



**Land Tenure and Economic Activities  
in Uganda: a Literature Review**

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## LIST OF ABBREVIATIONS

ASPS	Agricultural Sector Programme Support
BoU	Bank of Uganda
CDO	Cotton Development Organisation
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DFID	Department for International Development (UK)
DSIP	Agricultural Sector Development Strategy and Investment Plan
EMU	External Monitoring Unit
EPRC	Economic Policy Research Centre
FAO	Food and Agriculture Organisation
FIA	Financial Institutions Act
FOROWODE	Forum for Women in Democracy
GDP	Gross Domestic Product
GoU	Government of Uganda
IDP	Internally Displaced Person
ILO	International Labour Organisation
IOM	International Organisation for Migration
MAAIF	Ministry of Agriculture, Animal Industry and Fisheries
MDI	Microfinance Deposit Taking Institutions
MDIA	Microfinance Deposit Taking Institutions Act
MFA	Microfinance Act
MFI	Microfinance Institutions
MFPEDE	Ministry of Finance, Planning and Economic Development
MLHUD	Ministry of Lands, Housing and Urban Development
MT	Metric Tonne
NDP	National Development Plan
NGO	Non-governmental organisation
NPA	National Planning Authority
PEAP	Poverty Eradication Action Plan
PMA	Plan for Modernisation of Agriculture
ROSCA	Rotating Savings and Credit Association
SACCO	Savings and Credit Cooperative Organisation
UBOS	Uganda Bureau of Statistics
UCDA	Uganda Coffee Development Authority
ULA	Uganda Land Alliance
UNHS	Uganda National Household Survey
UPPAP	Uganda Participatory Poverty Assessment Report
VSLA	Village Savings and Loan Association

## **ABSTRACT**

Land is an important asset for people's livelihoods and for economic development in Uganda, where the majority of people live in rural areas. This working paper reviews the literature on Uganda's tenure systems and their relationship with economic activities, focusing primarily on rural agricultural land. The review illustrates that these relationships are complex and context-dependent.

Uganda's land reform was introduced with the 1998 Land Act which aims at enhancing tenure security by recognising existing rights to land. It also aims at bringing land onto the market. However, the reform's implementation has been slow and partial so far. The division of labour between land administration institutions is unclear and often institutions, for instance dispute settlement institutions, are inaccessible at the local level.

Furthermore, the evidence of any links between the formalisation of land rights, investment and productivity under different tenure systems is inconclusive. Land markets exist irrespective of the tenure systems. Access to credit is quite limited, and not primarily linked to titled land as some scholars suggest. Regional differences, the urban/rural divide and social and gender characteristics are equally important.

This review shows, however, that tenure insecurity, in particular in the post-conflict context of northern Uganda, discourages investment and leads to lower productivity. A likely path to strengthening agricultural production would be the reinforcement of dispute settlement institutions. Furthermore, despite a gender-sensitive legal framework, women have been discriminated against in both the customary and statutory settings. Improving women's access to land would also seem important. Overall, more systematic research on these issues is required.





## INTRODUCTION

Land is an important asset for people's livelihoods and for economic development in Uganda, where the majority of people live in rural areas. Land is also, increasingly, being seen as a commodity and the demand for land is on the increase, not least because of rising food prices, the potential for the production of biofuels and the recent discovery of oil in the western part of Uganda. In its new draft national land policy, the Government of Uganda (GoU) emphasises the role of land in Uganda's socio-economic development and the importance of efficient land use (Ministry of Lands, Housing and Urban Development (MLHUD) 2011a).

This working paper reviews the literature that analyses the relationship between land tenure and economic activities in Uganda.<sup>1</sup> The objectives are to examine the state of the art with respect to the following issues: (i) land tenure in Uganda; (ii) tenure security in Uganda; and (iii) the ways in which the various aspects of land affect and are affected by economic activities in Uganda. Issues pertaining more specifically to women and linked to land tenure, tenure security and economic activities are also examined.

The paper focuses on literature written after the introduction of the 1998 Land Act and amendments thereto. Uganda reformed its land tenure systems with the new constitution in 1995 and the Land Act in 1998. The latter is one of the new waves of land reforms that have been introduced all over Sub-Saharan Africa in the last couple of decades. The first

wave of land reforms, in the 1960s and 1970s, viewed customary land systems as ineffective and aimed at strengthening the role of the state in establishing enforceable land rights, but with little success (Peters 2009: 1318; and Quan & Toulmin 2000: 2). Like other new wave land reforms Uganda's reform aims at the dual goal of (i) improving tenure security and (ii) creating a land market (Okuku 2006) (for more about new wave land reforms, see Wily 2003; Lipton 2009; Cotula et al. 2004: 5; Boone 2007; and Augustinus & Deininger 2005).

