



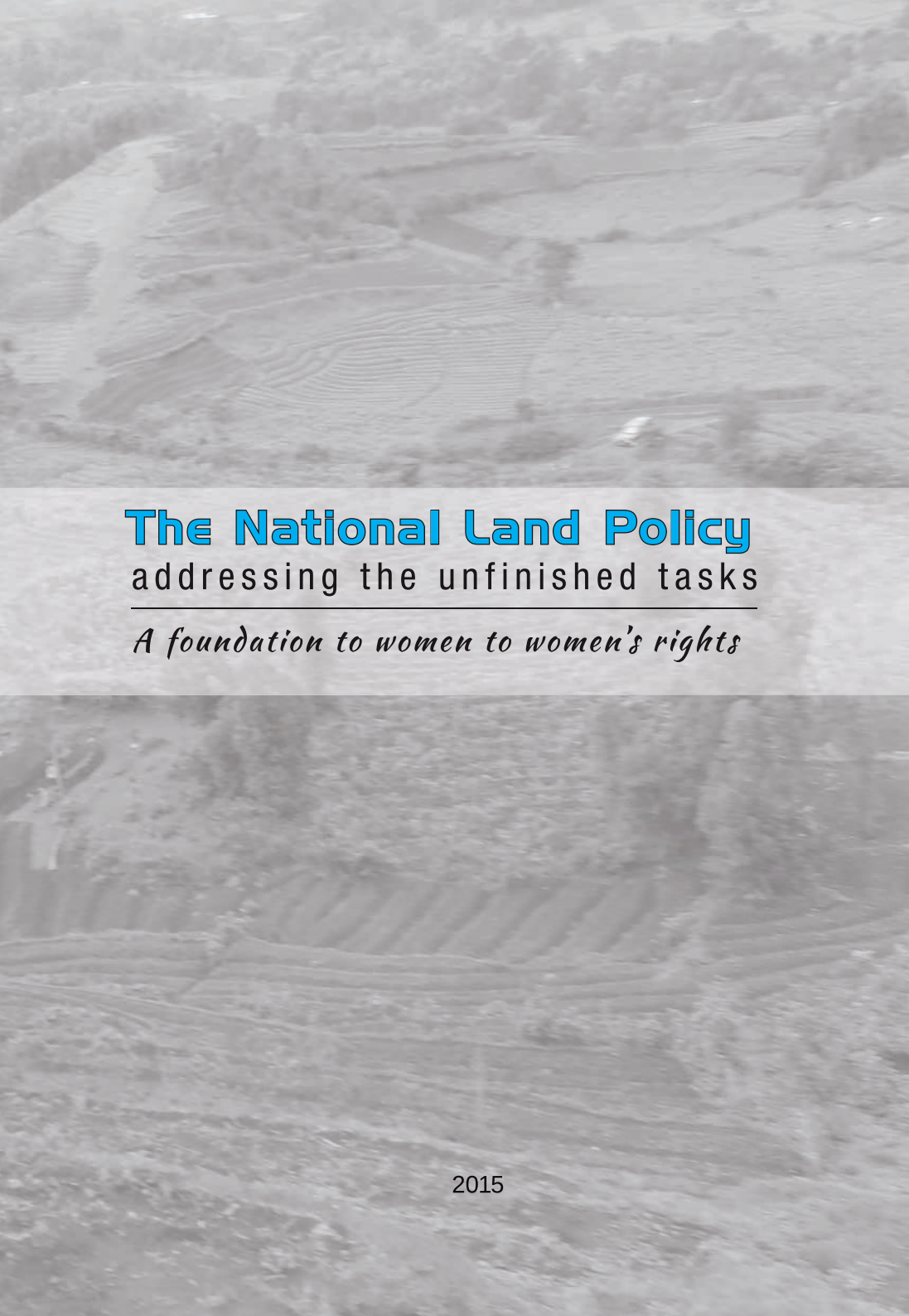
Gender Transformation & Empowerment

The National Land Policy addressing the unfinished tasks

A foundation to women to women's rights

2015





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Introduction

Land in Uganda and many parts of the world remain a critical factor of production and an essential pillar of human existence and national development.

Despite being a critical factor to production since colonial times, the country has never had a comprehensive land policy. The available policies and laws on land and natural resources have been quite scattered.

