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GENDER TRANSFORMATIVE LAND ACQUISITION – A GUIDE FOR COMMUNITIES AND INVESTORS

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List of abbreviations

GDP	Gross Domestic Product
UBOS	Uganda Bureau of Statistics
WB	World Bank
PWD	Persons with Disability
MLHUD	Ministry of Lands, Housing & Urban Development
NLP	National Land Policy
PPRR	Principles, Practices, Rights and Responsibilities
NGO	Non-Government Organization
CSO	Civil Society Organization
FPIC	Free Prior Informed Consent
ILO	International Labour Organization
RGIL	Responsible Governance of Investment in Land
BJCU	Bukonzo Joint Cooperative Union
ESIA	Environmental Social Impact Assessment
VGGT	Voluntary Guidelines on Responsible Tenure of Land, Fisheries and Forests
CFS-RAI	Committee on World food Security – Principles for responsible Investment in Agriculture

Introduction

Land plays a fundamental role in the livelihoods of most African communities. It contributes virtually to all socio-economic activities including human settlement, production, investment and conservation by adopting best practices for purposes of growth in Agriculture, industrial and technological sectors which must be secured and sustainably utilized for posterity.

In Uganda, agriculture is the main economic activity contributing about 26% of the Country's GDP and employs approximately 69% of the population, of which 50% are women (Ali, 2015). Land is a key resource in the agricultural production and yet according to UBOS (2013), women only own 28%. The women's property rights are constrained by the legal system which is pluralistic in nature (World Bank, 2018). Legal pluralism refers to the application of different sources of law, including formal and informal laws. The different sources of law are usually in conflict with each other, creating tension that hurts the Women's land rights.

Similar to other Sub-Saharan African Countries, land in Uganda is mostly acquired through marriage and inheritance (World Bank, 2015). Due to the patriarchal nature of traditional communities, women and girls can only get access to land through their male kin in their lifecycle. Girls and unmarried women can claim land rights through their father.

Women play a vital role in Uganda's rural Agricultural sector contributing higher than average share of crop labour in the region (WB, 2015). The contribution of women towards family food security is still under appreciated. Their effort is rewarded with prohibitions in accessing land, credit and other productive assets. The men want to control land not only for cultural reasons but also as a means of holding to household financial power.

The National Land policy adopted in 2013 has openly recognized discrimination against women as a weakness withing the customary tenure that needs to be addressed to ensure that, its provisions are consistent with constitutional, policy, and legal commitments to the promotion of gender equality, none-discrimination and the empowerment of women.

The 1995 constitution of Uganda prohibits cultures, laws, and customs that undermine the dignity of women, orphans and other marginalized groups in exercising their land rights under Article, 32(1). Under article 237 (1) of the constitution of Uganda 1995, land belongs to the Citizens of Uganda in accordance with the recognized land tenure systems.

Although, the law provides access to land for all citizens, cultural barriers and poverty traps tend to limit the minority groups such as women, youth, persons with disability (PWDs) to own and or make decisions concerning access to and use of land. Land rights are human rights that does not discriminate against any member of society.

People need to clearly understand that, land laws does not explicitly discriminate against women but in some instances, there is a gap between policy and practice. Massive awareness is critical to discourage such inhumane practices, customs and cultures in Uganda.

Gender transformative Land Acquisition

Domestic and global demand for food crops, biofuels, and other horticultural products and raw materials to feed a growing population, urban expansion and address climate change has resulted in changes in the agricultural production systems from smallholder farming systems to the onset of large-scale acquisition of agricultural land especially in the global south. Large scale farms are often promoted for their perceived ability to increase productivity beyond the level smallholders could achieve. For many governments, transitioning from subsistence to commercial agricultural production is a strategy to achieve efficiency, revitalise rural economies, gain a foothold in export markets and earn the much-needed foreign exchange to support the country's development goals. Making land available for commercial agricultural investments can attract private investment. Where there are people living on the land and whose livelihoods depend on it, the question is - how to ensure that the land acquisition process is inclusive in that concerns and interests of women, men, and youth are duly considered. What are the practical pointers so that no one, in particular women, is left behind?