Unlike past reforms the recent one works by recognising existing rights to land, be they customary and overlapping, and by decentralising the responsibility over the administration of land to the local level, i.e. to the district, sub-county and parish levels. It provides the legal framework governing land tenure, land administration and the settlement of disputes (Coldham 2000: 65). It does not aim at redistributing land. Therefore, it could also be called a land tenure or a land law reform.

As will be made clear, implementation has so far been slow and uneven. Some of the prescribed land administration institutions have been established at the local level, but most have not. Informal and customary practices persist and there are large differences in the level of implementation between the different parts of Uganda. Most often, formal and informal institutions coexist.

The local institutional setup also shapes the extent to which different groups of people can access land and derive benefits from it. The introduction of a land law reform affects these institutions and, thus, has distributional consequences. For instance, traditionally, women often access land through their male relatives. To what extent do the more gender-sensitive provisions in the reform improve women's access to land in practice?

<sup>1</sup> The review forms part of a larger study of the linkages between land and property rights and economic behaviour in Uganda, commissioned by the Royal Danish Embassy in Kampala, Uganda, and of a study on land administration and gender equality carried out as part the ReCOM programme jointly funded by Danida and Sida.

With a particular focus on women, the distributional aspects of development are discussed throughout the paper. The term gender is used to stress the dynamic relationship between the sexes.

The paper also discusses issues related to land and economic activities, i.e. the relations between land tenure, land use, productivity and financial services. One of the aims of the reform is to promote a more effective use of land and to improve the market in land by strengthening the land administration and supporting the registration of titles (Olanya 2011: 11). Land plays a role in economic activities in different ways and the paper will look into these facets. It is necessary to agricultural production, which is still considered by most countries and development interventions to be central to eradicating rural poverty<sup>2</sup> and which plays a critical role in poverty reduction strategies (Christiaensen et al. 2011).<sup>3</sup> Land is also an asset that may be used as collateral to obtain credit to invest.

People's ability to engage in economic activities and the role land may play in these activities is also likely to be influenced by the nature and composition of institutions at the local level. Women's rights to land, for instance, were supposed to be protected by the reform, but, still, women own little of the land, they are often discriminated against and hampered in their economic activities (Rugadya et al. 2004; and Lucas 2007: 102). On the other hand, women are increasingly seeking to diversify their activities into non-farm

enterprises (World Bank 2009b: 2). In other words, people's ability to derive benefits from land is highly varied along lines of gender, socio-economic status, etc. A broader range of issues that may affect economic activity will therefore be discussed throughout the paper, including types of production, investment incentives, ownership and access to land, involvement in land markets, access to financial services and credit.

Despite a number of in-depth case studies of land and land markets, the working paper shows that the existing literature does not deliver any conclusive answers about the extent to which different forms of land tenure affect economic activities in different parts of Uganda. There is a glaring lack of empirical research that compares the relationship between the different tenure systems and economic activities. Evidence from studies undertaken elsewhere in Africa about the relationship between land tenure, tenure security and economic growth is, at best, mixed.

A strong tradition, which can also be found in scholarly work on Uganda, diagnoses the lack of clearly distinguishable property rights in many developing countries as the main problem behind tenure insecurity and lack of investments. Some of these studies recommend more individualised, western-style, land property titles as the solution.<sup>4</sup> In fact, tenure security and titles are often used interchangeably (Platteau 1992: 5). A current, highly influential proponent of this strand is the Peruvian economist, Hernando de Soto, who emphasises the formalisation of property (de Soto 2000).

<sup>2</sup> For a critique of this position, see for instance Rigg 2006.

<sup>3</sup> The paper will not delve into the debate about agricultural growth and poverty reduction (see De Janvry & Sadoulet 2010) or the link between economic growth and poverty reduction (for more on these issues, see e.g. Fosu 2011; and Ravallion & Datt 2002) and will only focus on the literature on economic activities insofar as they are linked to land.

<sup>4</sup> A moderate version of this way of thinking can be found in Uganda's Draft National Land Policy which states that "Mechanisms to deliver the right balance between improving livelihoods, protecting vulnerable groups, and raising opportunities for investments and development are needed" (MLHUD 2011a: 32).