Post-independence attempts to settle the land question and deal with fundamental issues in land tenure, land administration through a number of reforms i.e. decrees of 1975, the 1995 constitution and the Land Act cap 227 with limited success.

In many parts of rural Africa, land constitutes the primary source from which millions of people derive their daily livelihoods. This is also the case in Uganda where land is by far the most productive asset with agriculture accounting for 43 percent of the national GDP, 80 percent of employment and 85 percent of export earnings. Representing 80 percent of the agricultural labor force, women carry out most of the agricultural work producing up to 80 percent of food and cash crops. Despite their essential contributions to the national economy, only few women enjoy secure rights to the land they till. In fact, with control and ownership of land mainly concentrated in the hands of men, most women are crucially dependent upon male family members for access to land.

Customary land tenure explicitly recognizes women's vulnerabilities arising from their dependence upon men and for a long time pro-actively provided for the protection of their land rights in both their maiden and matrimonial homes. However, the customary safeguards ensuring women's tenure security have largely been eroded under the pressures of increasing land scarcity, rapid population growth and increasing individualization of land rights among others. Male family members that are supposed to hold land in trust for the entire family have increasingly turned themselves into individual land owners, gradually depriving weaker family members of their rights majority of whom are women and girls.

When Uganda underwent a major land and legal reform exercise during the 1990s, law and policy makers made a conscious effort to redress gender-based imbalances existing in land access and ownership and put in place a gender responsive legislative and policy framework safeguarding and strengthening women's rights in land. Even though the legal environment seems more favorable to women in Uganda, the situation on the ground is still far from satisfactory. Abuse of women's land rights is particularly widespread in the rural areas where women are frequently denied access to land by members of their own families.

Uganda has passed several laws in response to gender based violence including those protecting women's land rights. However, the Government is yet to prioritize the implementation of these laws in a way that impacts women positively, protect their land rights and reduce gender based violence. Violence against women has implications not only on individual families but on the country's overall development, thus reducing violence against women and protection of their land rights needs to be an urgent legal policy and practice goal.

At national level, Ugandan Constitution 1995 clearly states in Article 21, that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and shall enjoy equal protection of the law. The Constitution further states that no person shall be discriminated on any basis including sex and it authorizes Parliament to enact laws that redress imbalances between men and women in order to bring about equality.

The Constitution protects the property rights of all persons, and where that right is limited by compulsory acquisition, such persons are entitled to prompt payment of fair and adequate compensation. The Constitution guarantees equality in marriage between men and women, and such equality comprises decision making in the home. The Constitution also protects the rights of widows to inherit the property of their deceased spouses and to enjoy parental rights over their children.

The Constitution recognizes specific rights of women including the right to full and equal dignity with men as well as equal treatment with

men, including the right to equal opportunities in all spheres—political, economic and social. Also important in the context of women and land rights, the Constitution guarantees the right of access to information in the possession of the State or any of its agencies, as well as the right to justice, including the right to a fair, speedy and public hearing before an independent and impartial court or tribunal.

At regional and international level, Uganda is signatory to 2 key instruments that spell out the rights of women, including the Protocol to the African Charter on Human and People's Rights, on the Rights of Women (also known as the Maputo Protocol) and at international level, Uganda is signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The Maputo Protocol requires states to combat all forms of discrimination against women. It recognizes the rights of married women to acquire their own property and administer and manage it freely. It upholds women's right to equal benefit and protection before and under the law including effective access by women to judicial and legal services, including legal aid. The Protocol calls for special protection of widows, elderly women and women with disabilities. It also requires states to ensure the protection of poor women and women heads of families including women from marginalized population groups and provide an environment suitable to their condition and their special physical, economic and social needs.

Additional to the Maputo Protocol is the African Union (AU) Framework and Guidelines on Land Policy in Africa, which were adopted by the African Union in July 2009. The Framework and Guidelines provide an overview of the historical, political, economic and social background of the land question in Africa and elaborates on the role of land as a valuable natural resource endowment in attaining economic development and poverty reduction. The guidelines have the potential to ensure agricultural investment and promote economic growth without weakening development of different groups.

The AU framework and guidelines recognize the need for land policies that support a wide range of economic, social and political objectives

including the prevention of conflicts and conflict resolution through mutually acceptable dispute processing mechanisms. The AU Framework and guidelines urge African governments to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation.