This booklet focuses on providing stakeholders, such as communities, government authorities, investors, and organisations with a guide on enabling a gender transformative land acquisition in Uganda. It starts with unravelling the gender and social norms which influence access to and control over land in Uganda. It provides an overview of Ugandan laws and policies supporting gender equality. It explains the added value of a gender transformative land acquisition. Finally, it offers some practical pointers to guide communities towards a gender transformative land acquisition process. These pointers are by no means carved in stone. Given the diversity of rural landscape and *lifescape* in Uganda, these have to be contextualised to obtain positive impacts that will benefit the community, including women.

Understanding gender and social norms

Gender is a social and cultural construct that is defined by norms which distinguish differences in attributes between women and men, boys and girls. Gender norms, which are a subset of social norms, are informal rules which shape collective perceptions and expectations of individuals' roles and responsibilities based on their gender identity. Gender and social norms define women and men's tasks and responsibilities related to food production and provision, income generation as well as maintaining the community's social fabric. Gender determines how both men and women gain access to land and influences how both men and women obtain land rights through social and kinship relations, the land market and from the state.

In Uganda, land and rights to land embodies social, economic, cultural and political attributes. Especially among women, land guarantees social and economic security. Access to and control over land accords

status, prestige, and power. It is a key resource which can enable women to provide for their households' subsistence needs, strengthen social bonds which bind communities as well as open pathways to improve their economic position. Secure land tenure offers women the possibility to apply for credit from formal financing institutions to grow small businesses. Women's right to land is guaranteed in the Constitution and other laws of the country.

Overview of the legal and policy framework on gender and land rights in Uganda

Generally, policies and laws passed in Uganda guarantee equal land rights for women and men. The 1995 Constitution, the 1998 Land Act Cap.227 (as amended) and the 2013 National Land Policy provide wide ranging policy and legal reforms to advance gender equality and ensure the protection of women's land rights.

The 1995 Constitution

The 1995 Constitution espouses gender equality and instituted policy and legal reforms aimed at securing women's land rights. The Constitution provides rights to equality and freedom from discrimination including based on sex and guarantees the rights for women. The Constitution upholds women and men as being equal in dignity and equal before the law and prohibits any laws, cultures, customs or traditions that harm women's dignity or status (Box 1)

Box 1. Provisions of the 1995 Constitution for gender equality and equity

- Article 21: All persons are equal before the law in all spheres of political economic, social and cultural life and in every other aspect and shall enjoy equal protection of the law.
- Article 31 (1) of the Constitution entitles women and men to equal rights during and after marriage.
- Article 32 of the Constitution provides for affirmative action in favor of groups marginalized on the basis of gender or any other reason created by history, tradition or custom.
- Article 33(4) states that the state shall provide facilities and opportunities necessary to enhance the welfare of women to enable them realize their full potential and advancement.

Source: Constitution of the Republic of Uganda, 1995

The Land Act Cap 227

The 1998 Land Act provides for the protection of the rights of women, children and persons with disabilities (Box 2).

Box 2. Rights of women and children in the Land Act

- Section 27 guarantees the rights of women, children and persons with disabilities as regards decisions taken in respect of land held under customary tenure, whether in respect of land held individually or communally
- Section 38 provides for a spouse's security of occupancy on family land and provides a detailed definition of what constitutes family land
- Section 39 requires mandatory consent by spouses to transactions involving matrimonial land (where the family ordinarily resides) and land from which the family derives sustenance.
- Sections 15, 47, 57 & 65 guarantee the representation of women on communal land associations, Uganda Land Commission, District Land Boards and Area Land Committees, respectively.

