 2002, ix

Section 28 of the Act provides that 'any decision taken in respect of land held under customary tenure... shall be in accordance with customs, traditions and practices of the community. However where the decision denies women or children... access too ownership, occupation or use of land it shall be null and void. Or where the decision violates articles 33, 34 and 35 of the Constitution it shall be null and void'.

Sec. 40 provides for consent by spouses or children in any transaction on land where a family ordinarily resides and derive their sustenance. The provision gives protection to minor children, dependant children of majority age and spouses. It has been said to be one of the achievements of the land Act inspite of its many loopholes that make enforceability very difficult.

The Land Act also provides for the representation of women on a number of institutions set up under the Land Act. The Constitution of Uganda ensures that women are represented at all bodies set up in the Decentralization structure with a percentage of 30. The representation of women has been described by many as " *byoya bya nswa*" not real or just cosmetic. Tamale (1999) in her book; '*When Hens Begin To Crow*' describes this kind of representation as '...allowing women to partake of the political cake: to participate in decision-making but not to represent women as an interest group'.¹¹ This has meant that the woman representative does not bring on board women's issues as key issues, which need special attention.

The Movement Government has seemed to use the ploy of representation to appease women for their support and it is seen more as a reward for their votes. Ensuring that these women representatives speak out clearly for women issues has not worked at all levels. However women Members of Parliament have to an extent tried to speak out for the rights of women on land and have been very instrumental in the lobby process for the reinstatement of the co ownership clause into the Land Act. Although both the Land Act and the Constitution have helped to secure women's rights and access to land, on the ground the same has not really happened. Without control of land women lack the power to make the vital decisions on land that will improve their economic status.

Women in Uganda need more than Access

In Uganda, both men and women agree that women have access to land within the family set-up.¹² Women in Uganda make 50.9% of the population, produce over 80% of food, provide 70% of agricultural time, 97% of women have access to land, 30% have access to and control proceeds from land but only 7% own land.¹³ It is clear that the access by women does not translate into decision making on what to grow, when to dispose of it and to control the proceeds of the produce. This then suffocates the efforts of the

¹¹ Tamale (1999) 74

¹² ULA/ MISR (Dec. 2001) 17

¹³ Ovonji Odida, Land Reform: What remains to be done to secure Land Rights in Uganda. Paper prepared for the Human Rights Commission Magazine. (Undated)

women tilling the land and any efforts to change her own economic status by her time on land do not yield much. In a consultative study carried out by the Uganda Participatory Poverty Assessment Project (UPPAP) in 1999 it was revealed that women's access to land is only certain through their male relatives, or their husbands through marriage. In the Land Alliance study (2001), The Justification for Co ownership it was revealed that 'Extreme powers on the part of men over land matters embedded in the clan/family set-ups as well as the eroded protection in customary and patriarchal tendencies...have denied women the assurance and incentive to productivity.' The incentive for production/ investment is, in reality, ownership or some sense of control but not access. Therefore access in itself will not translate into much without control and limitations to economic empowerment for women will remain. The study reveals realities and dilemmas that women go through. Women in Apac in Northern Uganda and Masaka in the Central Region noted that ;

... 'women in this community are the ones that ensure children go to school and if they owned/ controlled the land , it would improve productivity and secure education for their children'. (Apac Discussions)

*...If women could have a say on land, it would give them some influence and deter the aimless land sales by the husbands. (Masaka Discussions)*¹⁴ It is clear from these findings that access alone cannot help change the economic imbalances caused by the lack of control of land by women.

The National Poverty Eradication Action Plan (PEAP), which is designed to remove mass poverty by the year 2017, recognizes that in order to change the status quo, women need to have control and ownership of land. The PEAP makes recommendation for the introduction of Legislation that ensures women's land rights. The Plan for Modernization of Agriculture (PMA) makes note of the fact that the issue of land ownership and inheritance by women who are key stakeholders in Agriculture Production has not yet been resolved, through legislation (my own emphasis)¹⁵ The recommendation for co-ownership of land by spouses would enhance women's security over land and therefore enable women to make decisions on use of the land. Concrete land rights for women will create certainty and assurance that returns to investment on land will accrue to women as well.

Lobby and Advocacy for Spousal Co ownership of Land; As one of the ways to strengthen women's access and control to land in Uganda.

During the Debate for the enactment of the Land Act 1998, proposals were made by civil Society Organizations for the recognition of women's Land Rights in the land law. The Uganda Land Alliance a representative of over 45 member NGOS submitted proposals to Parliament, which included the following issues:

¹⁴ ULA/MIRS Study (Dec. 2001) 17

¹⁵ The Republic of Uganda, Ministry of Finance, Planning and Economic Development. (2001) The Plan for Modernisation of Agriculture , 27

- Legal recognition of customary land as a tenure and the registration of women's interests on customary land.
- Spousal and children's consent in person for any transactions on family land.
- Spousal co-ownership of land.
- Representation of women on all land management and Dispute Resolution Institutions etc.

When the Law was eventually passed most of the above proposals were taken on board. However the proposal for co-ownership of land was missing. The motion to provide for co-ownership of land by spouses had been unanimously supported and its principles passed during the debate on the Land Act 1998. The proposal was meant to ensure legal protection of spouses especially women in both monogamous and polygamous marriages and to strengthen the provisions of S.40 of the Land Act on protection of the family by requiring spousal consent before dealing with land.¹⁶

Section 40 of the Land Act 1998, provides for spousal consent before transacting in land where a family ordinarily resides and derive their sustenance. It only deals with an interest in land that is not a property right, hence the issue of ownership of land and control over products of women's sweat is not addressed. Whereas S.40 of the Land Act is important, it does not address the issue of women's ownership of land which co-ownership by spouses seeks to directly address.

In February 2000, Cabinet relegated the co-ownership clause to the Domestic Relations Bill still in offing their reason being, putting the issue in the Land Act would open up a can of worms and other issues in the Law would be reopened up for debate. The decision was seen and indeed bespeaks of an intention to deny the women their due as demanded for under the Land Act. There have been promises that this government will consider the current Domestic Relations Bill, in its new mandate ending in 2006, besides there is a very clear indication that the amendments to the Land Act 1998, have to be tabled in the mandate of the seventh parliament to ensure its implementation, that is an opportunity, the Alliance has prepared for and continues to lobby both policymakers and the grassroots communities for support on the issue.