The framework and guidelines provide for the development of tracking systems and mechanisms for land policy formulation and implementation that will enable governments learn from past successes and setbacks, and make timely readjustments to national land policy processes as new challenges arise. The framework and guidelines set out a series of best practices and recommendations that includes the need for governments of Africa to develop comprehensive land policies that make for further development of land related sectors; recognition of the role of local and community land administration; harmonization of local and national land administrative structures and laws; recognition that women's land rights need to be strengthened through specific mechanisms; and balancing of pro-poor priorities with market orientation.

The framework and guidelines further recommends that in making land deals governments take adequate measures to ensure that market driven policies do not marginalize already vulnerable groups e.g. women; and that civil society organizations be engaged in land policy formulation from the inception of such policy, while land reform should be both inclusive and consultative with representation from women, small scale farmers etc.

The AU framework and guidelines explicitly recognize that patriarchy dominates social organization of society and discriminates against women in ownership and control of land resources. The guidelines also acknowledge the role that national land law has played cementing the system of patriarchy i.e. by conferring title and inheritance rights along male lines on the assumption that women can and should access land through their husbands or male children. The framework and guidelines also explicitly recognizes the claw backs of women's land rights through

subordination of equality provisions in statute to customary and religious law contained in many African constitutions.

The AU guidelines provide an opportunity for activists to lobby their governments to remove age-old rigidities in traditional structures and systems which discriminate against women, and also critically examining the interface between state and indigenous systems—certification, documentation, codification and the impact of these systems on women's rights.

The framework and guidelines are not legally binding, but African states have made commitments with regards to women's land rights, which can be used to bolster adoption and implementation of provisions of the AU framework and guidelines at national level. These include: Binding Commitments in the Constitutive Act to Gender Equality and AU Protocol on the Rights of Women in Africa (2003), which Uganda has ratified; Binding commitments in sub-regional protocols/declarations; Commitments in National Constitutions and policies; and International Conventions—CEDAW, Beijing.

CEDAW defines discrimination against women as “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

As a State party to the Convention, Uganda has committed itself to undertake a series of measures to end discrimination against women in all forms, including ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises and to ensure effective protection of women against discrimination.

CEDAW specifically require protection of the rights of rural women. Article 14 demands that States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including

their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. The article also requires States Parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development.

Women's interests in land are protected by the Land Act. Section 27 explicitly holds that any decision taken in respect of customary tenure that denies "women or children or persons with disability access to ownership, occupation or use of any land" or violates any other rights granted to them under the Constitution shall be null and void. Section 39 furthermore prohibits a person from engaging in any transaction in respect of family land without the prior consent of the resident spouse while Section 38A explicitly protects the right of a spouse to have access to and live on family land during the subsistence of marriage.

The protection granted to women was further enhanced by the legal recognition of customary tenure given that the customary provisions safeguarding women's claims in land now have full judicial force in state law and are to be upheld also by state courts, provided that they do not violate any rights granted by the Constitution. In order to improve service delivery and ensure proper implementation of the new law on the ground, the Land Act also set up an ambitious structure of decentralized land management institutions providing for the establishment of District Land Board, District Land Offices and Registries, Sub County Area Land Committees and District Land Tribunals.

Despite these attempts to redress this situation by outlawing discriminatory cultures, customs and practices in land ownership, occupation and use, and requiring spousal consent to transactions involving family land in the 1995 Constitution and the Land Act Cap 227 have not been effective due to failure in implementation and enforcement. While the Land Act (Cap 227) caters for a spouse to some extent, it does not tackle the land rights of widows, divorcees and children.⁷

Strategic litigation in respect of the Divorce Act (Cap 249) and the Succession Act (Cap 162) nullified sections of the law charged with realization and ascertainment of land rights for vulnerable groups, especially women and children. These landmark court decisions are yet to be translated into law. The National Land Policy further prescribes specific strategies to ensure that constitutional rights and obligations with regard to gender equality are upheld, particularly around reforming customary laws and practices.

