

# **‘Cutting the Coat According to the Cloth’: Decentralisation and Women’s Agency on Land Rights in Uganda**

## **Final report**

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## 1. Introduction

Research in the East African region has established that land is rated highest in importance amongst all household assets (Daley & Hobbey, 2005). Land is a key asset for the majority of people's livelihoods and is a key ingredient in the constitution of rights, entitlements as well as identity. Equally so, land disputes tend to constitute the largest percentage of conflict at household and community levels. Hence the terrain of land rights claiming has been at the centre stage in many of the countries in the region.

This paper is about the changing context of land rights claiming in Uganda, the context of decentralized land administration, and how women are positioned in this change. According to the Land Act 1998, all land is vested in the citizens who own it in accordance with four types of tenure: Customary, Mailo, Freehold and leasehold<sup>1</sup>. One of pillars of the Act is about delivery of land services primarily through decentralised structures. The Act establishes new systems of land administration including those related to dispute resolution, and provides for the representation of women on all the structures. On the whole the Land Act is said to be targeted at the following:

1. Poverty alleviation via strengthening the rights of customary occupants;
2. Agricultural development through facilitation of land market and improved access to credit;
3. Gender equality through strengthening women's land rights;
4. Protection of the Environment; and
5. Decentralization of government through decentralized land administration.<sup>2</sup>

On women's land rights, there is no express provision women's right to land. There is no provision for co-ownership of family property in Uganda despite the efforts of women activists during the land law reform process. However **Section 28** of the Land Act (1998) provides for general protection to women or children or persons with

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<sup>1</sup> For elaboration of Uganda's Land tenure systems, see Land Act 1998 (Part II on Land Holding), see also West, H. W. 1964. The Mailo System in Buganda: A preliminary Study in African Land Tenure, Uganda Lands and Surveys, Department, Kampala.

<sup>2</sup> (ROU 1999: report of the 1998 Land Act Implementation Study, Ministry of Lands water and environment, cited in Hunt, 2004: 177).

disabilities with respect to any decisions on land held under customary tenure. Section 40 also prescribes restrictions on transfer of land by family members, whereby consent is required from spouse in case of sale, mortgage, pledging or lease of any land where the family ordinarily resides and derives sustenance.

The Land (Amendment) Act 2004 provides for the protection of family land by requiring the consent of spouses in that each spouse has a right to give consent or withhold consent to any transaction involving land upon which she or he resides. This consent thus seems to offer security of occupancy for spouses, and introduces the concept of family land, which is clearly defined.<sup>3</sup>

The guaranteed land rights for spouses are access to live on, to use, and to give or withhold consent. However it is acknowledged in the land policy drafted a decade later that there is a legal lacuna in terms of not rightly providing for women's land rights<sup>4</sup>.

The Land (Amendment) Act of 2004 was an attempt to give consent rights to the disposal of family land. Women are only protected in relation to the defined land while other land acquired during marriage is not protected. The right accorded is not explicitly a legal right to own the land but to occupy it. The ways in which these sections are operable in practice intertwine with the aspects about the impasse created by the facilitation of land markets and strengthening of rights customary occupants as the paper will demonstrate.

In a way, these and related debates, provisions and revisions have been animated by the women's struggles in Uganda. The protection of women as spouses had its origin in the famous co-ownership clause which was an amendment to the land bill tabled by Hon Miria Matembe on the floor of the 6<sup>th</sup> Parliament. The drama around the

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<sup>3</sup> The scope of land covered ranges from residence, to land on which the family derives sustenance, or where the family decides it falls in that category. In addition, there is recognition of family land based on norms, customs, traditions or religion of the family.

<sup>4</sup> Republic of Uganda (ROU). 2009. The National Land Policy, Working Draft Four, Ministry of Lands Housing and Urban Development, Kampala

clause is that it was apparently passed in parliament but later deleted at the drafting level. Kawamara-Mishambi and Ovonji-Odida (2003), document the experience of the campaign to advance women's property rights in the 1998 Land Act. In considering what popularly came to be known as the 'Lost clause', the authors demonstrate the enormous resistance to women's efforts to include a provision on spousal co-ownership of land in the land law. The intention of the clause was that family land – homestead land on which a family resided or from which it derived its sustenance – should be vested jointly in both husband and wife/wives, and be owned as such. The provision was passed in parliament but it did not appear in the published Land Act (2003:162). Women parliamentarians as well as women's organisations challenged the 'omission' but to no avail. The amendment of the act in 2000 presented an opportunity where the consent clause was later included in the land law as a compromise from the original co-ownership.

In 2003, the laws governing divorce and succession were successfully challenged in court, through strategic litigation by the FIDA and Law and Advocacy for Women in Uganda and major sections were declared unconstitutional, including those relating to the ascertainment of land rights for women and children.<sup>5</sup> However no new laws have been enacted thus far and the laws including the Land Act have not been revised to effect this change.

At the general level, land reform debates and processes have re emerged in the wake of renewed debates on land reform in African economies and the need for increased formalisation of land rights in order to release the productive and investment potential<sup>6</sup>. A critique has been levelled on this perspective that takes a generalist approach to land reform<sup>7</sup>. There is a question surrounding attempts to formalise rights over long settled land over which there may be various layers of, sometimes competing claims (Hunt, 2004). In Uganda's land reform process though the World Bank perspective tended to dominate, there were alternative voices on

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<sup>5</sup> UGANDA ASSOCIATION OF WOMEN LAWYERS, AND OTHERS Vs. THE ATTORNEY GENERAL; Constitutional Petition No.2 of 2003.

<sup>6</sup> Principally deriving from de soto's thesis on formalization of property rights as 'breathing life into dead assets' and fully embraced by the World Bank.

<sup>7</sup> CBR publications on land exemplify this critique. See CBR 1992.

the dangers of a generalised emphasis on land markets and possible dispossession of majority cultivators.<sup>8</sup>

There has been robust debate on whether or not formalisation of title to land necessarily increases security of tenure and by implication productivity. Many have critiqued de soto's thesis on the basis of its evolutionist bias and ethnocentrism (Nyamu-Musembi). Furthermore the empirical evidence in much of the South does not support the existence of a causal link between formalisation of property rights and investment and productivity (Nyamu-Musembi, 2006, Hunt, 2008). Divergent views exist on whether or not formalisation of title is the answer to the challenge of land reform in which Africa finds itself which also raises issues about women's land rights and how best to ascertain them (Agarwal, 2003, Jackson 2003).

In all this, the least studied and hence least debated aspect has been that to do with decentralisation of land services and its impact on land rights in general, and on women's land rights in particular. Land administration is an important factor in the construction of citizenship. It is an important factor in the constitution and enjoyment of property rights as it converts tenure regimes into actual lived realities and relations (Obaikol & Ahikire, 2008). The official idea of and on decentralisation would be, for example, that the closer land administration (encompassing roles such as registration, investigation and adjudication) is to the people the more civil access and participation is enhanced. The response of many a scholar has been that decentralisation does not seem to deliver on its much echoed promises of community participation and popular rule, and may in some cases entrench elite and patriarchal power (Beall, 2009, Khadiagala, 2006, Ahikire 2007). However we need to go beyond these general and evaluative assertions and to unearth what is actually happening. What land relations have been engendered by decentralised land administration and with what implications for women?

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<sup>8</sup> See CBR (Centre for Basic Research). 1992. Memorandum on the Proposed Land Tenure and Control Bill in Uganda, Working Paper No. 33.

Women's land rights in the context of decentralization of land administration raises new issues on the terrain of social citizenship. It is now widely recognized that a deepening of economic and social rights is critical for consolidation of social citizenship. Claims to economic and social cultural rights, in their very nature, are claims to foster positive changes in the society. Land in this way combines the economic and the cultural, determining people's bases and of existence and institutions. Hence land Administration is an important factor in the constitution and enjoyment of property rights as it converts tenure regimes into resource management, challenges and strategies.

This research specifically focused on the question of women's agency. The study looked at the ways in which women are exercising agency to lay a claim on land rights. Under the overall conception of active citizenship, it is an attempt to highlight the ways in which women are interfacing with institutions of power at local level, which claims are made and how the terrain of land rights is played out in the various spaces of local government and with what levels of success. The research was particularly interested in highlighting moments of women's collective agency.

Talking about agency, we are reminded of Cornwall and Coelho, who argue that one of the shortcomings of contemporary debates on deepening democracy has been the assumption that individuals are equally able to form associations and engage in political life, thereby ignoring the fundamental differences in power between social groups (2007:11). Hence when we talk about agency, there is no apriori assumption that the existence of land structures and such spaces of negotiating land rights will engender collective agency. Nevertheless, it is envisaged that the very existence of these spaces sets a political process into motion, a process that needs to be examined, characterized and understood in order to inform further debate and policy options.

Agency, whether individual or collective, is conditioned by the objective coordinates i.e. nature of the terrain, the facilitating and inhibiting factors. While the conception of the research was originally to map out the organisational capacities and the forms



that women's organisation around land rights takes, the field turned out different. There is very minimal organisation around women's land rights in the areas studied. Even at the national level there are very few organisations that focus specifically on land. The two prominent ones - Uganda Land Alliance (ULA) and the Land Equity Movement (LEMU) are engaged at the level of broad policy debate on land reform and are not able to spread to local levels to impact on daily organisation and struggles.