Source: Land Act 1998, Chapter 227

The National Land Policy 2013

The NLP commits itself to “redress historical injustices to protect the land rights of groups and communities marginalized by history or on the basis of gender, religion, ethnicity and other forms of vulnerability to achieve balanced growth and social equity” (MLHUD, 2016). Based on the Gender Strategy for NLP Implementation (MLHUD, 2016), the NLP makes the following gender specific commitments to action:

- Guarantee that the transfer of land under all tenure regimes does not deny any person rights in land on the basis of gender, age, ethnicity, social and economic status
- Ensure equity in the distribution of land resources, and preserve and conserve land for future generations;
- Government shall modify the rules of transmission of land rights under customary land tenure to guarantee gender equality and equity and
- Make provision for joint ownership of family land by spouses;
- Develop guidelines and procedures under customary land law for the allocation and distribution of land complying with the principles of equality and natural justice;
- Government committed itself to protect by legislation the right to inheritance and ownership of land for women and children, and
- Government, further committed to ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage and at succession without discrimination.

In addition, the recent enactment of the Succession (Amendment) Act 2021 by the Parliament of Uganda has provided additionally guarantees of the rights of women and children in matters of succession and inheritance (Box 3)

Box 3. Rights guaranteed by the Succession (Amendment) Act, 2021

- Section 2 was amended to include a customary heiress recognizing the fact that women can be heiresses to deceased relatives
- Section 23 inserted women specific words – mother, grandmother, aunt, daughter, etc. to further recognize the inheritance rights of women
- Section 27 increased the share to a surviving spouse from 15% to 20%
- Section 29 guarantees the rights of the surviving spouse to the matrimonial home

Source: The Succession (Amendment) Act, 2021

Gender inequality in access to and control over land

Despite the presence of legal frameworks, land tenure security for women in Uganda remains tenuous. Available statistics estimate that women own only 5% - 26% of registered land in Uganda despite the fact that they constitute 52% of Uganda's population (MLHUD, 2016). Additionally, as a result of deeply rooted patriarchal norms, gender inequalities continue to be normalised as manifested in the unequal access to and control of productive resources, including land despite women contributing 70% -80% of the agricultural labour force in Uganda (MLHUD). Women face a number of barriers in asserting their land rights despite the policy and legal protections (Box 4).

Box 4. Gender inequalities in access to and control over land

- Men dominate majority of decisions related to land use and management due to the patriarchal nature of society
- Social norms enforce women's dependence on men. Under customary law, women cannot own land in their own right.
- Women have secondary rights to land - they depend on their spouses or relatives to use land.
- Poverty and ignorance particularly for rural women have exacerbated the situation

Source: Mwasumbi, et al., (Eds.), 2020

Additionally, customary norms, practices and laws have far-reaching implications on women's land rights given the fact that 80% of land in Uganda is held under the customary land tenure system (Trocaire, n.d.). In the customary system, it is widely reported that women's right to land and property lags behind that of men. Men assume custodianship of land especially for commercial purposes whereas women are largely excluded from modern contract farming arrangements because of land tenure insecurity (FAO 2011).

Over the past few years, land mark achievement has been reached in some regions, namely in Lango, Teso, Acholi and Bunyoro, shedding light on the responsibilities of traditional institutions in protecting the land rights of women, including widows, and children. This is documented in the *Principles, Practices, Rights and Responsibilities (PPRR)*.¹ The PPRR challenges misconceptions that women do not own land under customary land tenure. This key document codifies the number of ways under customary tenure for women to have land rights as part of a family, head of a household in the event of divorce or widowhood or being an unmarried woman.

Land mark achievement on customary land tenure - women do now own land.

Voices emerging from the Principles, Practices, Rights and Responsibilities

Reasons for gender transformative land acquisition

Why should communities and other stakeholders be vigilant that no one, in particular women, is left behind in agriculture land acquisition?