Justification for Coownership

In a researches conducted by the Land Alliance, Action Aid Uganda, Uganda Women's Network and other Institutions like Makerere Institute of Social Research , it is clear that guaranteeing women's rights to ownership of land would be one of the ways to economically empower them. Findings by the Alliance revealed that; the patriarchal system of land ownership had no place for the woman except for her to use the land to carry out the duty of ensuring that there is food in the home¹⁷ (May 2000). The UWONET study also revealed that despite their heavy time in-put in production, women are poor because this time is

¹⁶ Uganda Land Alliance (April 2000) Co-ownership of Land by Spouses, PACE Kampala

¹⁷ Uganda Land Alliance and Action Aid Uganda (2001) Included Yet Excluded, Kampala

not valued and never rewarded.¹⁸ Since women contribute to food security and sustenance of agriculture, it goes without saying that the law should recognize and appreciate this through the inclusion of the co-ownership clause in the land legislation. The Alliance had to develop strategies for advocacy for the inclusion of the clause in law. The main focus of the Alliance was to carry out sensitization workshops of elders/ clan leaders, religious leaders and local communities and specifically target equal numbers of men and women as a necessary entity to change cultures that are oppressive to women and to bring out the importance of women in the development process

A campaign to sensitize the legislature and other policy makers has been ongoing since 1999. Meetings of several Committees and caucuses of members of Parliament and public Dialogues were organized. Radio programmes to introduce the issue for debate in the public arena were very instrumental in intensifying the debate on women's land rights. The issue of co ownership is an important one for the economic advancement of women and cannot be left without being resolved in face of new facts. Co ownership is just one strategy to alter the structure by increasing women's participation in production and economic development and as civil Society Organizations, it our hope that the Ugandan Government will take this opportunity to make the progressive articles in our Constitution a reality through the enactment of legislation that gives real protection to women and improves the agricultural sector. However many challenges remain, that will need to be resolved for tangible results to be seen on the ground even when the co ownership clause is introduced.

Challenges for realization of women's Rights to Land

Land Policy Considerations.

Uganda developed a land law without a Land Policy and this has also hindered the implementation process of the Land Act. The Ministry of Water, Lands and Environment has been working on the Land Sector Strategic Plan which recommends the development of a comprehensive land Policy for Uganda. These are very important guidelines, which will ensure that land law is properly implemented. The Policy will be important to develop principles on gender equity and equality, affirmative action for women with regard to land rights, and recommend for the legislation of women's land rights. Policy considerations will also address issues on poverty eradication and the contributions made by women. It will be important for the policy to address land ownership and control and deal with imbalances created by custom and patriarchy. The policy will help to streamline the objectives of the land law and deal with the inconsistencies in the Act. It will also guide the Institutions created on how to go about their work and determine disputes.

¹⁸ Uganda Women's Network (1997) Women and Land Rights in Uganda

Awareness raising and education on Land rights

Customs and traditions play the biggest part in keeping women's positions on land the same. It is therefore very important that both men and women are sensitized in order to change their perspectives on cultures that undermine the status of women and their welfare. It is necessary that women and men are informed on the importance of women's land rights. The Land Sector Strategic Plan is very clear on developing of a framework for information dissemination on land. As a matter of policy it will be important for Government to establish focal points on land rights information to enable the public demand for their rights and have them protected. This information can be placed at the Records office at Sub-County level for easy access. The deepening class boundaries and other divisions among women themselves will also be dealt away with through awareness and dialogue. Divides exist between the 'elite' and rural women, rich and poor, which makes it difficult to create change. This is especially seen during the debate on co ownership, where elite women can not relate to a situation of lack of control and therefore see no need for spousal co ownership. Their resentment of the proposal makes it difficult for lobby work and policymakers start using this as a scapegoat not to enact the clause saying that women are not sure of what they want.

Delays in setting up Land management and Dispute Resolution Institutions

Most of the Institutions put in place by the Land Act have not been fully set up and for those that are set, there are no logistics to make them operational. These delays have caused the delay in implementing the Land Law and therefore progressive clauses in the Land Act that offer protection to women have not been put to the test. When District Land Tribunals start hearing cases, it will be important to monitor their work and establish the number of cases brought to the Tribunal that affect women's land rights.

Conclusions and Recommendations

Instead of advocating for alternative income generating activities for women, it is more important to bring more resources under the control of women to strengthen agricultural productivity. The focus for intervention should be on enforcement of the Law on land and improving women's access to information on legislation that is gender sensitive and introducing information on agriculture through agricultural extension programmes. Amendment of the law on land to include issues like co ownership that directly give women land ownership will be very important. This will work towards improving women's access and control to land, credit facilities and water, the vital elements for empowerment of a rural woman in Uganda whose source of livelihood is in the land.

Governments in Africa should make a deliberate effort to enhance the capacity of NGOS' so that they participate in the implementation and sensitization processes, but also that they work in a conducive environment.

Civil Society Organizations will need to carry out research on court decisions that have been made over the years on the justification for women's land ownership. As noted by Ovonji, Willy and Muhereza (August 2000), It will be important to guarantee women land ownership rights in order to increase their control over household income and expenditure. This will in turn lead to better family nutrition, improved health status and enrolment of children in School. These being basic development needs will transform the woman from her poverty levels.

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ENSURING WOMEN'S LAND ACCESS

COMMENTS: ELIZABETH KARONO

Background:

After a period of broad consultation and considerable debate, Uganda enacted its land law in 1998. Because of the considerable efforts of advocates for women's land rights, the process leading up to, and immediately following, the enactment of the law brought to the fore the issue of women's land rights within the context of the land question in Uganda. The lack of effective control over land by women and girls not only became an issue for public discussion, it has also become more openly acknowledged in key policy documents. In order to strengthen advocacy for women's land rights, I believe that it is necessary to deepen the premise on which this advocacy is advanced. On the other hand, support for women's land rights at the level of policy should go beyond mere declarations and address how policies will be translated into actual programs and how they will affect people's lives.

Within the context of the issues raised by the moderator, issues that need closer scrutiny based on the reality in Uganda are the following:

Advocacy for women's land rights

Because demands for securing women's land rights tend to be made without demonstrating why and in which ways women's limited land rights are actually structured, it is helpful to examine the specific ways in which patriarchal land tenure and production arrangements structure women's marginalisation on land.

Debates around customary land tenure in Africa tend to fall in a dichotomy between views which stress the ideals of customary land tenure, and an indiscriminate criticism of these forms of land tenure, particularly by advocates of women's land rights, as being inimical to women's interests in land. There is need to examine this dichotomy of view-points in order to see if there are elements in customary land tenure that serve the interests of women, and for mainstream land tenure debates to factor into the equation the discriminatory nature of customary land tenure. An aspect of customary land tenure, which is not highlighted by both sides, is the unsustainable patriarchal inheritance system, which results into miniaturization of land holdings to economically nonviable sizes.