The weak organizational capacity was seen to be a result of a combination of two major factors. One is the sensitivity of the land issue itself and the second is the gross institutional failure surrounding land services at national and at local levels. Hence we find that individual agency, as opposed to collective agency, tends to be dominant. Women have to deploy energies in a way that minimizes the social costs associated with land matters. This is partly the basis for the choice of the title of this paper - 'cutting the coat according to the size of the cloth'. In the case of land rights claiming in the contemporary Uganda, we find a setting of openings for some spaces of action, muddled in hazy processes and procedures. Hence, the understanding of women's agency has to be firmly located in this setting.

### **1.1 A Note on the Research Process**

The study was conducted in two purposively selected districts. These are: Mukono District in Central Uganda and Lira District in Northern Uganda. The two districts though not very representative of the general situation in Uganda, provided the basis for comparison of the different conditions, such as differences in land tenure systems, situations of land markets and proximity to the capital, Kampala. Lira district also offered the opportunity to capture some of the issues to do with the war in the north and the return processes in the post war period.

Interviews were carried out with district officials on the District Land Boards, members of the Area Land Committees and other district officials such as the Community Development Officers (CDOs). Furthermore, discussions were held with

local councilors, leaders of Women Councils, members of women NGO, opinion leaders and teachers. Focus group discussions were held with groups of women and men, as well as some LC court members.

To generally test propensity, a short unstructured questionnaire was administered with 177 women respondents. During the course of the research in Lira district, a selected number of men respondents answered key questions geared at capturing their general attitudes to what changes are taking place in the land administration terrain and the attendant impacts.

From a feminist perspective, a specific orientation for the study was to capture women's voice in terms of opportunities offered by the policy reforms of decentralisation of land administration. To amplify this voice, the study covered life histories of selected women and through this approach, it was possible to unravel some of the complexities embedded in the genderedness of land administration in the districts studied.

## **2. Understanding Land Rights and Women's Agency**

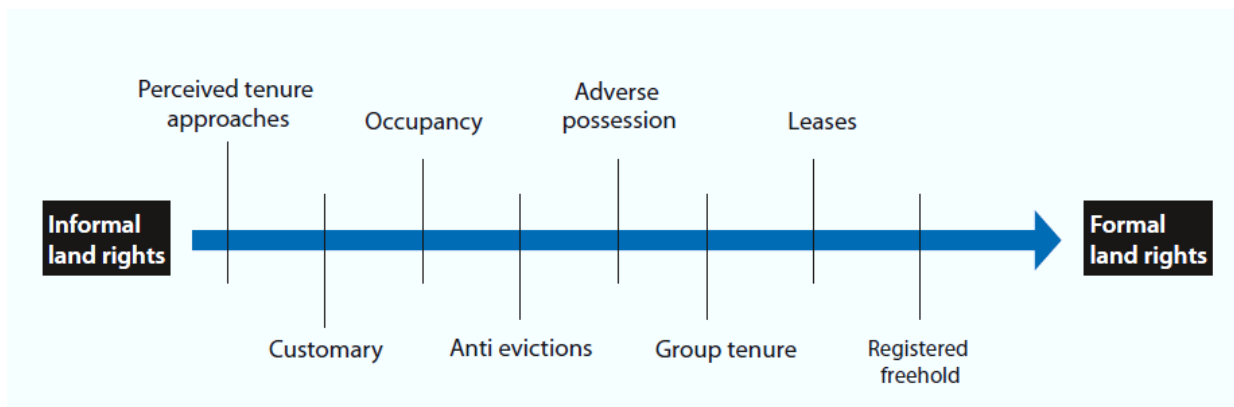
Land Rights are Property Rights. The "bundle" of property rights defines the nature of legitimate uses that can be made of land and the benefits to be derived from doing so. Such rights may comprise access for gathering, usufruct for a specified period of time, or more complete rights (often referred to as full ownership), with or without the ability to transfer the rights to the resource temporarily or permanently (Deininger, 2003:25). Hence Land Rights can be primary (ownership) or secondary (access, user).

It is important to underline that land rights especially in the context of a country like Uganda are manifested in form of a continuum rather than a fused state. At the one end of the continuum are the informal rights governed by the commonly perceived norms that in any case change over time. On the other end are the formal, registered land rights that bestow on individuals or groups exclusive rights of

ownership. In between these, are various conventions and norms with a mix of claims that can only be understood in their concrete manifestations (see figure 1). Informal rights tend to provide more multiple user rights while formal rights tend to present a higher degree of inclusive ownership rights.

The gendered nature of such conventions depends on the concrete conditions and that is why the debate about whether or not customary tenure is good for women

Figure 1: **Continuum of Land Rights**



Source: Adapted from UN-Habitat & GLTN, 2008: 8

has not been very useful (Tripp, 2004). This is precisely because rights' claiming especially within the arena of land is heavily dependent on the context, the nature of the players as well as their different sources of legitimacy at a given time. So in this case informal or formal rights can be good for women depending on the factors at play. Land rights as property rights in a sense need to be redefined from the conventional 'right to exclude', to 'the right to be included' and in here lay the challenge to all land reform attempts. The challenge is to re- envision land rights in a much broader sense than individual exclusive ownership.

Needless to argue here is that much as property rights have been at the centre of feminist research and struggle, land rights have largely occupied an ambivalent space – of being recognized as significant in women's lives especially in the African context, yet always a bit on the side in the dominant discourses on women's rights. Bina Agarwal (1994) as one of the leading theorists on women and land highlights the role of land as a key space for struggle, arguing that 'promoting women's equal

land rights enables women to fight for their economic social and political rights in other domains of society' (cited in Mak 2005:148). Accordingly 'working on land without rights in it meant a high vulnerability to poverty (2003:187).

Agarwal's point on linking land access and women's poverty has been contested though. The entry point into the through the angle of poverty has tended to raise a lot of debate. Jackson argues that in linking land ownership to women's livelihoods, Agarwal employs a male perspective. To Jackson, 'it is not necessarily the case for women since they experience poverty in very distinctive ways, and are differently placed as subjects in relation to property and livelihood' (2003:457). Jackson goes on to say:

Assuming that the centrality of land to male poverty is necessarily the same for women's poverty is mistaken. It has been argued that in Africa land access is not a major cause of the poverty of women. In many (but not all ) areas in Sub-Saharan Africa, Women's access to labour and cash or other resources to mobilize labor are more important than access to land (2003:457)

Citing Whitehead and Kabeer (2001) on the prevalence of small farms as reflecting women's labour and cash constraints rather than lack of rights, Jackson seems to convince the reader that there is no necessary connection between the absence of rights to land and women's poverty, and privileges marriage breakdown through death, divorce or separation as a more important factor. This argument is also based on the fact that India the context on which Agarwal 's work is based is different from Sun Saharan Africa in terms of the high population densities, land values, tenorial forms as well as the greater degree of landlessness.

The argument here is that women's rights to land may not necessarily be a poverty issue, the way the Jackson/Agarwal debate has tended to tilt it. One needs to broaden the debate to talk about property rights even in the context of those who are not necessarily resource poor. Property rights may be related to poverty but these are not the same thing. Rights do not just relate to presence or absence of

resources but rather a much more nuanced process of ability to control and structure livelihood resources in a way that fosters personhood and identity. And, indeed the question is much less about efficiency concerns that:

Enhancing women's land rights could increase overall production, since production efficiency is associated with tenure insecurity and women with land rights and control of produce would be motivated to put in greater effort and investment into the land (Agarwal 2003: cited in Jackson 2003:458).

Jackson continues to argue that 'land rights may prove a bloodier battle than Agarwal imagines, with less widespread support from women ...and more uncertain gains. While this assertion is valid, the spirit behind it is flawed in that it tends to negate the whole question of women's land rights by foreclosing rather than opening up possibilities for research as well as feminist activism.

Economic rights require sophisticated sensibilities and nuanced uptakes. Recognising the centrality of property rights should not necessarily lead into the old traps of economic determinism. But certainly we see that land rights as property rights and as one of the threads from which substantive citizenship is woven and we need a retooling of some sort to be able to form adequate research questions on the material base of patriarchal power.