In rural Uganda, women comprise the primary users of farm land even in the absence of a landholding certificate which guarantees their landholding rights. Weak land tenure security makes them more vulnerable to losing out on investment processes, such as in acquisition of land for investment. Poorly planned, non-participatory, and non-inclusive land acquisitions can result in long lasting negative impacts:

- Further marginalisation of women who because of their subordinate role in the household can be systematically excluded from decision making processes.
- Women being by-passed in decisions related to compensation as well as in planning and implementing social safeguards and resettlement plans.
- Failure to understand concerns and issues women face including how compensation is determined. For example, compensation claim forms may only list the name of the husband (who was present in the meeting and as household head); hence, the only person authorized to collect payments. Women may not receive their share and money could be spent on alcohol etc.
- Failure to take into account the economic as well as social value of the land they farm and communal resources that they access for free.

Income in the hands of women is more likely to be spent on food and children's education.

¹ The Principles, Practices, Rights and Responsibilities (PPRR) is a formal documentation of customary land laws and traditional values. One of its core messages is that customs do protect the rights of women and children. <https://land-in-uganda.org/>

- Displacement to marginal land and changes in land management practices. Communities may allocate land farmed by women for investment. Because women tend to farm smaller plots and more subsistence crops than cash crops, there is a risk of them inadequately or not being compensated at all for loss of farm plots.
- Fertile land held by men could be allocated for agricultural investment. Men then use plots traditionally used by women for food production or to grow crops that they could sell. This brings changes in land management practices and control over crops that women manage. Farming on less fertile or infertile land will require application of purchased inputs.
- Increased pressure created on available communal resources. Rapid degradation of communal resources or even loss of access deprives women of access to fuelwood, fodder, water, wild plants and others which they are responsible for collecting and collect for free. This results to increasing women's workload - walking long distances and more time spent fulfilling domestic responsibilities.
- Dispossession leading to loss of livelihoods, unemployment, decreased to loss of income, food insecurity leading to household impoverishment.
- Rural youth unemployment can increase outmigration to urban areas which are already overpopulated and facing problems of joblessness.
- Internal conflicts and divisions within the community leading to loss of social capital.

Overall, women have fewer options than men to replace farm-based livelihoods and resources. This is a development issue. Communities should ensure that responsible investments in land, especially those involving land acquisition, must be gender transformative.

Creating better outcomes: how can the land acquisition process be made empowering for women and communities?

Communities should pay a proactive role in land-based investments, which include land acquisitions, affecting their localities. In the process of doing so, community members, including women, and their leaders can strengthen their local structures and processes to prepare themselves to understand and more effectively negotiate with investors and other intermediaries. Below are some pointers to ensure that land acquisition processes are inclusive and empowering for women and communities.

Land acquisition should provide a pathway for social transformation – empowering women and communities.

Consultation meetings

- Community members, including women, men, and marginalised groups must genuinely participate in consultation meetings to understand the proposed investment and its anticipated

outcomes and impacts. Outcomes and impacts can be experienced differently between women and men or within gender and social groups.

- Disseminate information about upcoming consultation meetings using various platforms. Tap information networks, women's information sources and places where women usually congregate.
- Consultation meetings are never one-shot or hurried for lack of time. These must be planned based on availability of community members and accessibility of venue. In particular, availability of women to participate in the meetings should not only be considered but that it is imperative. Women are commonly excluded in such meetings because of the assumption that they will be adequately represented by a male household head or adult male member of the family (what is good for the man is good for the woman) and that they have to prioritise household responsibilities. Identify other barriers to women's participation in meetings and address them.
- Focused group meeting(s) schedule and venue should be convenient to women and vulnerable groups. Secure space should be provided to enable participants to freely discuss issues and concerns, their needs and interests.
- Ensure that influential individuals/ households do not hijack community meetings as well as women's focused group meetings.
- Experienced facilitators and interpreters (if needed) should be available during these events.
- All meetings should be documented and minutes disseminated in public places!