The assumption that securing women's land rights will result in addressing issues of deepening poverty and food insecurity need to be closely examined. Uganda is a predominantly subsistence agricultural

country with its population rural and engaged in peasant agriculture. Despite this, there is emerging evidence, particularly in land scarce districts, that peasant agricultural production is being negatively affected¹⁹ by existing land tenure arrangements (Nyangabyaki-Bazaara: 2001). The implications of this transition need to be examined and factored into the equation of advocating for women's secure land rights.

Policy level recognition of women's limited land rights is still quite tentative given the inconsistent positions taken at the highest levels of government (the most telling example being the positions taken by both parliament and the cabinet on the spousal co-ownership clause) and the contradictions between and within policies. Given this policy-level incoherence it is perhaps not surprising that there are numerous gaps between policy declarations, actual implementation of these policies, and the reality on the ground.

A Question of Power - Gender, Patriarchy and Land Tenure

Gender is an important concept in understanding the structural causes of women's marginalization on land. The fact of being male or female is central to the way in which land tenure rights and production relations are determined. The hierarchical nature of rights and responsibilities over land and other property, which emerge as a result of gender-differentiated rights and roles are skewed against women and girls in favor of men and boys. By granting men and boys primary right of inheritance of land and property, and granting women and girls user rights mediated through their relationship to men, a situation of unequal power relations, drawn along gender lines, is entrenched in land tenure and production relations.

A key rationale of customary land tenure systems is access and control of labor (Lastarria-Cornhiel: 1997). Gender is one of the major determinants of allocation and control of labor. It determines who is entitled to whose labor and, within the context of the household and the community, which gender is the "...producing class..." and which is the "...expropriating class..." (Sylvia Walby: 1994: p.6). In most societies in Uganda, men are entitled to the labor of women and girls whereas women are not automatically entitled to the labor of men and boys. This gendered division of labor determines the responsibilities for production based on what are considered to be the roles for each individual within the household.

Patriarchy is a useful tool in explaining how this skewed and gender-biased system continues to determine land tenure and production relations in different social contexts. It is also important for understanding how the system reproduces itself over time. Defined simply as "*a system of social structures and practices in which men dominate women*" (Sylvia Walby: 1994: p. 5), patriarchy is a

¹⁹ The term "slow and painful death" (Bryceson and Bank, as quoted by Walker: Moderator's Comments) vividly explains the process which is happening, with women bearing the brunt of this painful transition!

concept that explains the power structure underpinning the exclusion of women and girls from effective control of a resource they use more than any other population group. Because it is a set of beliefs and principles that govern the way communities organize themselves, patriarchy is an all-pervasive ideology deeply rooted in peoples' customs, norms, social beliefs and practices. Because it is highly institutionalized, patriarchy is a key rationalizing principle, rarely problematized, even formal decisions on land and production relations.

Patriarchal land tenure arrangements are based on the assumption that women and girls gain access to land through their male kin at every point in their life cycle. This assumption denies women and girls independent right to land. It explains why policy makers in Uganda cannot see the validity of raising the issue of women's right to land outside the context of the domestic relations bill which is intended to address marital property. This mind-set persists despite the growing evidence of girl-child and female-headed households largely due to the high incidence of HIV/AIDS orphans and widows.

The incidence of HIV/AIDS vividly demonstrates the fact that guaranteed right of access to land does not match the responsibilities for household sustenance of women and girls. While responsibilities for women and girls to care for others have increased considerably their land and property rights have not only failed to match their needs but, in fact, declined. What is more, the failure of the patriarchal social system to fulfill its obligation to women has not lessened male dominance and control over women and girls!

Customary Land Tenure and Women's Land Rights

Despite the changes that are occurring, customary tenure continues to govern land relations in most societies in Uganda. A question that is pertinent to the current discussion is whether customary land tenure systems are inherently inimical to women's land rights?

Communal Land Ownership and Women's Land Rights

One of the positive tenets of customary land tenure is communal land ownership in which the tribe, clan, or extended family acts as a joint ownership unit (Jean-Philippe Platteau, 1995). As long as individuals are recognized members of the group, their rights to land for production are guaranteed. Unfortunately, the changes that have occurred in customary land tenure have resulted in communal land ownership becoming individualized, with boys and men getting the primary right of ownership. This implies that in addition to losing their communally guaranteed user rights, women and girls have to succumb to the authority of individual men who are the "rightful owners" of land.

Individualized land ownership goes hand-in-hand with privatization of communally owned resources. Evidence from areas where communal land ownership has virtually disappeared, such as Mbale district, shows that the common resources have also virtually disappeared, with severe consequences for women.

The implications of these changes for women have to be appreciated within a context where traditional institutions and mechanisms for safeguarding the land rights of those with only user rights have weakened. This means that women have no institutional mechanisms to turn when their land rights are violated, or when they need support to access land in order for them to fulfill their obligations for subsistence production. At the same time, social insurance mechanisms for caring for the weak and ailing have also weakened adding more stress on women and girls.

Flexible land tenure arrangements

Customary land tenure allowed for a variety of different interests in a single piece of land to be recognized and given effect. Flexibility in customary land tenure is also reflected in the fact that it allows for a wide array of arrangements by which land can be accessed by those without ownership rights, including borrowing, tenancy or pledges. Such flexible land tenure arrangements are beneficial to women because they permit negotiation for access to land on terms and within social contexts and institutional arrangements that are accessible, affordable and familiar to them.

Tenure Security and Agricultural Production

As with any other farmer, land tenure security for women arises from how confident they feel about their rights on the piece of land they use, which in turn affects their behavioral relationship to the land and the investment choices they are able to make. Farmers with only user rights (whether short or long-term) tend to have a lower level of tenure security than those with permanent land rights. Farmers with short-term user rights have less secure rights than those with long-term user rights.

Farmers with only user rights are often only free to grow crops for a limited number of seasons and have no right to plant or harvest perennial crops. Although more secure than those with short-term land rights, farmers with long-term user rights still have no right to lend, rent, sell or bequeath the land, unlike those with permanent rights (Blarel: 1994: p. 83-84). The most secure land rights are those that allow the farmer to bequeath the land. This level of security allows the farmer to determine what to grow – whether perennial or seasonal, whether cash crop or food crop, and assures the farmer of control over what is produced. Because women tend to have only user rights, under the best circumstances the highest bundle of rights they can enjoy are long-term user rights.

In his recent study on the *Impact of Liberalization on Agricultural Production and Food Security*, Nyangabyaki-Bazaara illustrates the relationship between tenure security and agricultural production in Uganda. This illustrates the limitations imposed on farmers who have only user rights to land. He also points out that there is a tendency among peasants to shift labor from subsistence production to cash-crop production and that this has implications for household and community food security (Nyangabyaki-

Bazaara: 2001). The situation which Bazaara describes has specific consequences for women because in addition to their limited land rights as tenants, they have to operate under the specific production responsibility for subsistence rather than cash crop production.