### **3. The Setting and Women's Representation on Local Government Land Structures in Uganda**

According to the Land Act 1998, the land administration hierarchy principally consists of the District Land Board (DLB) and the Area Land Committees (ALC) (see figure 2) where women are supposed to constitute at least one-third of the members. The role of the District Land Board (and therefore the District Land Office) is to facilitate the private land owners to register and transfer their private rights and interests in land. The DLB principally deals with allocation of land not owned by any person or authority and manages land registration and transfer of interests in land. The composition of the land Board is as follows<sup>9</sup>:

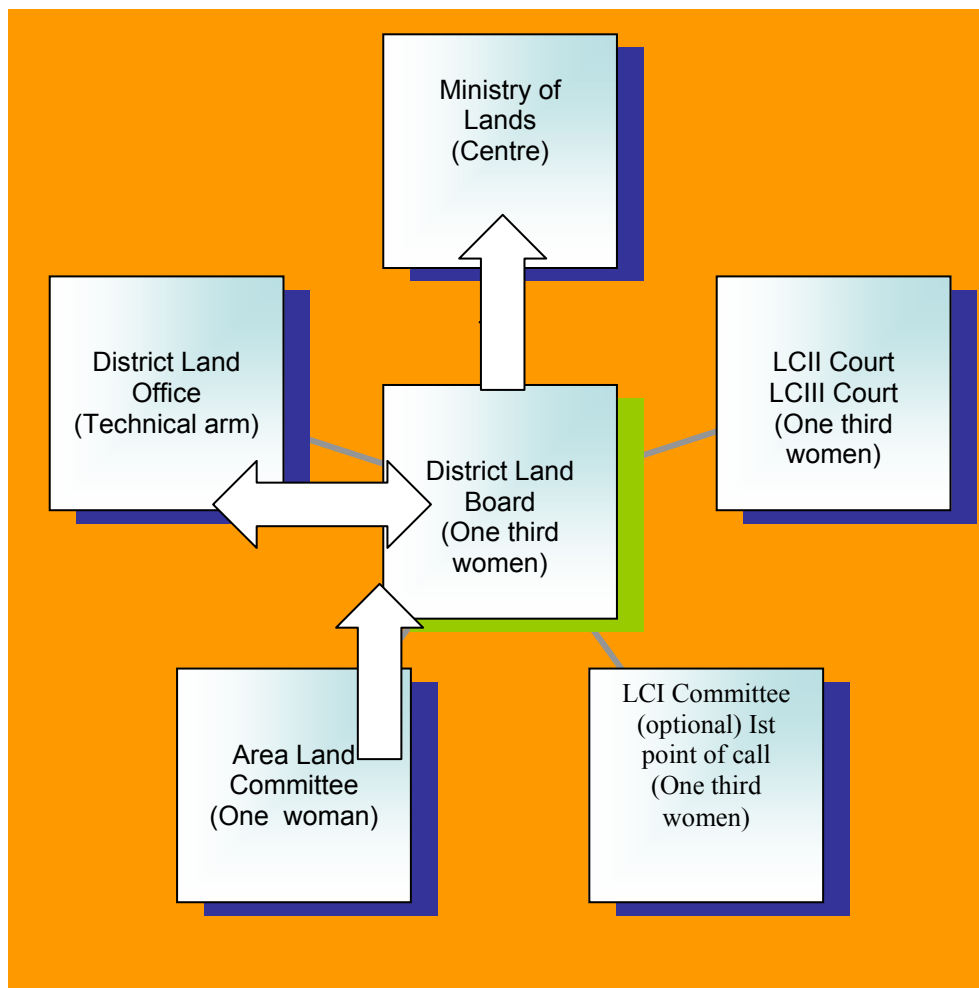
- a) chairperson
- b) one member representing municipal councils
- c) one member representing urban councils
- d) one member from each county in the district

The one third women regulation actually turns out to be one woman among five members of the DLB.

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<sup>9</sup> The Land Act 1998 (S. 58).

**Figure 2: Land Administration and Women's Location**



The Land committee at parish level, consists of the chairperson and three other members appointed by the district council on recommendation of the Sub- County Council. It is stipulated that at least one of the members should be a woman (LA 1998 S. 66 (2)). In principle the land committees are a subsidiary of DLBs, assisting the latter in an advisory capacity especially with regard to ascertaining rights in land. On adjudication, there exists Local Council Courts as a dispute handling mechanism, replacing land tribunals that were scrapped before they were fully operational in the country. The LC courts exist at LCII and LCIII. By law women must constitute at least one-third of the members on these courts.

On Adjudication, the land Act had set off a highly ambitious structure of land tribunals at district and Sub-county levels to deal with land disputes. District land tribunals were to have all powers of Magistrates Court Grade 1 in exercising their

mandate. However Land tribunals never saw the light of day. Due to the financial and human resource limitations some districts never established them and where they were established, enormous conflicts apparently arose on account of partiality and incompetence. Instead, the LC courts which had been banned from hearing cases relating to land were reinstated. Through the Local Council Courts Act of 2006, these courts are supposed to deal with matters relating to land and causes and matters of a civil nature governed only by customary law, among others (section 10).

Looking at the evidence in the two districts, the land knowledge base is very limited and on the ground, it presents itself in a highly disjointed and fractured manner. The most salient knowledge on land administration at the district level was principally in terms of registration of land interests. Hence as the arrows show, the clearest relations are those to do with registration i.e. the relationship between ALCs to the DLB. Yet, given that registration of land interests covers only a few predominantly urban based people, the land board itself was not clearly comprehended by majority people. Compared to services such as health, education, production which have a clear knowledge base, and clear institutional framework of service delivery, land services are immersed in a sea of ambiguity. This ambiguity in turn impacts on how women pursue and struggle for their land rights.

There are provisions in the Land Act that could have been easily embraced by the majority accessing land through customary tenure. But these do not seem to constitute part of the dominant land knowledge base. For instance the provision on Communal land Association (CLA) (section 16) is that a group of persons can form such an association for 'any purpose connected with communal ownership and management...' There is also a provision for obtaining certificates of customary ownership but this information rarely sips through the maze of land rights knowledge on the ground. And here we are not talking about community being ignorant as often argued. Rather, it is a general maze where even district officials talked to, were are not able to provide land knowledge in its comprehensive form<sup>10</sup>.

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<sup>10</sup> Only one sub-county (Barr, Lira) was exceptional. The Sub-county chief seemed to have a relatively comprehensive grasp of the legal framework in relation to the practice.



On registration, the Land Office handles those who come to seek the services, relating to titling, men and women alike. Even here there seemed to be a lot of uncertainty. In Mukono district for example, observation made at the Land Office was that people, men and women came with different queries ranging from registration of land, title transfer to confirmation of land titles and were not very certain on which process to take or which officer was responsible for handing their cases. At the time of the research it was also revealed that due to accusations of corruption and immense fraud, the District land Boards had been suspended from conducting business<sup>11</sup>.

While the district level is principally about registration the issues that affect the majority of the people, particularly women are not about registration. Rather they are about security of tenure and dispute resolution, in the context of competing claims on land. In our observation, the dispute handling mechanism is the most shaky. Both officials and people in the community had multiple versions of dispute resolution mechanism at local government level.

A question on what mechanisms exist to handle land disputes invited multiple responses and majority of people were not very sure of what institutions exist and what steps one should follow. In some cases the LCIII courts were formally in place while in others the executive committee doubled as the LCIII court. In some cases the ALCs were not in existence and in others, the LCIII court doubled as the ALC. For example, in Lira District, it was found that there were both LC courts independent of local council, as well as Area Land Committees, in the two rural sub counties visited. In the urban division of the municipality, there were Area Land Committees but it was not clear whether or not the LC court existed. In Mukono district, the two subcounties visited (for the in-depth study) had completely different structures. In one S/C, the chairperson nominated the area land Committee which doubles as the

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<sup>11</sup> In Lira the research team learnt during the July 2009 fieldwork that the Land Board had not been in operation since March. In Mukono the position was not very clear. It was not possible to talk to any member of the land board.

court<sup>12</sup>. In the other, the LC III executive committee doubled as the court, with the LCIII chairperson and the chair of the court. Such inconsistencies and areas of disjuncture definitely impact on the manner in which land rights claiming is actualized.

A manifestation of this institutional failure can be seen through the ways in which land matters have now increasingly spilled over to the office of the Resident District Commissioner, RDC. The RDC is not provided for in the Land Act. The RDC, according to the Local Governments Act (1997) is a representative of the president in the district, appointed directly by the president (LGA 1997:Part VIII). The roles of the RDC are more advisory and as an overseer to take care of national interests. From an observer's point of view, the RDCs office is not well equipped to handle such a service as land. A casual visit to the RDCs offices in many of the district is basically a one-person office, sometimes assisted by a deputy and a clerk. But RDCs have increasingly been drawn into handling land matters because of an existing need i.e. the lack of a clear dispute handling mechanism in land administration in the context of viciously escalating land disputes in a range of districts.

According to the information obtained in one of the sub-counties in Mukono, all the land structures were constituted according to the stipulated guidelines but the districts have never commissioned them formally, which leaves the people at the local level to employ their ingenuity in dealing with the land matters in their locality. Because of this maze, parties to disputes invoke different norms to support competing claims, and choose to utilize the institutional channels according to personal calculations and the social networks available to them.

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<sup>12</sup> Its naming was not very certain too. Through interviews with the members they identified themselves as the LCIII court. The sub-county officials referred to it as a land committee. the formal headed paper used reflected Land Tribunal Court

## 4. Women Negotiating Land Rights

### 4.1 On Women Representatives on Land Structures

In the conceptualization of the research, one of the major aims was to locate the position of women representatives on land structures and whether or not they had a positive impact on women's land rights claiming in the local setting. As it were, representation is a very complex notion which has engaged feminists for quite some time now. The debates around what has been termed as the interest argument revolves around the fact that women in public office should not be there only in numbers, but that they could/ might use their presence in decision-making structures to engage on behalf of women's rights and liberation. In other words this highlights the importance of feminist politics as opposed to mere feminine presence (Goetz, 1998).