Other strands of the literature on land question this relationship between tenure, tenure security and economic growth as being too simplistic and for not taking into account the communal character of much property in Sub-Saharan Africa. Reforms aimed at individualization have often ignored common property and, subsequently, reduced tenure security. Moreover, land has often been registered in the name of individuals, typically the male heads of household, implying that women tend to lose customary control over land (Ostrom 2001: 134; Place & Otsuka 2002: 114; Berry 1993; Whitehead & Tsikata 2003; and Joireman 2007). The critique makes it clear that the state is not the only institution that structures tenure and provides tenure security. In fact, state administrations may be riddled with irregular practices that create tenure insecurity. Customary institutions, on the other hand, often looked upon as ineffective enforcers of property rights, may be better at providing security (Feder & Feeney 1991; and Joireman 2011: 5). In other words, the relation between an institutional set-up and tenure security should not be taken for granted.

Besides the legal framework and the legal status of rights emphasized by de Soto, the following other major aspects that affect tenure security and economic growth are also included in the analysis: the administration of rights, the provision of land administration services and enforcement; and, from a more bottom-up perspective, the individual's perception of tenure security and his or her knowledge and land access options.

The other strand of the argument underpinning the theory on the formalization of land rights is that land can contribute to investment and increased productivity through several interrelated mechanisms. The tenure security conferred by formal rights is sup-

posed to make people more willing to invest in their land, enabling them to access credit and also facilitating and even encouraging transfers of land through land markets. Land can therefore have an impact on economic growth through agricultural productivity, but also through its use as collateral for credit, through investments in land and non-land enterprises and through land markets. However, it should be emphasized that economic growth may take place independently of land and land tenure. As this review shows, empirical studies are not unanimous about the relationship between land and economic growth.

Based on the literature review, the working paper provides an overview of the different aspects of land tenure and tenure security in each of Uganda's four recognized tenure systems and discusses their relation with economic activities.

The review is based on searches on Google Scholar and the Scopus database of the keywords 'Uganda', 'land tenure', 'tenure security', 'gender', 'women' and 'land tenure and growth'.<sup>5</sup> Both academic literature and reports from agencies and institutions are included.

The rest of the paper is structured as follows: Part 1 discusses the literature on land tenure, land administration and tenure security in Uganda. It is divided into six sections, first looking at the legal framework related to land (1.1) and the different tenure systems in Uganda (1.2); then land administration and its implementation (1.3), as well as land dispute resolution (1.4) and tenure security (1.5) and, finally, section 1.6 sketches the recent changes related to the above.

Part 2 reviews the literature on land and economic activities in Uganda, with a focus

<sup>5</sup> It includes the relevant literature on land tenure, but not on related topics like forestry, natural resource management and the environment.

on agricultural land. It examines some of the ways in which land tenure may impact economic activities at the local level. It is organised into three sections, examining theory and empirical studies on land, investment and productivity including the link between tenure security and investment, providing a brief summary of Uganda's agricultural context (2.1); land markets (2.2); and land and access to credit, and more general issues related to financial services (2.3).

## **PART I. LAND TENURE AND TENURE SECURITY IN UGANDA**

### **1.1 The Legal Framework**

Uganda reformed its land tenure systems with the 1998 Land Act, which spelled out the inherent principles enshrined in the new Constitution of 1995. The passing of the Act was highly politicised (Bazaara 2000). It fed into ongoing processes of decentralisation in the country (Ngabirano et al. 2011: 33; and Hartter & Ryan 2010: 816). Generally, the new legislation is seen as a big step forward after the 1975 Land Decree which had nationalised all land by declaring it public land, but did not provide much protection of the user rights of small-scale farmers (Coldham 2000). The 1995 Constitution reverses the nationalisation by stipulating that land belongs to the citizens of Uganda and shall be vested in them. The reform attempts to reconcile two objectives.

On the one hand, like most other contemporary land reforms in Sub-Saharan Africa, it recognises existing rights to land. For instance, the Constitution is the first document ever to recognise customary tenure, which is the predominant mode of access right in Uganda. Tenants' rights are also strengthened. The reform strengthens individuals' rights to land (Beyaraza 2004: 78. See also Rugadya 1999: 6;

and Olanya 2011: 7) to the extent that, for instance, public infrastructure development has proved difficult and expensive, or has been blocked altogether, until the government invokes compulsory acquisitions that involve the Minister responsible for lands (Bashasha 2011; and Hunt 2004: 180). However, the fact that the government has retained possibilities, stemming from the 1975 Land Decree, to acquire land in the public interest has been criticised (Okuku 2006: 18). Finally, the reform contains provisions to enhance the land rights of underprivileged groups; for instance, it prohibits discrimination against women's rights to land (Hunt 2004: 174).