It is not surprising that one of the consequences of liberalization identified by Nyangabyaki-Bazaara is that it accentuates gender differentiation. He reports that because of the gender division of roles and responsibilities in agricultural production, the work-load of women has increased as they have had to provide labor for cash crop production as well as subsistence production. This is made worse by the low-level of technology used in production: “...intensification of production for cash/export under the same technological base will work against women...liberalization tends to reinforce the patriarchal power wielded by men...” (Nyangabyaki-Bazaara: 2001: p. 30).

Policy Framework

A brief review of some of the key legal instruments and policies illustrates their inherent incoherence when it comes to supporting women’s land rights. This is illustrated below:

The Constitution of Uganda recognizes traditional land tenure systems among the tenure systems applicable in the country. These systems deny women and girls inheritance rights. As the supreme law of the country, therefore, the constitution sends contradictory messages regarding women’s land rights, specifically, and their human rights, in general, and this constrains advocacy for women’s land rights as human rights.

Uganda has put in place a National Gender Policy and National Action Plan on Women as key policy documents for promoting gender equity, in general, and the empowerment of women, specifically. Unfortunately, neither document specifically mentions the need for securing women’s land rights. This limits the potential for other national policy interventions like the PEAP and PMA to be used to secure women’s land rights.

Policy statements such as the NGP and PEAP basically provide guiding principles and aspirations but not specific concrete actions and strategies that translate into benefits for the poor, in general, and women, in particular. In fact these policies define the principles and aspirations, and expect different departments of government to develop and implement specific actions within the contexts of their mandates. The extent to which policy stipulations and expectations are realized in practice depend on the commitment, goodwill and capacity within the individual sectoral departments of government.

In practice, cross-cutting issues such as gender, HIV/AIDS and poverty rarely get mainstreamed as there is no specific institution to be held responsible for all the actions that need to be undertaken. Responsibility for an issue such as women’s land rights is spread between the MGLSD and the MWLE,

neither of which has so far taken responsibility for championing it. Despite this, women's land rights keep being raised as important by all the key policy documents discussed above.

Within decentralized systems of local government, different layers of commitment and capacity are needed in order to translate and implement national level policy goals at the district and sub-county levels. At the local level, commitment and capacity, if they exist, are likely to be used to address priorities, which may not always be consistent with what is anticipated at the national level.

Heavy reliance on donor support both at the national and district levels for implementation and capacity building for important national policies means that, good as they may be, they may not see the light of day should donor funding not be forthcoming. This also has implications for the sustainability of initiatives started within the context of these policies.

ENSURING WOMEN'S LAND ACCESS

COMMENTS: MICHAEL KEVANE

Motivating the discussion on women's land access

Land tenure rights for men and women in sub-Saharan Africa are changing, and more attention is being devoted to formalizing land tenure rules (Kevane and Gray 1999; Lavigne Delville 2000; Toulmin, Quan et al. 2000; Gray and Kevane 2001). The task before the panel is to identify politically feasible and cost-effective interventions to change tenure rights of women in countries of sub-Saharan Africa. There are a number of conceivable interventions. In different countries, these might involve change in statutes and, more importantly, public awareness and enforcement.

- New forms of joint conjugal ownership over land upon marriage, with provisions for spousal consent over land use and transfer, and provisions for division of land upon termination of marriage through death or divorce
- Individual title held by women (and perhaps continuation of the policy of little encouragement of title for individual men)
- Joint title given to associations of women (creating female corporate institutions that would operate as counter-weights to male-dominated lineage groups)
- Longer term security of rental transactions involving women as either landlords or tenants
- Obligations of kin and/or kin groups to women, e.g., sons to their mothers
- Quotas for women in market-based or expropriation-based land reform, especially for public investments in irrigation projects
- Create or expand set of new assets for women (e.g. housing plots, trees, village or urban retail space), and allow unequal rights to persist in agricultural land
- Differential taxation of land according to gender of registered owner
- Re-corporatization of land under more gender inclusive village authority

It goes without saying that these interventions will only be meaningful if complementary reforms are made in the institutions allocating agricultural inputs and outputs. Many extension agencies, credit programs, marketing boards, and fertilizer and other official, state input programs are currently targeted exclusively towards men. Many contract farming schemes, crop marketing corporations, and other agribusiness firms in the private sector also target men as potential clients, and refuse to enter into contractual partnerships with women.

General remarks

Before discussing the various interventions, some general remarks might be in order. All interventions involve gains and losses for different social groups. An intervention becomes more politically feasible if

losers are compensated. An intervention becomes more cost effective-- has a smaller impact on the overall fiscal balance of the government, or generates returns that enable the government to repay loans used to finance upfront costs-- if the beneficiaries of the reform have some of their winnings taxed away. Reforming tenure rights to favor women, then, will be more feasible and cost effective if female beneficiaries are taxed, and male losers in the reform are compensated for their loss of rights.

Thinking of tenure reform this way has two obvious implications that are sometimes ignored. First, if losers are not powerful politically, then reform quickly degenerates into outright theft. The politically powerful use the reform as a pretext for abrogating previously recognized, respected, and enforced property rights. Early attempts to reform tenure in African countries are widely recognized to have degenerated into outright land grabs, by men against women, by well-connected urban merchants against weak rural communities, and by powerful lineage elders against their juniors (Fleuret 1988; Shipton 1988). The land grab inevitably leads to continued and costly political conflict. This is not really a problem in gender reform, since women are not, typically, very powerful or connected political actors. Second, if losers are indeed politically powerful, then either they have to receive the bulk of the efficiency benefits from the reform (or the outside funds supporting the reform), or they have to be divided, so that a fraction of losers will ally with the comparatively disenfranchised beneficiaries.

In the gender reform case, the natural point of fracture of the powerful opponents of reform would be urban-rural, for many countries. Urban men have very different interests from rural men. The question then is how to package tenure changes in rural areas that favor women, with tenure changes in urban areas that favor urban men. Of course, the tenure changes in urban areas should not come at the expense of urban women. That is not necessarily a problem. There are many reforms in urban areas that have the effect of creating new assets. States around the world, by virtue of their monopoly over most resources and previous regulatory 'takings', have plenty of largesse available, from radio and other electronic spectra, to urban zoning, to transport and occupational licensing. These are just a few of the assets that states can return to the private sector, and almost all of them will benefit men more than women, even if done on an equitable basis. The legacy of persisting inequalities between men and women mean that men are often in better positions to profit from new opportunities. The one exception might be urban retail property, where in some cases women are more important actors than men.

The point of this brief discussion of the political economy of reform is simply to remind reformers that building a viable political coalition is integral to reform. Of course, if outside donors are willing to fund the reform, and compensate losers directly, the domestic political constraint becomes less binding.