We however realize that such a debate needs to be raised to a level where women are not spot-lighted and set up for failure. I have also argued elsewhere that we cannot and should not assume that representatives who are women will necessarily act for women. There are also many factors mediating the extent to which such representatives may act for women. The only important point to underline here is that it is nevertheless possible to envision a greater appreciation of complexities of gender inequalities as a result of women's representation (Ahikire, 2009).

Talking to a number of actors and women in different spaces the general idea was that women on land structures were highly ineffective. One respondent had this to say:

Women's role has been invisible and very minimal because apart from being on those committees, I don't know what they have done for us. They never come down to us and teach us. They never call for meetings. Maybe with time they will be active (woman in Buikwe, Mukono).

Another woman referred to the women representatives as *bifananyi* (pictures or wall hangings). Accordingly, the women representatives had no programmes to

reach women and only became visible on Women’s Day. ‘We only wait for Women’s Day to dance’. They argued. Responses as to whether or not women representatives on land structures have helped women in claiming their land rights are presented in table 1 below:

**Table 1: Have women on Land Structures Helped Women?**

Response	Mukono		Lira			
	Women respondents		Women respondents		Men respondents	
	No.	Percent	NO.	Percent	No.	Percent
Yes	8	7.8	21	28.0	14	63.6
No	68	66.7	50	66.7	8	36.4
Non response	26	25.5	4	5.3	0	0
Total	102	100.0	75	100.0	22	100.0

*Source: Fieldwork in Lira and Mukono Districts 2009*

In Mukono, less than 10 percent of the respondents answered in the affirmative, whereas in Lira it was 28 percent. There was also a high level of non-response in Mukono, indicating lack of knowledge about the women that sit on the committees and courts. In Lira a selected sample of male respondents were interviewed. The contrast between their views and those of women is interesting. Accordingly, 14 of the 22 men talked to believed that women representatives have had a positive impact for women. Why this contrast between women? The contrast between women’s and men’s perceptions on women on land structures understood in a way that the responses of men were based on the general idea, something out there occasionally talked about, while women’s responses stemmed from their own personal experiences. But the general outlook was that women on land structures were not widely known.

In Lira, during a discussion with women and men in Adyangwe village, a specific question was posed about the knowledge on women representatives on land structures and whether or not the women utilize them. Women noted almost in chorus:

You are telling us stories! This is the first time we are hearing of such. Here we are in darkness (FGD, Adyangwe, July 2009).

This response was surprising. The discussion was held in the compound of a widow who had been at the sub-county the previous day, in a court case where part of her land had been encroached on by a notorious land grabber. There were two women on that court panel and they were present in her court session although they did not contribute anything during her session. This particular woman also attested to having no knowledge of women representatives in these structures. But this could be a result of the disconnect between the official and the local language versions of representatives. The official version provides for one - third as women and not necessarily *women's representatives*.<sup>13</sup> Yet local translations often carry connotations of the acting for representation. But the other reason could be sheer lack of connection. The court members are not salaried and do not receive any kind of standard allowance. This means that their mobility is very restricted. If the particular woman representative is not residing in one's village, that representative is merely one of those members on the court and does not necessarily signify representation for the women.

However, there were, some indications of women representatives helping to advance women's interests in land. In Lira, for example, it was indicated that women representatives on the land board then, were very active in advancing women's interests where possible. For instance, when it came to allocation of (urban) public land, they ensured that women also got the information on the land/plots available so that they could apply. But this would in any case evidently benefit a few urban women who have the money and the requisite social networks to be able to access such highly competitive processes of purchasing land.

In some cases, women on the LC courts and ALCs were said to offer advice to fellow women when approached, especially on procedures and what steps to take. But all in all, it was not clear what the roles of the representatives were. Given the setting discussed above, where land structures have not been clearly streamlined it would

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<sup>13</sup> This kind of debate is not unique to this level of structures. There has been robust debate on whether or not women parliamentarians, women councilors are representatives of women (see Tamale 1999, Ahikire, 2007).

not be unfair to evaluate the women representatives in isolation. The positions on land structures are appointive and not elective, hence not known to the majority of the people. Worse still they are not remunerated, and apparently there was no orientation or training on land matters.

We particularly found that women on land structures had very little knowledge on gender issues. Some did not even possess the minimal experience of activism and engagement that you find in other women local leaders such as councilors and those on Women Councils. In one of the court proceedings I attended, I remember impulsively writing a comment in my notebook to the effect that the woman member of the court panel was not part of the proceedings at all. She was largely acting spectator – supporting majority points and opinions.

Talking to a number of people about why women on land structures tended to be invisible generally, the dominant opinion was that because these posts were not elective, the chairpersons in charge of nominations took liberty to select women who are known to them and not necessarily those who are active or have an intrinsic interest in women's rights. However the bottom line is that gross institutional failure in land services and in this setting it was very difficult to pursue the question about women's representatives and their ability to articulate women's land rights issues.

#### **4.2 Women Registering Interests in Land**

One of the clear outcomes of decentralization of land administration is that quite a number women (though relatively much fewer than men) especially in the urban areas have registered land in their names. They have used the proximity of the processes to acquire titles or letters of administration in cases of widows. However, the records of land transactions in the district land offices are not sex disaggregated so it was not easy even for the board secretaries to tell what percentage of those seeking to register land were women. Nevertheless they had a general idea about the steady increase of women. In Mukono women were estimated to constitute

about 25% of those transactions recorded in the Land Office, which was not the case in the past.

Recent studies on land ownership show that the national holding of registered land by women has grown from 7 per cent in 1995 to 16 per cent in 2004 (Sebina-Zziwa et al. 2004)<sup>14</sup>. In Buganda region the average percentage of registered land by women was noted to be at 18 per cent. This means that ownership of registered land by women though still low, has more than doubled in the last ten (10) years. According to a report by the Ministry of Gender, Labour and Social Development (MGLSD) on the evaluation of gender outcomes in the 10 year Poverty Eradication Action Plan (PEAP) a major limitation here is that data on national land holding by women does not distinctly reflect whether it is the increase in the number of women owning land or a few women holding larger acreages (RoU, 2009). Nevertheless the relative increase of land registered under women's names is something to celebrate.

It may not be possible, to draw a correlation between the decentralization of land services and the increase in land registered by women. But it is possible to anticipate that some women (who are able to) have utilized the relatively eased channels of land registration to claim land rights through the titling route. Again, this route covers only a tiny minority of women since the highest percentage of land is governed under customary tenure.

There were also indications of women using the ease of registration to register land in their names without the husbands' knowledge. It was not possible to identify many women who had secretly registered land in their names because, after all it was supposed to be a secret. But the fact that the phenomenon was part of the general knowledge that people hold indicates some level of change in the land relations terrain.

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<sup>14</sup> The researchers made an actual count of the registered land in the national land registry

### 4.3 On Women's Collective Agency

In all interviews and discussions conducted, there was no indication of women organising around land rights in the local settings. The question was always followed by exclamations indicating that land is very sensitive and one cannot even begin to contemplate activism around it.

**Table: Responses on Women Working Together/ Mobilising on Land Rights**

Response	Mukono		Lira	
	No.	Percent	No.	Percent
Yes	4	3.9	13	17.3
No	97	95.1	61	81.3
Non-response	1	1.0	1	1.3
Total	102	100.0	75	100.0

*Source: Fieldwork 2009*

The severely low level of organisation around land rights is not surprising. Land is a very delicate and highly volatile issue. Women cannot afford to put their lives in the 'direct firing line'. So they use other means of rights claiming and sometimes use very indirect means to secure their right to land. More often than not, they use these means as individuals depending on the situation at hand. However, we acknowledge that individual agency has limitations and there is need to catalyse women's organisational capacity on land rights in Uganda.

In Lira District, there were indications of some local women's organizations dealing with women's land rights albeit in a limited manner. One is the Lira Women's Peace Initiative that was set up to deal with women's problems living in camps. When IDPs started returning to their homes, the organization found itself having to deal with some women's problems to do with land, especially relating to widows. The LWPI mostly helps women who approach them by directing them and providing advice on where to go for legal redress. The other notable women's organization found in Lira was the Lango Women Clan Leaders Association (LWCLA). In many ways, LWCLA is a refashioning of custom. Traditionally, each clan had a woman leader to perform roles such as initiating new wives into the clan or mobilizing women for functions. But



they were not referred to as women clan leaders. The crafting of the name women clan leaders brought them into logger heads with the Lango cultural leaders who argued that culturally there are no women clan leaders i.e. women cannot head clans. But LWCLA members argued that the English translation of their traditional title was women clan leaders and has continued to operate under that banner. LWCLA has made relative positive impact in terms of facilitating social dialogue through radio programmes on women's rights. These discussions sometimes touch on land rights especially for widows.

However, on the whole, these organisations are essentially service based organizations, offering help to widows and carrying out sensitization. Hence it is much less of social mobilization around women's land rights. It was also noted that these organizations have not engaged the local authorities on women's land rights.