On the other hand, the reform provides the basis for formalising and individualizing existing, customary rights to land and promoting the development of a land market. It also aims at streamlining tenure, transforming the different tenure systems into individualised freehold tenure, that is, fully individualised and registered rights to land (Mwebaza 1999: 10). Customary ownership rights and the rights of tenants are thus strengthened through the provisions which make it possible to obtain certificates of customary occupancy. These certificates can subsequently be upgraded to freehold titles. Recently, this principle has been spelled out even more clearly in the Draft National Land Policy of 2011, which states that "public policy regards freehold as the property regime of the future" (MLHUD 2011a: 22). A land fund has been set up to facilitate the process. Initially it was proposed to buy out absentee landowners in Kibaale District, but it ended up having a nationwide coverage with the purpose of assisting disadvantaged people to acquire land (Mugambwa 2002: 33; Hunt 2004: 177; and Rugadya 1999: 6).

With the recognition of customary rights alongside more formal, state-backed property

rights, the reform accepts a certain degree of legal pluralism, defined as a situation in “which two or more legal systems coexist in the same social field” (Merry 1988: 870). The dual reform objectives have been traced back to different approaches to the land reform – a market and a constitutional approach (McAuslan 2003: 281). Sometimes the two have proved hard to reconcile (Okuku 2006: 21; and Adoko & Levine 2008: 103).

The reform is not very clear about how customary land should be regulated. This leaves implementation in the hands of different actors at the local level (Busingye 2002: 9). Similarly, the 1998 Land Act restores the ownership rights to *mailo land* – the land tenure system of central and western Uganda with landlords and tenants – but it reduces the landlords’ control over the land to a very narrow sense of *de jure* ownership with barely any *de facto* rights. Occupants are allowed to deal with the land as they see fit, i.e. also sell their occupancy rights, which have been made permanent (Baland et al. 2007: 290). This perpetuates a situation with overlapping rights to land.

Several scholars have criticized the reform for not being based on a land policy which spells out the principles behind it. A land policy, some say, is needed to guide the implementers in case of contradictions and inconsistencies in the legal framework, for instance between the Land Act and older pieces of legislation like the Survey Act, the Registration of Titles Act, the Land Acquisition Act, the Mortgage Decree, and the Town and Country Planning Act (Rugadya 1999: 9; Nsamba-Gayiiya 1999: 9; and Hunt 2004: 177). There may also be a contradiction with the later 2007 Land Use Policy and the 2011 Draft National Land Policy, currently on its way through the political system, which both aim at enhancing effective use of land (MLHUD 2007 and

MLHUD 2011a). This signifies a change in focus compared to the Land Act’s focus on individual rights. Furthermore, from a political economy point of view, the reform has been criticised for freezing the distribution of land, whereas many had wished for a more redistributive land reform (Okuku 2006: 21).

### *The Legal Framework from a Gender Perspective*

Uganda’s 1995 constitution has been hailed as being particularly gender sensitive and progressive and among the most female friendly in the world (Goetz 1998: 245; and Rugadya et al. 2007: 21). It stipulates that women and men are equal and have equal rights and “specifically prohibits laws, cultures, customs, or traditions that violate the dignity, welfare, or interest of women” (Khadiagala 2001: 62). Moreover, as a signatory to the UN Convention against All Forms of Discrimination against Women, CEDAW,<sup>6</sup> Uganda is committed to eliminating discriminatory practices based on gender (Tripp 2004: 11).

The Land Act also contains provisions reinforcing the land rights of women, children and orphans (Hunt 2004: 177; and Walker 2002: 57). It is thus in line with similar reforms elsewhere in Sub-Saharan Africa which have sought to eliminate discrimination during the last couple of decades (Augustinus & Deininger 2005: 6). The general recognition of customary land rights also applies to women’s rights to land. However, the Act’s simultaneous recognition of customary authorities may undermine these rights. Customary systems do not always take women’s rights into account. Customary inheritance systems, for instance, often disadvantage women, as do practices of division of property during divorce. The Act

<sup>6</sup> The Convention for the Elimination of All Forms of Discrimination Against Women was adopted in 1979 by the UN General Assembly



contains a number of clauses to prevent such discriminatory practices. For instance, even though it stipulates that any decision taken in respect to customary land should follow customary law, it declares that a decision will be “null and void” if it discriminates against women’s or children’s access to ownership, occupation or use of any land (GoU 1998: section 27; and Mugambwa 2002: 82).