New conjugal contracts

Laws of intestate succession are important determinants of women's access to land. Since newly married women in sub-Saharan Africa are on average 5.4 years older than their husbands (Chart 1), and live longer, when permitted they inherit and manage the land of their deceased husbands for long periods of time. Chart 2 gives some evidence on the extent of widowhood in the region; there is a huge gap between the likelihood of being married for older men compared with older women. Numerous land tenure reformers have called upon states to implement new laws of intestate succession that give widows strong ownership claims over the estates of their husbands. Sometimes these calls for intestate succession are treated as separate from land issues, to be dealt with under reform of personal law (Manji 1998).

The economist immediately asks two questions of reform of intestate succession, which straightforwardly changes the terms of marriage contracts. First, since marriage contracts are multidimensional, it might be expected that the gain of a property right is simply offset by a corresponding loss in some other dimension of the contract. Regulating one of the terms in a multidimensional contract might not alter the equilibrium in the marriage market; the welfare of women remains exactly as before, and improved tenure status masks a worsening status on another dimension. Second, since marriage contracts are voluntary, parties might simply opt out of official marriages and cohabit, or develop new, unofficial marriage contracts. Chart 3 suggests there is considerable variation in marriage rates across African societies. (The correlation between the percent of women married and the difference in age at marriage is .61- quite high. Lesthaeghe, Kaufman et al describe some of the different marriage zones in sub-Saharan Africa ()).

Much research tells us that marriage rates also change over time (in particular, they are declining) (Hakansson 1986) (Andre and Platteau 1998). If further decline in marriage is the response in the marriage market to the legal reform, then the reform will have little effect. The incidence of the reform, then, depends on the substitutability of contract terms and the elasticity of response to changes in contract terms. If contract terms are highly substitutable and alternatives to formal marriage are available, changing the laws of intestate succession will have few effects. To ensure significant effects, in this case, the state may find itself in the uncomfortable business of investigating the content of conjugal relationships, to enforce official marriages and punish unofficial marriages. There are high costs to creating marriage police.

This then raises the question of how to change marriage contracts in ways that enable stronger rights for women without encouraging evasion. That is, how can a new marriage contract be self-enforcing? Two things need to happen. The man's lineage must have a new, pecuniary interest in encouraging official marriage and enforcing the right of women to inherit the property of their husbands. In addition, men need to have incentives to get married in general, so that the terms of marriage do not turn against women

and offset the new intestate succession rights. One way to do the first is to have a non-lineage person become the inheritor or administrator of land following the intestate death of a man not officially married. The lineage then has a strong incentive to make sure that lineage men are officially married. The woman becomes, in effect, a member of the lineage. On the second, there are many ways to give men more incentives to marry in general, but perhaps the most equitable one is to give women some right that will be valuable to her husband. Identity cards, for example, are valuable assets that governments can supply at low cost to women, who typically are much less likely than men to possess them. An identity card gives the holder considerable ease of passage, and access to formal financial institutions. The identity card holder will earn more money. The husband will want to share in that new surplus. The general point is to bundle a change in intestate succession with incentives for self-enforcement and transfer of assets from the state in order to maintain the attractiveness of marriage for men.

Individual titling

Much discussion of new interventions in land tenure involves consideration of how to apply 'demand-driven' interventions. Instead of making *everyone* and *every field* have a registered title, simply issue title to those who find value in titles greater than the costs of application and potential litigation. Gradually build up a base of titles by first titling the self-selected easy farmers and easy fields. Why not apply a related principle in targeting interventions, and use a categorical approach to titling. Pilot programs, instead of being geographically targeted, could be gender-targeted. To my knowledge, there are no examples of such gender targeting in titling programs. There is no reason why they would be less effective than other programs. Such programs would have the added benefit of enabling female surveyors and titling administrators to broaden the scope of their responsibilities. Instead of deferring to male colleagues in titling men's fields, their male colleagues would be deferring to them.

Joint titling

There is increasing evidence of the impact of giving title to associations of women (Schroeder 1993; Dei 1994). One problem associated with the typical project is that a particular landholding group in the village bears most of the cost, since association land must be contiguous. Careful mapping can be used to delimit areas where the costs of land transfer can be shared among many groups of rights-holders.

Longer term security of rental transactions

As with associations and individual titling, the new emphasis on 'demand-driven' formalization lends itself to categorical targeting of women. Why not concentrate new resources on experimental programs to formalize rental transactions in writing by encouraging women to step forward?

Obligations of kin

There is a well-described 'house-property' system of East Africa, where widows hold land in trust for their children, and where married women have rights to veto transfers (because land is held by a kind of coparcenary group with children having rights over family land). This system is changing, according to some anthropological accounts. Instead of the widow holding land in trust for her children, the sons are obligated to provide land for their mothers (Besteman 1995). Instead of the complaint, "Mother, you lost my land," the complain becomes, "Son, where is my land?" The obligation of husbands to provide land for their wives becomes an obligation of sons, as members of the lineage, to provide land to their mothers.

Quotas

States have fairly dismal histories in their attempts to allocate 'improved' land, especially in new irrigation projects, to women. Why is that? Why do the best of intentions seem to go awry? Several authors have studied the effect of irrigated rice cultivation on women's access to land in The Gambia. In The Gambia, farmers recognize both common and individual land rights. Women historically controlled rice fields that they cleared with their own labor. Their rights to this land were well defined: they controlled the production from this land, but more significantly they controlled the right to transfer land, which they generally did, to their daughters. The studies of three different irrigation schemes illustrate how women's access to land changed when the irrigation projects changed who could cultivate rice land. Brautigam (1992) argues that because the rice land was cleared and developed by men, men could claim the land as their personal plots. Some of these plots were categorized as household property that came under the control of male household heads; inputs and mechanized services were allocated overwhelmingly to men. Carney (1988) describes how women's rights to irrigated rice land evolved in the Jahaly Pacharr irrigation project that was expressly aimed at women farmers who were ignored by other failed rice projects. About 13% of the irrigated rice land was registered in women's names, but notes that (p. 71), "even though the land was registered in women's names, none of the pump-irrigated plots were considered their individual (*kamanyango*) fields. Irrigated plots throughout the project were designated by both men and women as *maruo*, or compound land." Women's access to land was reshaped by redefining the meanings of the categories by which their access has traditionally been allocated. The new projects allocated land to women, but that did not mean that women had the power to control the land. Irrigated crops turned out to be different kinds of crops, and control over land was linked to the crop cultivated, rather than a spatial concept of ownership.