The only pointers to collective action were found at neighborhood level. For example in case of a land dispute, women gather around to support and give evidence in favour of fellow woman, when the LC court members are conducting a site visit to ascertain the facts surrounding land under dispute. Sometimes the gatherings help to prevent possibilities of bodily harm to women in cases where they confront land grabbing. In Lira a case was mentioned of how fellow women saved one from being harmed by a land grabber. She screamed and they all gathered and hence the land grabber was restrained from causing bodily harm to the woman. But this is the far they go. Very few women testify in courts as witnesses even when they have adequate information to do so. This point will be elaborated on more in the coming analysis on dispute resolution.

#### **4.4 Rights Claiming and Dispute Resolution**

Dispute resolution could be said to be the actual space in the decentralised arrangement that makes a direct connection to the realities of the majority of people. Land disputes are rife and have multiple sources. Land is one of the most

contentious issues in every village, and at district and national levels. Land rights are fought over within households, within the extended family, between families, within the clans (where they exist and between families and clans and outsiders (Adoko & Levine 2005:3). This fact is also seen in press coverage of land debates<sup>15</sup>.

In Lira district disputes involving women are commonly from widows. Land in Lango sub-region where Lira is located, is governed under a clan system where land is principally owned by the clan whose leaders have jurisdiction over who gets what and how, though individual or family rights do exist in a wider social context (Adoko & Levine 2008). In the traditional setting women belonged to their fathers' clan before marriage and became members of the husband's clan upon marriage. In this sense women as widows had a socially sanctioned right to husband's clan land and inbuilt relative protection, even upon the husbands death (Adoko & Levine 2005). In present times this mode of land rights has been fundamentally corrupted due to various changes, including increased commoditisation of and breakdown of social ties.

The clan structures have been severely weakened but most importantly, have taken on a new meaning that confers exclusive ownership of land to the men of the clan (Adoko & Levine, 2005). Widows are dispossessed by in-laws and outsider land grabbers alike. The situation in many parts of the district was aggravated by the Lords Resistance Army (LRA) conflict and displacement where people left their lands and lived in the Internally Displaced Peoples (IDPs) camps for a long time. On returning, the widows who have very little protection are dispossessed or engaged in unending boundary disputes.

In Mukono district, the problem of widows also exists but with a slightly different manifestation. Land in Buganda region is particularly governed under Mailo land tenure where majority of cultivators have been lifetime squatters on land owned by

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<sup>15</sup> For example, looking at New Vision Newspaper, the government Daily, there was an estimate of over 305 articles related to land in 2007 and over two hundred in 2008.

landlords. Families (ebika) occupy pieces of land through they do not necessarily own the land. Also in Buganda, there is a viciously vibrant land market. In the words of the RDC Mukono district, there is a lot of buying and selling of land where a single plot can be fraudulently be 'sold more than twenty times' (interview with RDC, August 2009). Husbands secretly sell land without the wives' knowledge or they chase them completely in order to sell of the land.

#### 4.4.1 The Concords: Women's Agency and LC Courts

Through the interviews and discussions, one important point became apparent. And this was, that despite all the limitations and inconsistencies, the existence of land structures at the local level represented an opening for all, women inclusive.

Accordingly, decentralisation has had the cumulative effect of increasing women's access to land though not necessarily ownership (*interview with sub-county Chief, Barr S/C, Lira, June 2009*)<sup>16</sup>. In other words a number of women have seized the opportunity of decentralised land administration to increase (or rather secure) their relative access to land through the use of channels available.

**Table 2: Women's Responses on Mechanisms Often Utilized in Case of Land Conflicts**

	Mukono		Lira		
	No.	Percent	No.	Percent	
LCs	87	85.3	LCs	45	60.0
RDC	1	1.0	Clan leaders	11	14.7
Clan leaders	8	7.8	Cultural leaders	11	14.7
Administrator General	1	1.0	Government	2	2.7
Non- response	5	4.9	Non response	6	8.0
Total	102	100.0	Total	75	100.0

*Source: Fieldwork in Lira and Mukono Districts, 2009*

The question that elicited the above responses was open, relating to where people go in case of land conflicts. The responses on LCs, 85% (Mukono) and 60% (Lira) is a good indicator of their utilisation. In terms of other responses it can be observed that while Lira district is more inclined to clan and cultural leaders, Mukono District

<sup>16</sup> Also see appendix 1: a few cases involving women

bends more on governmental structures and spaces. But in general, LCs were the most highlighted even in group discussions.

The very first point mentioned in all discussions was that these Local government (LC) structures were accessible. And this is not only in terms of distance but also in relation to the institutional space, especially in relation to dispute resolution. This was particularly emphasized in relation to the LC courts at sub-county level (LC3). It was mentioned that women were increasingly utilizing the LC courts and some winning the cases. In Lira one of the women representatives on the Area Land Committee emphasized that in many cases women preferred LC courts especially where disputes involved clan members. LC courts tended to offer a relatively more responsive and impartial environment.

The positive aspects of the LC courts were given as follows, among others: the language is not intimidating in that they use the local language commonly used in the area;<sup>17</sup> the costs involved are much lower than for example those incurred with the Magistrate's Court; it is possible to draw on knowledge and truth existing in the general memory of the people around you and not necessarily on documentary

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<sup>17</sup> Section 21 (1) states that ...the proceedings of the court and the records of those proceedings shall be the language of the court which shall be the language widely spoken in the area. Provides for an interpreter in the cases where any of the parties does not understand the language of the court.

evidence as often emphasized in the Magistrate's court;



Above: a woman as witness in a land case in relatively a relaxed environment, Kyampisi, Mukono District, July 2009

the LC court is less formalistic and less legalistic; there is no need to hire a lawyer as representation by an advocate is outlawed by the Local Council Courts Act 2006 (Section. 16(2)).

Yet the situation is not as clear cut as it sounds. There are various nuances that need to be mapped on this picture of LC courts. Proximity is not the constant factor and women especially emphasized the need for a little bit of distance. Hence those who had utilised the courts emphasized that the LCIII court had been more helpful than the LC1 and LCII courts, which should be supposedly more accessible sine they are at lower levels. It was indicated that many women tended to appeal at LCIII contending that the lower court had been compromised. Appeals from LC II are very common, said the chairperson of the LCIII court, Nakisunga, Mukono. In other words women seem to say that LC courts should be local accessible but not *localised*.

**Case Amuge (female 86yrs) vs Opio (male 65yrs): Building a house in the widow's land without her consent (15/2 /2008), Apala S/C Lira District**

This case was first heard by the LCII court

The case was judged against Amuge who was now appealing against the LCII judgment. Amuge gave the following grounds of appeal:

- i) her witnesses were not given the chance to testify
- ii) Mr opio ( respondent, then defendant) as the chairperson of the LCII court then influenced the members

Amuge informed court that the respondent took advantage of the insecurity and her sickness to build a house in her land without her consent. She reported him to LC1 chairperson who summoned Opio but the latter refused to appear before the LCI chair. The LCIII court members made a site visit to the disputed land and confirmed that it belonged to Amuge. The judgment was that: from today 11.June 2008 the disputed land now belongs to Amuge since she, and her late husband were the first to settle on the land. (Obtained from Court records, Apala, S/C).

The above case was disposed off in a pace of four (4) months, a relatively short time though others may take longer depending on the circumstances. As according to the RDC Mukono some LC III courts are humane and dispense justice in a relatively short time. He contrasted this to the judges in Magistrate's Courts:

Those judges are not bothered.

They can even say case adjourned until 2015 and that is it.

*(Interview August 2009).*

One of the key observations made is that the nuances underlying the land struggles and the bases over which competing claims are made in the arena of LC courts could be a mixed blessing. I begin with the positive one. The LC courts tend to utilize a blend of know ledges ranging from the customary norms in living memory, statutory provisions, including Bills that are not yet passed by Parliament. For example, where a woman was wedded, the formal marriage certificate was used to strengthen her case. Where documentation did not exist, there was more use of witnesses, neighbours, relatives, opinion leaders and officials at lower levels to ascertain 'the truth'.

**Case: Kabalega and Family Vs Bangisibano (Widow), Nakisunga S/C Mukono District**

Kabalega and family (in-laws) wanted to chase Bangisibano (widow) from the house that the husband had given her before he died. The Case was brought before the LCIII court. Court noted that Bangisibano was the wedded wife of the late husband (Church marriage). The claimant had one version of the will and the widow had another. The judgment read: Nobwegenderaza bungi nóbujulizi obuweredwa ku njuyi zombiri, obwananyini bwebintu byomugenzi ... buli mu mikono gya Namwandu... n'abaanabe – meaning- After careful consideration of the case, the ownership of the property is in the hands of the widow and her children. (obtained from court records, Nakisunga)

In the above case, the LC court judgment was based on existence of a marriage certificate. In another case (below) the judgment was based on the need to protect the rights of the children and the woman was seen to be a better custodian of those rights. In another case the same court of Nakisunga had to refrain a woman from selling her land on the basis that the children were still young and needed the land for their livelihood.