The implications for Ugandan women of the primacy of customary law is that their rights over land and housing depend significantly on the quality of their personal and social relationships, primarily with their intimate partners and to a lesser extent with other kinship groups. A number of factors, including the weakening of the institution of marriage and increased scarcity of land, have contributed to the deterioration of women's rights under the customary framework. Although Uganda's statutory laws grant men and women equal rights to land and other property regardless of their marital status, application of these laws has been mired by a number of factors. First, legal pluralism that stems from the recognition of both customary and statutory land tenure in the Constitution and the Land Act results in multiple conflicts between customary and statutory laws, which are often not mediated by statutory provisions as prescribed in the Constitution. The application of statutory laws is further complicated by a number of factors, including lack of knowledge of the laws and the high costs of legal action to administer an estate. The weak institutional capacity of the legal system, particularly in rural areas, also prevents effective enforcement and administration of the laws.

Marriage is essential in prescribing women's property rights, but despite the fact, the Ugandan Parliament has failed to pass the Marriage and Divorce Bill, a law that attempted to clearly spell out men and women's property rights in marriage. The Bill defined marital property and the rules applying to the ownership of property acquired during marriage, including the notion of spousal contribution—both monetary and non-monetary—towards improvement of matrimonial property. These provisions were aimed at entitling women to their fair share of property

in marriage and in the event of divorce. The Bill also seek to provide some level of protection of property rights, to men and women in cohabitation. Without a clear law on women's property rights in marriage, many women are left vulnerable. However, through the National Land Policy, Government has committed itself to "ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage and at succession without discrimination.

Widows are also a category of women that are among the vulnerable, and who suffer the clash between statutory and customary law, when it comes to protection of their land and property rights. Uganda is long overdue for an amendment to the Succession Act, in order to clearly spell out and protect widow's rights to inherit property. Here again, Government, through the 2013 National Land Policy, commits to "review and regulate customary law and practices in access to and ownership of land, thus ensuring that rules and procedures relating to succession do not impede transmission of land to women and children; as well as amending the Succession Act Cap 162 to provide for the right to succession and inheritance of family land by women and children.

The National Land Policy 2015 addresses Historical injustices and colonial legacies which have resulted in multiple rights and interests over the same piece of land; disposition and loss of ancestral land by some communities; boarder disputes arising out of tribal, ethnic groupings and trans state border disputes and the ineffective dispute resolution mechanisms which have resulted into illegal evictions. Whilst under contemporary issues, Uganda is faced with disparities in ownership, access to and control of land to vulnerable groups, displacement, land grabbing and landlessness resulting from high population growth and the increasing demands on land for investment especially communal land which are neither demarcated nor titled.

In addition, other issues addressed by the policy include underutilization of land due to poor planning and land fragmentation; environmental degradation and climate change; poor management of the ecological systems due to their trans-boundary nature and unsustainable exploitation

arising out of the conflicting land uses and inadequate enforcement of natural resource management, standards and guidelines. It also tackles issues of efficient and inefficient land administration and management system, which has made the system prone to fraud and forgeries.

To address these problems, the government formulated the National Land Policy. The vision of the Policy is a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialized economy with a developed service sector. While the goal is: to ensure efficient, equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall socio-economic development.

The National Land Policy, among others things, seeks to re-orient the Land sector in national development by articulating its centrality vis a viz other sectors in economic development. It also has a bifocal emphasis on land ownership and land development, stipulates incentives for sustainable and productive use, as well as other measures intended to streamline the institutional framework for land administration and management to ease the delivery of efficient and cost effective land services.

The policy further introduces essential reforms for stemming off escalating land conflicts and land evictions through re institution of administrative land tribunals, creation of a special division in magistrates court and high court, and recognition of the dual operation of both customary and statutory system in land dispute resolution.

The policy further affirms the responsibility and mandate of the ministry of lands to continue performing its residual roles of policy formulation and implementation, standard setting and quality control, resource mobilization and monitoring and evaluation. To implement this policy, a National Land Policy Implementation Unit has been designated to coordinate the planning and implementation of the proposed measures and strategies

The Government of Uganda formulated a national land policy to provide a framework for articulating the role of land in national development, land

ownership, distribution, utilization, alienability, management and control of land. This is intended to ensure that the country transforms from a peasant society to a modern industrialized and urbanized society. The National Land Policy is a frame work for reforms and development and use of land resources in Uganda and it must be implemented if Uganda's land resources are to be used productively and optimally.

The National Land Policy also consolidates the various scattered policies with land and natural resources with emphasis on both ownership and land development.