A consent clause in the 2004 Land Amendment Act, requiring the consent of spouses for land transactions, seeks to further protect women’s rights. A similar clause for children was annulled with an amendment in 2004 (GoU 2004a: section 19).

Despite these provisions, the Land Act has been criticised for not including a provision for joint ownership of land, much advocated for by women’s groups, that would strengthen the rights of women, for instance through registering their names on titles and certificates on a par with their husbands (Joireman 2007: 476). The clause was in fact removed from the Land Bill,<sup>7</sup> (Bird et al. 2004: 23) but included in the Marriage and Divorce Bill 2010.<sup>8</sup> Other laws also affect women’s rights to land, for instance the Customary Marriage (Registration) Act, the Domestic Relations Bill, the Succession Act, and the Succession (Amendment) Decree. Some of these laws may disfavour women (Ssenyonjo 2007: 345).

The debate about the protection of women’s rights to land directs attention to the interrelationship between state law and customary practices. Customary institutions are key for most women’s access to land. They may also play a role in interpreting state law

and regulations at the local level and vice versa (Bikaako & Ssenkumba 2003; and Nkonya et al. 2004: 17).

## 1.2 The Land Tenure Systems in Uganda

Like most other contemporary land reforms in Sub-Saharan Africa, Uganda’s land reform recognises existing rights to land. The 1995 Constitution and the 1998 Land Act recognise four different tenure categories: customary, freehold, *mailo* and leasehold (GoU 1995; GoU 1998; and Rugadya 1999: 6). Public land owned by the Government (gazetted reserves, including parks, forests, etc.) is not cited as a separate land tenure system.

Unambiguous recent figures about the distribution of land by tenure types are hard to get. About 95% of landowners in Uganda do not have land titles and their rights remain unregistered (GoU 2010b: 161). Customary tenure is the predominant mode of access to land in Uganda.

The 2010 Statistical Abstract from the Ministry of Lands, Housing and Urban Development, basing itself on the 2002 Uganda Population and Housing Census Analytical Report, claims that 68.6% of all households are on customary land, 18.6% on freehold, 9.2% on *mailo* and 3.6% on leasehold. Deininger and Castagnini report that customary tenure accounts for 59% of plots (Deininger & Castagnini 2004: 12), while the below table from the 2010 National Development Plan, based on the 2002/3 Uganda National Housing Survey, claims that only about 45% of the land in Uganda is customarily held (table 1). Despite the confusing categorization of tenure where, for instance, freehold and *mailo* land often are grouped as one category, table 1 provides the most recent and probably most reliable data on the distribution of land in Uganda on tenure systems.

<sup>7</sup> Museveni, according to Tripp, said the following: ‘When I learnt that the Bill was empowering the newly-married women to share the properties of the husbands, I smelt a disaster and advised for slow and careful analysis of the property sharing issue’ (Tripp 2004: 7; see also Khadiagala 2001: 62).

<sup>8</sup> These two bills form the Domestic Relations Bill.

Table 1. Distribution of Land Tenure System in Uganda by Region, 2002/03 (percentage)

Tenure System	Uganda	Central region	Eastern region	Northern region	Western region
Registered freehold <i>mailo</i>	7.8	8.9	7.8	1.8	11.1
Unregistered freehold <i>mailo</i>	35.7	78.3	11.9	6.6	33.6
Leasehold	15.9	12.3	26.4	15.6	8.8
Customary	40.6	0.4	53.7	76.1	46.6

Source: National Planning Authority, NPA, Government of Uganda (2010).

The largest proportion of land in central Uganda is under *mailo* tenure. Much land is acquired through inheritance, but the land markets seems to be lively and on the increase. Only 10% of the land owned was registered with land titles or certificates of customary ownership (Baland et al. 2007: 290; and Economic Policy Research Centre [EPRC] 2008).

Western Uganda faces the highest land pressures with the average landholdings in the region being 25% below the national average. On the other hand, the region had the largest tracts of land under the leasehold system (EPRC 2008). Generally, formal registration and different types of titling are more frequent in central and western Uganda, whereas customary tenure prevails in eastern and northern Uganda.