**Case of Conflicting Claims**

A woman obtained a loan and bought a plot. The husband built a house on the plot. After some time they separated and there was a dispute on who takes what. The man wanted to sell his house, the woman was the owner of the land and she was still servicing the loan she used to purchase the plot. The case was brought to Nakisunga Sub-county. The court ruled in favour of the woman basing on the principle of protecting the children whom they had borne before they separated. (as narrated by the Nakisunga court Members , July 2009).

The research further found out cases whose judgments had been based on considerations of the Domestic Relations Bill (DRB), a bill which has been on the shelf of parliament for over 40 years and had been going through a serious of revisions in the contemporary period. We saw judgments based on the much debated Land Amendment Bill 2007 still on the floor of Parliament.

We shall later highlight the contradictions and dangers in this apparent informality, where there is selective use of custom, memory and statutory provisions. Nevertheless, the complexities on the ground make a compelling argument that through this blend, some of the positive customary norms become documented in

the records of the LC courts<sup>18</sup>. Historically, custom has been selectively used, particularly erasing many of the social protection measures in traditional societies. The documenting of some of the principles, which draw on some of the customary practices that protect women has potential to revive some norms which would help to address women's diminishing status and livelihood options.

Local councils especially the Sub-county level, are battling with all kinds of disputes, both intra and interfamily in nature. Husbands versus wives<sup>19</sup>, women versus in-laws (males and females<sup>20</sup>); neighbours against an alleged witch (where they simply want to occupy or sell her land); land lord lords versus tenants some of whom are even 80years old and have lived on the land all their life; and fraudulent LCI chairpersons. In a group discussion in Nakisunga, one woman exclaimed:

Even sons, *your own blood* can send you, the mother away. They know women do not inherit real estate. You end up with only cups and baskets (FGD Nakisunga S/C Mukono, August 2009).

In many cases, every official at the sub-county, not just the LC court is always ready to encounter a woman with a problem and 80% of those are related to land. The Community Development Officers (CDOs) and sub-county chiefs encounter these problems almost on a daily basis and are forced to attempt to offer solutions. In some cases men are summoned to the sub-county to explain and in some cases the women are advised to register their complaints with the LC courts. What I observed at many of the sub-counties was that the sub-county represents a social opening- an alternative space that lays astride the very formal spaces such as police and magistrate's court and yet relatively autonomous of some of the familial intricacies. There is indeed an engrained social engagement process as LC courts and LC officials battle with land disputes of all kinds, especially those involving women. The LC courts are compelled to deploy their mental capacities in dealing with some of the

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<sup>18</sup> Proper study and documentation of these judgments can help in the identification of points of intervention for positive impact for women's land rights in the future

<sup>19</sup> Cases of wives versus husbands are multiple, including husbands' sale of land without wife's knowledge or use of force to sign and consent to sale of land or sheer brutal violence to compel the wife to run away and he sells the land.

<sup>20</sup> In a group discussion in Mukono, women emphasised that sisters in-law tended to be the worst culprits in mistreating wives in the family and widows, especially those who have come back to their natal home in the event of marriage break up (July 2009).



very intricate disputes. In the long run there is potential that that some of the gender fair norms and practices may be institutionalized as the norm and the desirable.

There is a mix of knowledges, derived from custom, statutory law and some of the rights discourses coming through NGO sensitization. Some of these know ledges may not be very accurate. For example an appeal was lodged at LC where the appellatant claimed to have lived on the land for 57 years and the judgment was that:

According to the Local Government Act of 1985, it is not allowed for a person who has stayed or cultivated from 12 years and above to be removed from the area. The case was hence judged in favour of the appellatant (Apala S/c court 2008).

The Local Governments Act of 1985 does not exist. The LGA 1997 does not have such a provision on land relations. However the provision exists in the Land Act relating to lawful occupant and bona fide occupant. Section 30 (2a) gives definition to bonafide occupant as a person who before the coming into force of the constitution had occupied and utilized or developed any land unchallenged by the registered owner ... for twelve years or more.’ In the above case, the respondent was not a registered land owner but never the less the court utilized the provision of ‘12 years or more.’ This was a case involving men but the point I make here is that the LC courts are tasked to craft a basis for their judgment, and building up pieces provided in the statutory law as well as custom.

As more and more women utilize LC courts on land matters there will be likelihood of a cumulative effect of building a strong sense of women’s entitlement to land rights, whether they are actually winning the cases or not. Women’s engagement with the LC courts has the potential for expansion of issues for public considerations. Members of LC courts often testified to the fact that sometimes they were challenged on how to deal with cases especially these relating to family members, such as between wife and husband; mothers and male children; and women and in-laws.

Women's engagement with of LC courts as quasi public spaces has the potential to enhance their exercise of citizenship and increase their leverage in land access in this case. A very interesting scenario here is that whereas women did not see a lot of change in their land rights status and claiming, men did indicate that their hitherto domination in matters of land (especially family land had been apparently dented by the decentralization process (Table 3).

**Table 3: Male Respondents views on how decentralization affected women(Lira)**

	Frequency	Percent
Their voices best herd	6	27.3
Made women know their rights over land	11	50.0
Increased women land ownership	5	22.7
Total	22	100.0

**Male Respondents Views on how has decentralisation has affected men (Lira)**

	Frequency	Percent
Acquiring land titles is easier	7	31.8
Empowered women to claim co-ownership	7	31.8
Lessened men's domination of land	3	13.6
Men cant sell land without wives consent	4	18.2
Non- response	1	4.5
	22	100.0

In the above comparison of men and women's experience of decentralisation of land services, men seem to say that apart from the eased registration aspect where they have clearly gained, the rest were gains for women. Majority women have a totally different picture. The gains are not as visible and as clear cut. But the views of men indicate that something is changing. The social psyche is slowly being refashioned. There are spaces for change that have been created by the process of decentralization of land administration.

The current spaces in the decentralization framework, though porous seem to represent a transformational potential. If given more impetus through greater social mobilization and capacity building, there is the potential to increase women's legitimacy in land rights claiming. Perhaps, as Cornwall and Coelho argue, the expansion of participatory arenas and spaces of negotiation, (as the LC courts in this case), may facilitate a new set of 'political actors and political subjectivities' (2007:3).

#### **4.4.2 Contradictions in LC Court Processes: Limits to Women's Agency**

LCs are fake. They have frustrated many genuine cases. They have betrayed the trust that people used to have in them. They often silence issues at the lower levels. (Interview with one S/C chief, July 2009).

Despite some of the positive outcomes and potentials discussed above, it should be stressed that there are critical contradictions in the local land dispute resolution

terrain. These contradictions impact on both males and females but tend to weigh more heavily on women, the poor and the dis-privileged. The benefits mentioned above and the spaces for women's agency (mostly individual) are not uniform and very largely contextual. As already discussed, the local land structures in the current state are somehow confusing. There is limited knowledge on who does what. Hence this state of affairs tend to largely benefit those with a high level of social networks or the very desperate women who may, by luck bump into a helpful officer to direct them to the CDO or LC court.

The above discussion on benefits and potentials of LC Court processes should not in any way be collapsed into the simple notion of 'the closer the better'. Majority of women who had utilized the LC courts noted the weakness of being easily compromised and specifically emphasized that the much lower structures were too close for comfort. I found that the LC I and LCII levels were not well utilized and seen by many as obstacles than instruments of local justice. Specifically LC1 were seen as land dealers more often than not taking sides in disputes, in favour of the person with more money.

The larger context of the lower councils is that since the stalemate following the 2006 elections<sup>21</sup>, they have been acting in an ambivalent position for almost 10 years now. Gradually what has remained of the LC I committee is the chairperson, and the secretary who has custody of the village stamp. And given that land sales have become a lucrative business LC I chairpersons especially in rural areas have positioned themselves as key witnesses, even charging a fee on the basis of some agreed upon percentage of the land sale value. In fact in Mukono the LC I chairpersons were locally referred to as *Bampuuta* (surveyors) who in some cases apparently directed landlords/ land buyers and grabbers on vulnerable people to be easily evicted. The RDC Mukono talked of how he had to order arrest of one Village

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<sup>21</sup> In 2006 when Uganda held its first multiparty elections after the 20 year party freeze, there arose a contention over lower local councils because their electoral guidelines had not been reformed and were still based on the individual merit system. The opposition parties challenged the apparent disconnect. Since then village chairpersons just continued to act but without a clear framework on their status.

(LC1) chairperson who had become notorious at selling people's land, especially the vulnerable, such as widows and the disabled.

The LCII courts where they functioned were accused of first and foremost being highly compromised by proximity. For example in cases where a woman brought a case against in-laws, the male members of the panel, the majority and the dominant, would hesitate to rule against their fellow man, their relative, neighbour or comrade at the nearby bar. A woman councilor in Mukono had this to say about the LCII court:

These men have closely knit networks. If he is not a relative, he is a friend or he often buys for him a drink in the trading centre. You cannot win at that level (July 2009).

It was also noted that LCs tended to be more helpful when a land wrangle was between male neighbours and/ or strangers than between couples. Some successes were also reported where land wrangles involved widows versus their in-laws. While women accused LCs of foot dragging and being on the side of men, a number of LC court members mentioned that they tended to treat cases between couples with care. In Nakisunga an example was given where a woman refused to testify against her husband on the basis that 'where would she sleep after that?'. This raises a very fundamental question about how outcomes of land rights claiming could be purposively managed to protect the vulnerable.