Historical and colonial legacies which have resulted in multiple rights and interests over the same piece of land, disposition and loss of ancestral land and some communities, border disputes arising out of tribal ethic grouping and trans –border disputes and ineffective dispute resolution mechanism which have resulted into illegal evictions.

Underutilization, land fragmentation, environmental degradation and ultimate change, poor management of ecological systems, exploitation, conflicting land use and inadequate enforcement of natural resources standards.

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To address these problems, government has formulated the National Land Policy and its vision is a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialized economy with developed service sector.

Goal: To ensure efficient equitable and optimal utilization and management of Uganda's land resources for poverty reduction, wealth creation and overall social economic development.

Key provisions for vulnerable groups and women

Persons infected and affected by HIV/AIDS, the terminally ill, persons with disability, elders and internally displaced persons are prone to loss of land rights and threatened by landlessness due to poverty-induced asset transfers distress land sales, evictions, land grabbing and abuse of land inheritance procedures.

Policy statements

- a. Legislation and management practices shall accord all vulnerable groups equal land rights in acquisition, transmission and use of land.
- b. The state shall regulate land markets to curtail distress land sales and ensure that land rights of the vulnerable groups are protected.

Land rights of women and children

Generally women are unable to own land or inherit it due to a number of hindrances:

Some customary practices in some areas continue to override statutory law in recognition and enforcement of women's land rights, abating unnoticed land grabbing of family level.

- a. While the 1995 constitution and land Act Cap 227 are in place, implementation has not been effective.
- b. Land Act 227 caters for a spouse to some extent, it does not tackle the land rights of widows, divorcees, and children.
- c. Strategic litigation –Divorce Act 249 and succession Act (cap 249) and succession Act (cap 162) nullified sections of the law charged with realization and ascertainment of land rights of women.

What will government do?

Strategies

To protect the rights of all vulnerable groups, government will take legislative and other measures to:

1. Guarantee that access to land, by way of transfer or transmission is not denied on the basis of gender, disability ethnicity , social or economic status;
2. Prevent the appropriation of the land rights of vulnerable groups through regulations and control of the land markets;
3. Mitigate the distress land sets involving persons infected and affected by HIV/AIDS and terminal ill persons;
4. Sensitize and encourage vulnerable groups to hold their ownership rights and interests in family or community trusts; and
5. Mainstream gender, HIV/AIDS and disability interventions in strategic land sector activities.

To protect the land rights of internally–displaced persons, government will take special measures to:

1. Consider restitution of land, housing and property or adequate compensation or resettlement: and
2. Put in place mechanisms and structures for claiming restitutions, compensation, or resettlement.
3. Natural resources: are optimally used and sustainably
4. Human settlements: Formulate a national housing policy and national urban policy for comprehensive planning and orderly development.
5. Agriculture: Use of land and water resources for agricultural production aligned with a national agricultural policy.

Climate change: In its plans and programs mitigate and adopt to the impacts of climate change, mainstream sustainable management.

What will government do?

1. Legislation to protect the rights to inheritance and own land by women and children.
2. Both men and women enjoy equal rights to land before marriage, in marriage, after marriage and succession without discrimination.
3. Review and regulate customary rule's to avoid violation.
4. Restore power of traditional leaders.
5. Design and implement a regime of matrimony property law aimed at the protection of spouses.
6. Make legal provisions for the joint or spousal co-ownership of family land and matrimonial home.
7. Amend the succession Act cap 162 to provide for the rights to succession and inheritance of family land by women and children.
8. Amend land Act cap 227 to restore the consent clause to protect children below 18years.
9. Mainstream gender, domesticate laws and support implementation of EOC

Conclusion

The fact that National Land Policy addresses the gaps and harmonizes the diverse views on historical land injustices, land management and land use in the country, a number of laws and policies need to be constituted to address land injustices against women, children and other vulnerable groups of people.

As recognized earlier, a number of legal and policies exist in regard to the protection of land rights of women and children. While the policy recommends very good legal and policy reforms, implementation of the laws and policies remain the biggest challenge in Uganda. Information sharing, knowledge and capacity building of stake holders especially the ordinary citizens is of paramount importance. Support to institution to strengthen service delivery especially in administration of land justice is key.

The land policy has laid a foundation to address the challenges to women's access, control and ownership including protecting their rights once for all. However for this to happen, there is need for total commitment at political, administrative, practice and attitudinal change as a country.

With support from:



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