The Landesa Gender Primer provides a simple checklist that can be adopted by investors to ensure meaningful participation of women (Box 5)

Box 5. Checklist for engagement and consultation of women

- Ensure that the community facilitator (who may be an NGO or local leader) understands that the business representatives need to speak to women as well as men—both women leaders and women users of land, even if they are not owners or rightsholders.
- Provide information in the language women understand and post or circulate material in places where women go regularly and are likely to see the information.
- Identify women in the community who can gather and involve other women in information meetings and work with them

Source: Landesa Gender Primer, 2018.

Awareness raising/ Capacity building – no stone left unturned

- Communities should seek assistance from relevant organisations on their rights and responsibilities, legal framework, good business practices, and conditions of the investment and its potential impact locally and among women.
- Application of the Free, Prior and Informed Consent (FPIC). FPIC applies to indigenous peoples and local communities. FPIC emphasises on genuinely involving community members in decision making processes of any proposed development activity. It builds on the principle of harnessing local ownership and protecting human rights. The FPIC process must be undertaken conscientiously.

It should explain clearly and truthfully how, when, with and by whom the proposed investment will be undertaken. Communities must impress upon investors and/ or their representatives that an FPIC process is not a one-time event to be ticked off from a checklist. Equally important, FPIC processes must be gender transformative (Box 6).

Box 6. Free, Prior and Informed Consent

This principle states that any investment affecting the land or resources of indigenous peoples should not proceed without the free, prior and informed consent (FPIC) of those affected by the proposed project or investment. The right to FPIC is derived from the International Labour Organization (ILO) Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries and the United Nations Declaration on the Rights of Indigenous Peoples. It gives indigenous communities a veto – the right to say no – to a project being implemented in their territory. This power may extend over the lifetime of the project if the nature or scope of the investment changes over time.

The four elements are briefly described as follows:

Free. Those deciding whether to consent to a project should do so without coercion, intimidation or manipulation.

Prior. Consent must be sought well before any authorization or the beginning of project activities. The timetable must allow sufficient time for culturally appropriate consultation and for completion of local decision-making processes.

Informed. People receive all relevant information about the project. The information provided must be objective, accurate and presented in a manner or form that is understandable to those receiving it.

Consent. The people have agreed to the activity that will take place on their land. The right to consent includes the right to say no to the project or to offer to consent only under certain conditions.

While international law and the VGGT explicitly call for FPIC only where indigenous peoples are involved, many argue that the most prudent risk management approach for investors is to insist on FPIC in all cases. There is a strong case for applying FPIC in any situation in which an investor requires land where there is a local population living and working.

Source: FAO 2014b.

- Community members, including women, should be adequately engaged during the conduct of environmental and social impact assessments (ESIAs). Results should be disseminated in a manner that is understandable to all participants in a public forum. Organise a women's focused group meeting following the public forum to ensure that everyone is well-informed and can participate in the dialogue.
- Awareness raising activities should be provided on appropriate social safeguards, resettlement, compensation packages etc. for affected communities/ households/ individuals as well as their rights and obligations. Communities should also be well-aware of the obligations of the government, investors and other stakeholders in land acquisition processes.

Gender transformation

- **Do no harm, do better!** Identify risks and vulnerabilities to women associated with the land acquisition. A gender transformative land acquisition should not only do no harm, but should strive to do better by taking transformative actions to empower women and community members from organising and conducting consultation meetings, awareness raising events, creating decision making structures, planning compensation schemes etc.

Illiteracy and disability should not be treated as hindrances to recognising women's rights.