During the reconnaissance visit Lira in 2008, the research team learnt that majority of cases involving women stopped at LCII. The cases were either resolved at that level or the parties were advised to go and settle the dispute within the clan. According to the Lira District Deputy RDC then, traditional leaders and clan leaders were more trusted than LCs.<sup>22</sup> During the fieldwork in 2009, this fact was interrogated in some detail, uncovering the fact that the LCII was more of a blockage in the quest for women's exercise of agency. The in-depth study revealed that most cases were blocked at LCII. The women who lacked the information on appeal processes or lacked the stamina to appeal at LCIII just resigned to their fate.

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<sup>22</sup> The reality on the ground is however more fluid than often presented. In some cases women were said to prefer LCs because the traditional network is already closely knit in favour of male members

Corruption is another fault line that runs through the LC courts. People, women in particular claimed that LC courts tended to favour the rich. In Mukono, they gave a saying that *esente wekuba egonzaawo. Omwaavu tawaya* – meaning those with money always have their way. The poor are doomed. In many cases LC courts were known to make judgments in favour of the rich and powerful and it was suspected that they received bribes or were merely intimidated. In Lira I held an informal discussion with a retired police officer who has a small grocery shop in the vicinity of the sub-county offices. He is always inadvertently listening to conversations of various people as they come to his shop either to buy a soft drink or rest on his benches. He said jockingly:

Here even if your case is genuine, if you don't have money, you lose out. They call it *environment*. The question therefore is: how is your *environment*? (Discussion, Apala S/C Lira, June 2009).

Another related issue was that to do with court fees. The impression got during the field work was that courts determine the court fees and they were not standard. In Lira Apala sub-county, it was learnt that the court fee is 20,000/= while the site visit fee is 15,000/=. In Mukono in Nakisunga the court fee was said to be 30,000/= while the site visit fee was said to depend on the distance to be covered. This money accordingly facilitates the courts, for example in procuring stationery and covering their transport. As according to the LC Courts Act (2006), the court members are not salaried and do not receive an official allowance, meaning that they are dependent on the fees paid by claimants and respondents. And while the court members saw what they charged as very nominal and insignificant, some women and men were too poor to raise such monies in a single instance<sup>23</sup> and viewed the fee as extortion. Women especially lamented that their earnings were very low and some were discouraged from pursuing their cases because of the 'high' court fees.

From another angle the LC courts were known to be easily intimidated by the rich and the powerful. A few cases are used to exemplify this view:

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<sup>23</sup> Earnings in the very rural areas are seasonal dependent on agriculture or in any case not much more than 1,000 per day

### The Story of Achola, Lira District



*Achola right. Left is her co-wife, standing in front of Achola's house*

*By July 2009, Achola had been pursuing a case at the sub-county since July 2008. Angiru grabbed part of her land. She reported the case to LCII, it was considered and she won the case. Angiru appealed at LCIII. Achola used to walk to the sub-county every Wednesday. In one of the court proceedings attended, Achola did not have witness. When we asked her neighbours in the village why they could not come to help Achola as witnesses they said they feared to be witnesses against Angiru because he was feared in the whole village. He was a powerful land grabber. Her co-wife whose part of the land had been grabbed by the same man indicated that she was stopped from being a witness and could not lodge a case since the piece grabbed from her land was small in her case and she could afford to ignore. During cross examination in one of the court sessions attended, Angiru was looked to be very much on top of things well dressed and having a contest with a bare footed woman. He asked arrogant questions such as where were you in 1960's when we got this land? You are a woman you have been married. Observation also indicated that even the court members feared Angiru. People around also suspected that the court members had received bribes from Angiru. Other people suspected that Angiru was foot dragging to make Achola lose interest in the case or that he intended to push the case further upto to the magistrates court located in Lira Town (about 25Kms away).*

Every Wednesday we communicated with Mary to find out about the progress of the case and as usual the story was - *case adjourned*. Information provided in November 2009 indicate that Achola won the case but the land grabber still refused to comply, to vacate the said land. The case dragged on for over a year, costing her time, money and weighing heavily on her emotional gauge. In this case it is very apparent that Achola required a mechanism of legal redress beyond the LC court system<sup>24</sup>

<sup>24</sup> During the fieldwork, we were made to understand that Achola's case had dragged on because she lacked witnesses and had not paid the money necessary for court to conduct a site visit. We forfeited our lunch money and gave it to Ochola to pay. The next day we conducted a focus group discussion in her compound. Word has gone around that this could have been partly the reason why Ochola has

In another case a member of parliament grabbed land belonging to a certain widow. The widow could not get witnesses to testify against the MP. At the same time the court was said to be fearing to pass judgment against the MP, though it was clear the widow was the rightful owner. In addition the two belonged to the same clan and it was highly unlikely that the clan would favour the widow over the male MP. The combination of the status – a man and influential personality as member of parliament hence compromised the widows land rights in the localised setting.

From another perspective, LC courts were seen as time wasting. *Case adjourned* – was locally translated as - ‘*come back tomorrow, come back the other day*’. Some women could not imagine themselves trekking to the sub-county every week over an uncertain period of time to pursue a case or act as witness. In the cases where the dispute was against powerful people security considerations also played a role in dissuading women from pursuing the cases.

One major limitation mentioned was that LC courts had no sufficient authority to implement their decisions or requirements. In some cases they served summons and the supposed respondents refused to appear. Once the respondent does not appear the LC court is disarmed, and has no other mechanisms to enforce their authority. According to one Community Development Officer, LC courts are under-looked. Accordingly, the local people on these courts are assumed not be very knowledgeable and their decisions and judgments can be ignored in some cases.

This is why the RDCs office has turned out to be a representation of authority in land matters even when it is not legally mandated to do so. Two cases highlight this dilemma.

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finally won the case. We are receiving several calls from the same village, from women who need help, who think we can help. Yet we cannot.



### **The story of Nampijja (not her real name)**

Nampijja's husband decided to abandon her. He argued she was stupid and was going to look for a better wife. He nevertheless promised that he would leave her in the land with her children. Nampijja struggled and was able to build another house. The husband teamed up with his relatives to chase her away claiming the Nampijja was getting rich using their ancestral land. They came with pangas and machetes and threatened to kill her and her children. They cut all the crops down—bananas, vanilla, coffee, name it. She ran to the sub-county. The husband and his relatives were summoned to the sub county but he decided to ignore the summon. They instead continued to harass Nampijja. 'You would be bending say digging only to rise to sharp panga facing you'. Laments Nampijja. 'Even police said I did not have a right on the land', she sobbed. The LCIII advised her to go to magistrates court but she did not have an idea on how to approach the court and worse still did not have money. Nampijja sought help from the RDCs office. The RDC apparently summoned the husband and relatives, threatened to imprison them and even sent police officers to the site. The in-laws were threatened and stopped the physical harassment but have now ensured that Nampijja does not cultivate the land. *Kati tubeerawo munsiko* – 'we now here surrounded by a bush which we cannot touch' she said. She only uses the house compound to grow mushrooms and cabbages in sacks and has to hire land elsewhere outside the village to cultivate.

### **Expanse of Land but Nampijja cannot cultivate it & has to hire land somewhere else**



What comes through from Nampijja's story is that the local structures, courts inclusive have severe limits. They lack the requisite authority to deal with a number of disputes especially those related to land, which can, in many respects become

criminal in nature.

### **Nampijja: Cabbage growing in face of Land Restrictions**



Consequently some people often go straight to the RDCs office without even trying the sub-county. Another case of Namugga brings in another angle to the whole terrain of seeking justice.

### **Namugga (not her real name, Mukono District RDCs office).**

Namugga is standing in front of the RDCs office, the sack bag she is holding apparently contains clothes of her children. According to the story narrated by Namugga to who ever cared to listen, she purchased land in a village in Kyampisi S/C, facilitated by the chairperson of the village as the caretaker of the land. After two years the chairperson brought people to buy the same piece of land under the pretext that he would give her another piece and build her a house in the vicinity. He apparently forced her to sign an agreement that she had sold and received money. Yet she had not received any money. She was later evicted and had been staying at the hospital where she was nursing her husband. Now the hospital was sending them away. She went to police which did not help. A friend advised her to seek help from the RDC.



According to the story as narrated by Namugga herself she was advised to go to the RDC about 30 Kms from her Sub-county to seek help. She did not have any introductory letter because the village chairperson was supposedly the culprit. She

did not go to the subcounty because she did not know that the sub-county could help.

Namugga's case unraveled intricate dynamics. One is on the land knowledge base. As already noted, the land knowledge base at local level is highly fractured. Very few people have clear knowledge on what steps to follow. Namugga did not have any knowledge of how to proceed in such a case and she had all her hopes in the RDCs office. As one woman intimated in a discussion at Nakisunga S/C, *Omukyala bamutundide mu kibanja tamanyi atandikira wa* meaning often women are instantly dispossessed and have no idea on where to begin.