New assets

In much of rural sub-Saharan Africa, corporate groups that regulate economic activity in village society have confronted a new economic problem. This is the problem of determining inheritance rights over

new assets such as improved housing, trained bullocks, transport equipment, and agricultural machinery. None of the assets existed to any significant degree more than two generations ago in rural areas. The problem of deciding on competing inheritance claims to these assets is at hand. This ongoing process gives reformers a unique opportunity to bundle reforms in land inheritance with changes or clarifications in inheritance of other assets. Moreover, it gives reformers the opportunity to simply abandon the gender dimension to land reform, and instead concentrate on gender reforms regarding other assets.

The complexities in tenure institutions defining rights to agricultural land are mirrored in the complexity of rights to improved housing. More and more people in southwestern Burkina Faso live in improved housing, made of sun-fired or quarried brick and with tin roofs. Little is known about the extent of this housing, nor the determinants of construction. More importantly, little is known about rules of inheritance for housing, especially for widows and other family members. To get a flavor of the uncertainty of inheritance norms, the following three paragraphs report on interviews with Bwa women in south-Western Burkina Faso. In the paragraphs, the *grand-frère* refers to the elder of the lineage, the *grand-famille*. *Elderly Bwa woman, Dec. 2000*. In the olden times the family all worked together, so elders of family took everything. Nowadays children take possessions. Girls have no rights to inherit cattle; no rights to inherit anything- they are destined for other families so they get nothing. When a woman dies everything is for the boys who will take the things for their own households, even the pots and pans. Older sons have more rights than younger sons. Older son will take fields of father. Youngest son inherits house according to Bwa custom. If lots of sons, they may work cattle together, or they may sell and divide. Nearby a man died and the family left the house empty rather than occupy it and it fell down.

Middle-aged Bwa widow, Dec. 2000. At first she said now when a man dies his sons inherit his possessions, with the youngest son inheriting all. But then when pressed she suggested that for a field they would cultivate it together until they accumulated enough oxen that they could divide up equally. her husband built a house that they then rented. Since his death the money goes to her oldest son, who then gives it to the *grand-frère*. Her own house belongs to her oldest son. She does not get the house, but would get the pension. She did not get her husband's cattle that was in care of a Peul. She does not even know how much there was, but says her son does. A wife gets nothing. When a woman dies, her daughters-in-law would inherit her possessions, or her own sons, or else if she had no children it would go to the husband's family. The deceased woman's family gets nothing. Her daughters can come and ask for things but no obligation to give them anything.

Older Bwa woman, Dec. 2000. If a man dies, the *grand-frère* or father will take his possessions, or maybe a *petit-frère*. If he has grown children then sons will take oxen and field; if lots of sons they can

cultivate together, but if they don't it will be a problem. Girls do not have right to anything; they must go and get married outside. The sons who inherit oxen should take care of the wives of the deceased man. Grown children will take the house, or maybe the *grand-frère* will take it. If the house is rented, she does not know who would get the money, the children or the *grand-frère*. When a woman dies her husband will take everything, or else the sons will take her possessions. Unmarried daughters will take her cloth and personal effects. For a woman without children, the person in the *grand-famille* who handles her funeral will take her possessions. To her knowledge there has never been a written will in Béréba, nor to her knowledge has any inheritance case ever gone to the authorities

As the passages indicated above, there is clearly a tension between the rights of the elders of the lineage of the man and the man's surviving spouse and children.

Differential taxation

I am not aware of any states that have effective land taxes, but an alternative to transfers of titles and rights might be differential taxation by gender of owner. If the default ownership were assumed male, unless otherwise attested to formally, this would give a strong incentive for titling of land in the name of wives and female relatives. A cynical step in the right direction?

Recorporatization with women's representation

Cote d'Ivoire, with World Bank funding, is moving to recorporatize village land, by granting village-level titles. One of the premises of such a program is that the village authorities 'represent' the villagers. But village authorities are frequently non-representative of their 'subject' populations. In particular, they usually do not respond to the concerns of women. Village organizations often fare no better. Hannequin (1990), for instance, reports in detail how Mossi village organizations in Burkina Faso continue to be dominated by men, even though some are set up deliberately as women's projects.