- **Gender transformation training/ awareness for all!** This includes but not limited to community members: men and women, investors, traditional leaders, government intermediaries and relevant stakeholders. Traditional leaders, in particular, play an important role in land acquisitions by ensuring that loss of access to communal resources are adequately addressed. Similarly, traditional leaders should also protect land use rights of women and guarantee the replacement of lands allocated for investment through access to arable land for farm-based livelihoods.
- **Decision-making bodies.** Introduce gender quotas in decision making bodies to ensure women's participation and representation. Strengthen the women leaders' capacities to ensure that they can participate and influence land acquisition negotiation that is fair and just for women in male- and female-headed households, indigenous communities and others.
- **Gender based violence.** Monitor and mitigate any form of violence, including gender-based violence, linked to land acquisition process.
- **Gender transformative compensation.** This encompasses who are entitled to compensation (both spouses, household members with interest in the land), how the compensation will be made (payment claims in the names of both spouses and mobile banking), what is the compensation for (loss or replacement of property, communal resources and assets; payment for loss of cash crops and subsistence crops), and promises for employment and availability of services that are crucial for women and rural households. Guidelines for valuation of property including communal areas and benefit sharing should be gender transformative.
- **Women as land users.** Land is commonly titled under the name of the male spouse with the female spouse(s) significantly contributing in agricultural production activities. In some cases, besides the main land parcel in which spouses provide agricultural labour, female spouses are allocated small parcel of land that they themselves cultivate to grow crops for home consumption and/ or sell in the market. Land acquisition process should be recognising these nuances. As explained in the RGIL Community Manual (2022), community members should pay special attention to whether the final agreement respects and even strengthens the land rights of women in the community. Land-based investments that ignore women's land rights can worsen the plight of women in the affected community as dispossession of land can affect women differently from men, and in some cases might increase burdens on women. It is, therefore, important that a responsible investment recognizes and respects all legitimate tenure rights, including the tenure rights of women (see Box 7)

Box 7. Strengthening Women's Land Rights in Uganda

The CFS-RAI Principle 3 provides that responsible investment should foster gender equality and the empowerment of women and the VGGT advises parties to investment contracts to ensure that the "negotiation process should be non-discriminatory and gender-sensitive. In Uganda, Bukonzo Joint Cooperative Union (BJCU), a microfinance and coffee cooperative union in the Western region, has been working to secure joint land rights for its mainly female membership. BJCU helps its members to legally register landownership in the name of husband and wife. It provides assistance during the lengthy and intricate process of registering joint ownership, involving: payments to the sub-county office (for application forms); having at least four neighbours verify the land boundaries; obtaining the signature of traditional chiefs; and having the sub-county land committee inspect the plot of land. The application is then forwarded to the district land office, where additional payment is needed in order to expedite issuance of a certificate. BJCU has succeeded in creating a climate of respect for women's land rights among its membership and their families.

Sources: FAO 2022 and Twin 2016

- **Equal in law, equal in practice.** Observe the rule of law and ensure that women are treated equally in all transactions involving land. Put into action the customary provisions that guarantee women's land rights. For example, implement the provisions of the Principles and Practices of Customary Tenure in Acholi land, 2008 (Box 8). Identify restrictions on women related land acquisition negotiation and contracting. Identify strategies to ensure that women's interests are not marginalised. Seek advice from civil society organisations supporting women's rights to ensure that women's issues, concerns and interests are duly addressed in the negotiation process as well as when land acquisition contract is drawn.

Box 8. Rights of women in Acholi land

- All members of the kaka (clan) have rights to land
- In addition to birth, women can also become part of the clan
- All clan members, irrespective of their status, age or gender, have rights to live on their homestead and family land, farm on their homestead, family and farming land, to return to family land after divorce and to reasonably withhold their consent on decisions affecting their rights to land
- Girls have the right to live on their homestead/family land as long as they remain unmarried
- Widows, whether with or without children, have the choice to stay on the land to which they are married, return to their maiden home and reject or accept a protector
- Land managers must obtain consent from family/household members and clan when making major decisions affecting land

Source: Principles and Practices of Customary Tenure in Acholi land, 2008

Grievance mechanisms

- Grievance mechanisms must be gender transformative – fair and accessible to women. It should offer a safe space for women to register their complaints without fear of intimidation and retribution.

Resources

- Approach government offices and civil society organisations whose mandate focuses on protecting human rights and rights of women for guidance.
- Tap the services of gender specialists to work with community structures during land acquisition process.
- Tap civil society organisations to provide capacity building for women and women leaders, awareness raising and gender transformation training.

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