The other point is that women may often be lured into signing papers where the LCI chairpersons themselves are culprits. This is why there was strong call from women in Mukono especially that government should decisively get the LC 1 chairpersons and the whole committee off land issues. They called for a directive to the effect that from now henceforth, LC1 should stop meddling in issues to do with land sales, or transfer.

Because LCs are sometimes seen as a waste of time, some people opt to go to spaces with highly recognised official authority such as the Administrator General.

**Case: Namu (not her real name) versus inlaws**

Her husband died in a motor accident. On the day of the burial, the inlaws accused the widow of having killed the husband and even went ahead to claim that some of her children were not of the husband. She was asked to surrender the land titles which she did not. They chased her with sticks and pangas. She went to the Administrator General's (AG) office and opened a file. The in-laws also went to the AGs office and opened a file. After sometime the widow's file could not be traced. Yet she had handed in original copies of the titles and other documents... *She broke into tears before she could complete the story.*

But the case above shows Namugga did not seem to have been helped even by going up to the AGs partly because she was in a vulnerable state and was manipulated to hand in original copies rather than photocopies.

The multiplicity of channels identified above, where women pursue land rights through Local government channels, central government or NGOs used could be seen as positive in that there are possibilities of choice. However looking at the concrete conditions, it is very clear that this is result of confusion about which steps to take and how. And this confusion seems to hurt the women more, especially the poor and vulnerable.

## **5. Concluding Remarks**

The decentralization of land services in Uganda presents a mixed blessing in as far as women's land rights claiming is concerned. This study had demonstrated that women have to some extent engaged the local land structures especially those to do with dispute resolution. Decentralization of land services has created a relative opening which could hold potential for enhanced women's land rights in all their diversity. One of the feelers of this change was located in some of the views from men, demonstrating a sense of loss on the part of men. The flexibility of the LC courts has sometimes been used to the advantage of women who often lack resources to take on the more formalized and expensive channels of rights claiming.

Yet it is also clear that there exists gross institutional failure which tends to limit the extent to which people are able to utilize the land structures. For women, this institutional failure tends to aggravate their already vulnerable position in as far and land rights claiming is concerned. The existence of such unclear structures may work to propagate the wealthy and the powerful, due to the ease with which the structures can be manipulated to their advantage.

The consideration of decentralisation of land administration viz avis the women's land rights claiming seems to call for a broadened debate on decentralization itself. The experience of Uganda indicates that locally accessible structures are desirable but not at all times without question. The local is desirable only under specific conditions. Locally accessible structures should ideally facilitate land services delivery but should at the same time not be the upper limit of land rights claiming.

For women to be able to effectively interface with institutions at the local level, there is need to refashion the terrain and make it accountable and more systematic. There is need for greater effort to review and improve the institutional framework and increase both horizontal and vertical accountability. The cloth from which to cut the coat has to be put into consideration. The cloth ought to be long enough.

## 6. RECOMMENDATIONS FROM THE FIELD

### **Eliminate LC 1 from Handling land cases**

Women especially in Mukono district suggested that LC1 executive committees should *by law* be barred from handling cases involving land, and should also be prohibited from involving and meddling in land sales. They emphasized that LC I is 'too close for comfort' and in issues of land, self interest often thrives.

### **Sensitization on Women's Land Rights**

One clear point was that knowledge on women's land rights was limited. Women as well as men could not delineate clearly what women's land rights actually mean. Hence they called for massive sensitization especially given the fact that the Land Amendment Bill is still on the floor of Parliament, to take advantage of this process to also elaborate and sensitise people on women's land rights and the available modes of rights claiming.

### **Greater Social Mobilisation by the Women's movement**

The point about sensitization also raised a related issue on the need for greater social mobilization around women's land rights. There was a clear indication that pursuance of land rights is a *risky business*, more so for women. Hence women called for creation of a force beyond the individual so that, for example, they would not need to personally struggle for land rights as against their husbands, in-laws, brothers and the like. This need was expressed in a dilemma often faced by women who take their husbands to the LC courts. The question which often arises is: *where will you sleep after that?* There is also the effect of broadening the arena of land rights claiming which can then positively impact on how the local structures function.<sup>25</sup> In this way, women's land rights claiming will move from the arena of the private to the terrain of the public.

### **Work to increase women in Key leadership positions in local level institutions.**

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<sup>25</sup> Our field experience in Lira District was very informative in this respect. Our presence at the compound of one Achola whose case had been pending for long, coupled with constant calls to the Chairperson to inquire about progress is believed to have made a difference. Other women with similar cases in Achola's Parish often called to inquire if we can help. Yet our intervention was very small and not able to create the much desired impact, say at the community level.

This comment was derived from a discussion with the RDC Mukono who argued that women could make a difference if they occupy positions in greater numbers much more beyond the statutory one-third. He therefore proposed that as the 2011 elections are drawing near, women all over the country should mobilize and ensure that women take positions in those spaces such as LC executive because their presence in big numbers has the potential to change the gender terrain.

#### **Increase in Land Related Service Organisations**

Respondents noted that there is a paucity of service organisations dealing with land issues. An increase of such organisations, locally visible and accessible were seen to be necessary in order to offer advice, interface with LCs and also open up further space for negotiation of land rights.

## **7. POLICY IMPLICATIONS**

The following recommendations are made with the view that even with the new land policy that has been debated by different stakeholders, the issue of land administration and women's land rights has not been well articulated. The lumping together of women and children somehow blocks the understanding of gender relations and many of the key questions on family property, inheritance and custom, remain largely unanswered.

### **1. Firmly Institutionalize Local Land Services**

Clearly, there is a high level of confusion that surrounds land services at the local level. The research shows that Land services at the local level traverse the jurisdiction of at least three central ministries; Ministry of local government, Ministry of lands and Ministry of Justice. In all this land services at local level seem to be a bit on the side. Land services at the local level appear to be neither part of mainstream Local government, nor mainstream Ministry of Lands. For local governments to be able to respond effectively to the needs of women, there is need to revise the institutional framework and make it firm and clear in terms of roles and responsibilities of the different structures.

### **2. Upgrade Land Knowledge in Service Providers at Local Level and establish strong information management Systems**

The study has clearly demonstrated that the land knowledge base at the local level is highly fractured and disjointed. There is a need for increasing awareness through upgrading the knowledge in the professional community on gender issues in land tenure in general, and in land administration. In the same vein, local structures should have proper record systems such that information is stored and retrievable in a well known manner. Records of local structures are key in terms of aggregating their democratic potentials.

### **3. Revisit the District Land Office**

Respondents submitted that the district land Office is not helpful. There are critical allegations of corruption and how it is not easily accessible especially for women. During discussions in Mukono it was noted that the people in the Land Office allegedly connive with land grabbers and even provide them with advice to dispossess the poor, women inclusive.

### **4. Elaborate more on Women's Land Rights**

Much as majority people seem to have knowledge on the consent Clause in the Land Act, there was no clarity on how it is operationalised in practice. There is need to elaborate further on the consent clause in the local land administration structures and give it a clear implementation framework.

### **5. Institute Safety Measures for women in Land Disputes**

Women expressed fear of involving in land disputes, even at the bare minimum level of being witnesses on behalf of fellow women. Such measures can include development of **official** guidelines on the rights of the parties in a dispute and clear

sanctions on culprits who act otherwise. This clearly calls for institution of safety measures to protect women in land disputes. This will also help to encourage collective action which very minimal at present.

**6. Harmonise and systematize Local council courts to increase people's/ women's Trust in the Dispute Handling Mechanisms**

There is need to review the policy on LC court fees and remuneration. Because they are not remunerated, they tend to transfer the burden to the people. Hence there is a clear need to remunerate the court members, and have a clear system on court fees rather than leaving it to the individual courts, which tends to breed corruption or allegations of its existence. Record keeping should also be upgraded.



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### Appendix 1: LC III Court Kyampisi Sub-County 2008/09: Land Cases Involving Women

Type of case	Origin of case	C	D	Court Decision	Outcome
Land Grabbing	LC I, LCII	F	M	Mr Kisitu was proved guilty of grabbing land from widows of Late Badiru. Court ruled in favour of the Widows	Dispute came to an end. No more friction on the land
Land Grabbing	LCI, Police,	F	M	Mr. Panyako was found guilty of stealing Nerina's Sales Agreement in order to capture ownership of the land. Court ruled in favour of Nerina. The defendant was asked to vacate the land	Stubbornly the defendant refused to vacate. Nerina took the case to the Magistrates Court, was given a court order (and court brokers) hence regained true ownership
Land Grabbing	LCI direct to LCIII	F	M	Kirumira was found guilty of grabbing a widow's land. He was forced to cancel the transaction in writing	Kirumira surrendered. Peace restored
Land Eviction	LCI direct to LCIII	M	F	Court observed that Kalemba had been under compensated by Ms. Nakiboneka. Court requested Ms. Nakiboneka to give more money to Kalemba	Having received the additional money Kalemba quit the land. Dispute ended.
Land Evicted	Direct to RDC, then referred to LCIII	F	M	Case between Mrs Kintu and Mr. Muwanga. Disagreement over the transaction made and the terms in the agreement. Court advised Mrs Kintu to request politely	Mrs Kintu was not satisfied by the advice. She decided to go further