Chart 1: Difference in singulate mean age at marriage for different countries

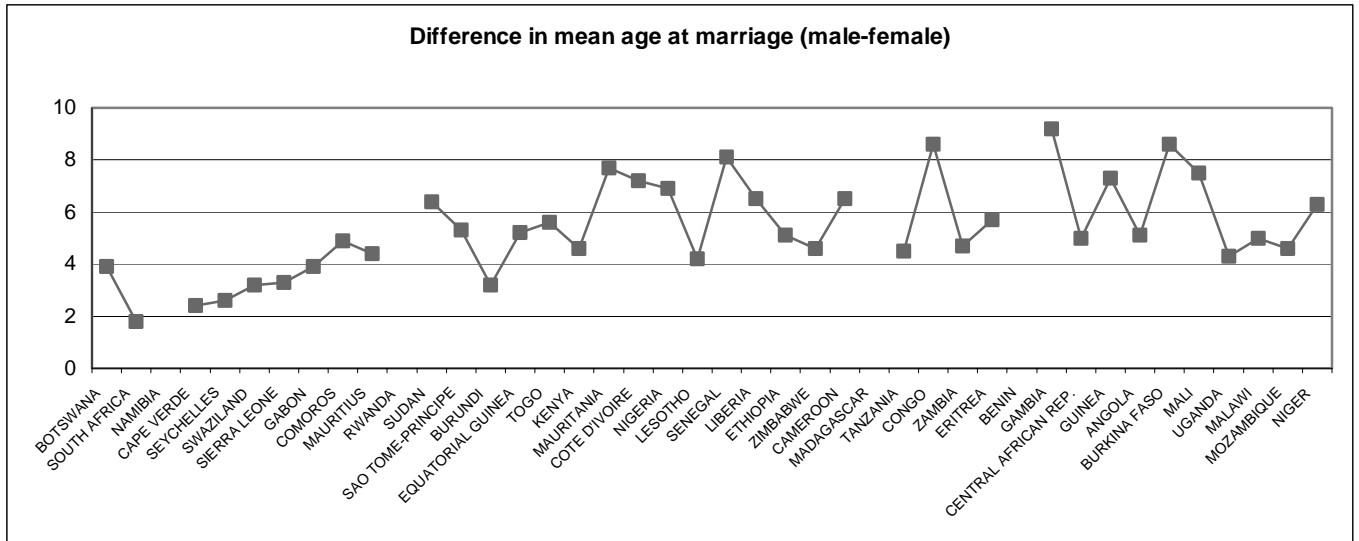


Chart 2: Percent of persons aged 60+ who are married

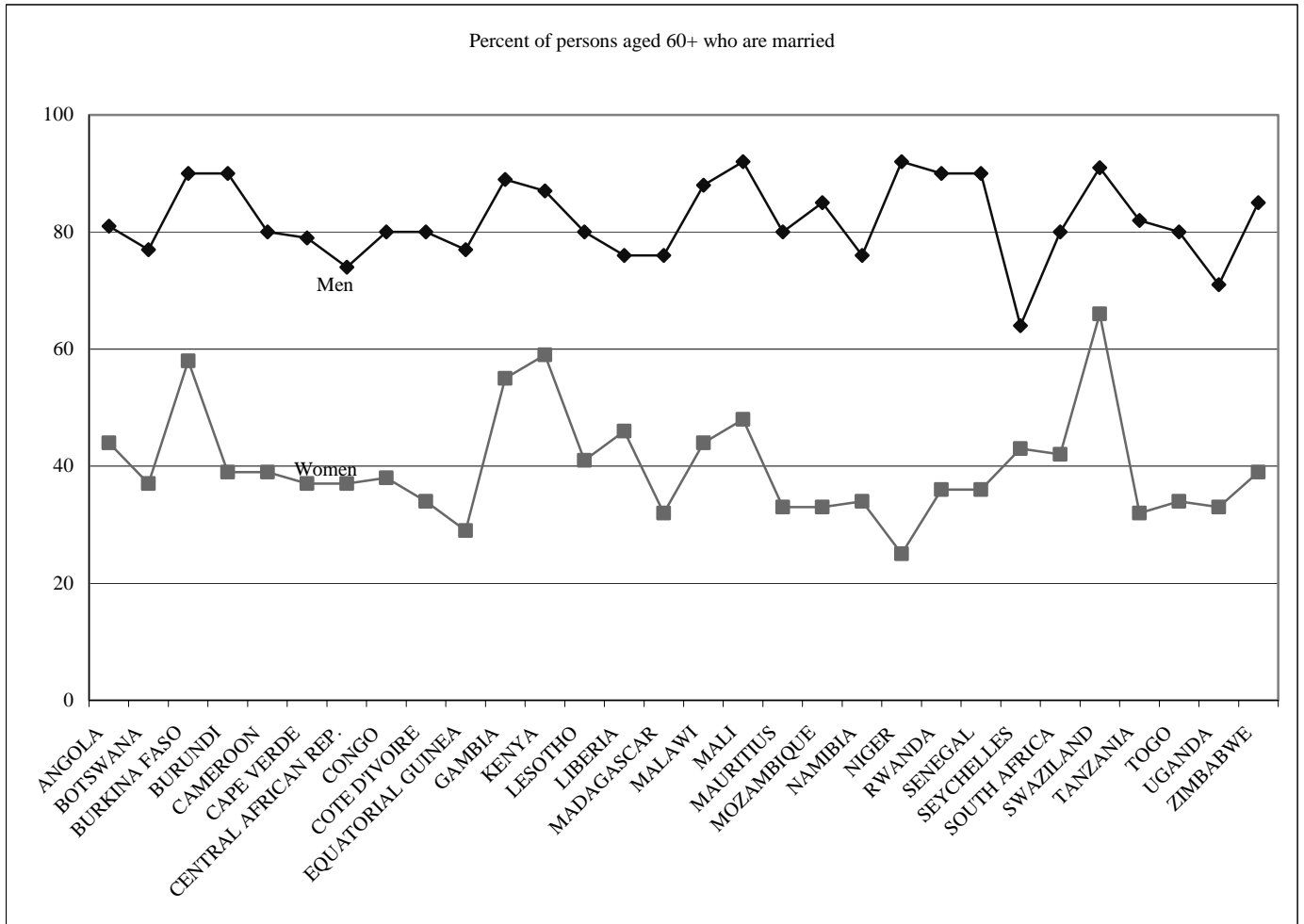
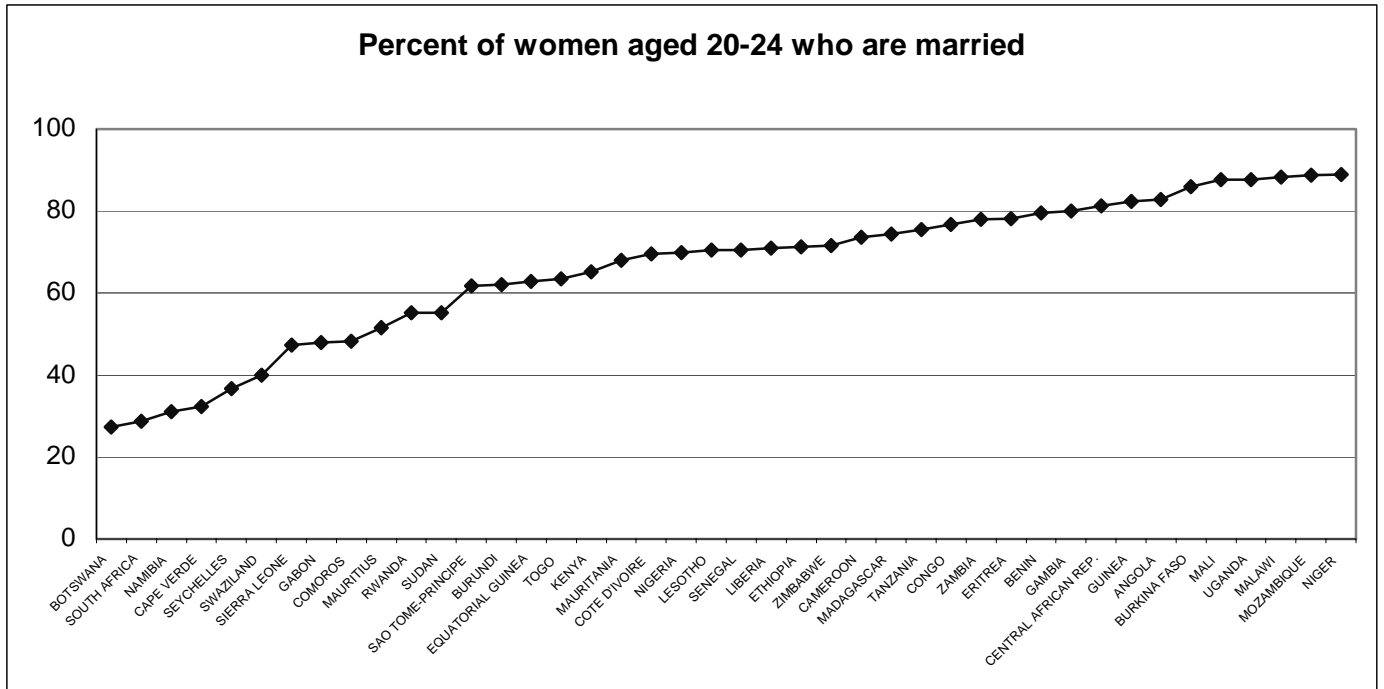


Chart 3: Percent of women married in different countries



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ENSURING WOMEN'S LAND ACCESS

COMMENTS: ESTHER KASALU-COFFIN²⁰

Introduction

I find the paper has adequately articulated the issues requiring attention, on women's access to land in Africa and the Middle East region. The paper starts by highlighting the extent of policy consensus on women's access to land, which the author points out, operates largely at the descriptive level. The author then outlines some general contextual considerations that need to be factored into the development of land policies and which, would more appropriately address gender issues in the Region. The author then presents additional factors, specific to the situation of women that require consideration in the development of land policy. Before finally making policy recommendations, the paper reviews three areas for debate, namely, the call for independent rights in land vis-à-vis joint rights in household; the value of statutory and/or customary law for protecting women's land rights; and the correlation between tenure systems, investment in land by women and enhanced food security.

Given that "access to land" can have several meanings in different countries and to different people, it is important to define the word "Access" in light of the policy recommendations that the workshop wants to end up with. The comments in this paper have been made with the understanding that access to land in this context, is the right to land (security of tenure) where an individual has the right to choose the manner in which land is utilized, during a specified length of time, is able to make decisions on the nature of agricultural (or otherwise) activities to undertake on that parcel of land, and has the full claim to the products accruing from it.

One group of key stakeholders that has received little attention in the paper is the donor community (financiers of the majority of development investments). Multilateral and bilateral financing institutions are very instrumental in shaping the nature of development investments in African countries. They play the role of advisers to national governments on areas of investments; and in deciding on specific development project/programme design concepts of externally funded development interventions. As a result, financial institutions exert a lot of influence on the type of projects/programmes financed within

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the framework of existing national land policies. The limited capacity of national Governments has meant that there is a lot of involvement in the selection and design of development projects/programmes by International Financing Institutions. There seems to be an underlying assumption that these institutions and the individuals therein appreciate the merits of women access to land and that they promote development interventions, which encourage women access to land, for purposes of efficiency. This is not necessarily true. Therefore, the document should point this situation out and the need to sensitize and train professional teams in international financing institutions.

The Extent of Policy Consensus on Women's Access to Land

Policy makers as well as those on the operational level generally agree that women should have access to land and control the products from it, mainly for reasons of basic human rights as well as for social and economic benefits that accrue as a result. Despite this broad consensus, there is little evidence on the ground, in many countries, of women access to land. In this section, the Cheryl Walker paper has adequately highlighted the disparity between the broad consensus on the major role that land plays in women's livelihood and hence in that of the entire household on the one hand, and the absence of comprehensive operational measures to implement land policy pronouncements.

Briefing Document for the Panel Discussion

The paper rightly points out that property rights favor men, and hence women do not have the same incentives as men in investing in agricultural production. It should be noted that this situation has resulted in women not optimizing their investments in agriculture. The implications at household and even at national level are very significant considering women involvement in agriculture in the region is much higher than that of men.

The General Policy Context

A Heterogeneous and dynamic regional policy context

Considering religion, in addition to social and cultural factors, plays a major role in land issues, it should be acknowledged that religious affiliations also have a significant influence on policy options.

Urbanization without Growth

In most countries in the region, higher rates of rural-urban migration among men as compared to that of women has not translated into more access to land for women remaining in rural areas. Men retain control over land even after migrating to urban areas, resulting in an increase of absentee-landlords, leading to falling productivity, due to continued lack of incentive for women to invest efficiently, in addition to inefficiencies associated with long distance management of land and agriculture operations.

Additional Considerations for Women-Centered Policy Development

Given the resentment that emanate from the opposite sex with regard to focus on women issues, it would be desirable to pursue a gender-centered policy development approach rather than a “women-centered” one.

Policy recommendations

The paper recommends reviewing and repealing all personal, family and customary law. Considering the workshop will be making recommendations on appropriate land policy options for Governments to consider, the suggestion to repeal customary law does not necessarily lie within the realm of political leaders. This involves traditional rulers who, in some countries are very powerful and have a lot of influence on the people. It might not be practical for political leaders to call for repealing customary law without the support of traditional rulers who exert more influence on people at the local level.

The author recommends investments in saving-saving domestic and agricultural activities, which address women’s needs with regard to their time/time constraints. In addition, to ease the pressure on land, it would be desirable for Governments to design policies that encourage more investments in agriculture-based activities that do not require land cultivation, such as processing using cottage industry type of technology. This would offer woman, rural and agriculture-based income generating activities. It would also offer men an alternative to crop and livestock production, which requires controlling large parcels of land.

The Cheryl Walker paper suggests addressing the unequal terms of trade for African agriculture and industry, at the macroeconomic and global level. Unequal and diminishing terms of trade have had a very negative impact on development in Africa. However, it should be acknowledged that as important as this factor may be, and the need to address it, the bargaining power of Sub-Saharan African countries is very limited. Nevertheless, Government policies should point out the need to continue with dialogue through key international organizations such as the World Trade Organization. Furthermore, for a more effective approach, this could be done in a coordinated manner at the regional level and on a specific product/crop.

So far there seems to be Consensus on the following:

Women are a key human resource in economic development since they produce at least 70% of the agriculture production in most African Countries.

Land is a key factor of production, and an asset central to increasing household income and attaining national development.

Agriculture and rural development is a key sector for attaining economic development, in most countries in the region.

As signatories to the Millennium Development Goals of reducing poverty by half by 2015 and through Vision Statements, many African Countries have indicated that they want to change their economic status, which is plagued with poverty, for the better.

It has been acknowledged that existing development strategies in most countries are not going to get us where we want to be.

Through their Poverty Reduction Strategy Papers (PRSPs) and other National Strategy documents, Governments have indicated how they intend to achieve their stated economic development goals.

Women access to land is limited.

Many workshop participants are of the view that the focus should be on developing democratic processes at the local level, to give a voice to members of communities, including women. In this regards, land administration should be carried out through the decentralized structures at the community level. However, in many cases, community members consider land administration in most African traditional systems, consultative and even democratic. By the definition of “access”, given above, women access to land is still limited within these systems.

The challenge for the Government therefore is to ensure democratic systems at the community level. Left alone under existing traditional systems, there is no guarantee that women’s voices will be heard and considered.

Under the broad consensus that countries (Government and its people) want to improve their livelihoods and naturally this also applies at community level, and given that people are rationale, when transfer of land administration to community levels is accompanied by **information and demonstrated economic and social benefits** of systems where women have had access to land, significant improvements should occur.

From the point of view of the Government, it should be acknowledged that there are, within different communities, varying degrees of resistance to women’s land access. Having recognized this, government policy strategy should be to actively work with those communities that are more receptive to an inclusive system.