#### *Ad. 1: Customary Tenure*

With the Constitution and the Land Act, customary tenure is recognised on a par with freehold and leasehold (Busingye 2002: 5; Olanya 2011: 8; and Walker 2002: 59). Under this type of tenure people may own or have the rights

to use land, but they do not have land titles. The systems vary from one place to another. Some communities allocate individual plots to their members, with known and defined boundaries marked by ridges, trenches, trees etc. whereas pastoralist communities tend to manage the land on a communal basis.

Access to customary land is generally administered by different types of customary land tenure institutions in which kinship is important. Land is often administered by extended family linkages (Quan 2000). For the same reason, land is often subject to restrictions on transfers outside the family and the clan. Still, these practices were seemingly not enough to guarantee tenure security all over Uganda. The Land (Amendment) Act 2010 was passed as a way to address widespread evictions related to land grabbing of customary and *mailo* land and, thus, to enhance tenure security (Nakirunda 2011; and GoU 2010a).

Pastoralism entails particular uses of land under customary tenure. Pastoralists typically manage land communally. In the literature there are descriptions of a 'cattle corridor'

stretching from the north-east all the way to the south-west of Uganda (Rugadya 2006: 6; Kisamba-Mugerwa et al. 2006: 2). This type of land tenure is under pressure from individualization and commoditisation of land. Furthermore, national land policies over the years have tended to ignore the interests of pastoralists (Pica-Ciamarra et al. 2007: 23) or have been aimed at individualising their land use (Kisamba-Mugerwa 1998: 102). Though the Land Act provides for recognition of communal ownership, later policy interventions which stress intensified land use are believed by some observers to put further pressure on the pastoralist lifestyle (see, for instance, Rugadya 2006: 51).

Despite the recognition of customary tenure, the current land legislation has not yet strongly impacted on land matters in customary areas (Bashaasha 2011). This may have much to do with the inadequacy of technical and financial support to implement the formal legal framework and the lack of awareness at the local level.

#### *Ad. 2: Freehold*

Freehold land was given as a grant to the citizens of Uganda and existing institutions (religious organizations, educational institutions and other big corporate bodies) by the colonial government before independence in 1962. It is a classic, individualised type of land tenure which reduces community control over land significantly. A study undertaken in five districts<sup>9</sup> found that freehold tenure was the most valued by landowners and national lending institutions (Bashaasha 2011).

The Public Lands Act of 1962 provided for the conversion of freehold into public lands and the implementation of leasehold tenure throughout the country (Batungi

2008: 76). In 1975, with the Land Reform Decree, all land previously held by title was declared public land; the decree abolished all freehold interests and vested the land in the state. Freehold tenure was converted into leaseholds for 199 years for public bodies and 99 years for individuals (Batungi 2008: 77). All this changed with the 1995 Constitution, although freehold still has a limited distribution in Uganda. The current land regime, as described below, is aiming at gradually making freehold tenure, together with leasehold, the predominant form of land ownership (Okuku 2006: 16).

#### *Ad. 3: Mailo*

The *mailo* system was introduced by the colonial authorities in mutual agreement with the Buganda Kingdom in 1900. It gave the King and the feudal landlords freehold rights over large tracts of land, often inhabited by poorer subjects who then became tenants of *kibanja* (Batungi 2008: 61). This type of tenure system is prevalent in some regions of Uganda, for example Buganda, Bunyoro, Toro, Ankole and Bugisu. The traditional land authorities in these areas, *mailo* landowners and the Baganda leaders, have opposed the national government's efforts to gain control over land administration.<sup>10</sup>

The 1995 constitution guarantees the security of occupancy of tenants and other 'bona fide' occupants, who have occupied, used or developed land unchallenged by the owner for at least 12 years. With the agreement of the landowner, these occupants can apply for certificates of occupancy and upgrade the

<sup>9</sup> Kabale, Ntungamo, Isingiro, Mbarara and Kiruhura.

<sup>10</sup> With the Land Act and subsequent amendments, the government sought to provide security of tenure for occupants and provide for state-backed land administration institutions. Among the Baganda, however, this has been seen as an ethnic bias towards western Ugandans and against the Baganda (Green 2006: 377; and Boone 2007: 571).



land to a freehold title (Hunt 2004: 177). Recent legislation (the Land Amendment Acts of 2004 and 2010) has further strengthened the security of tenure of tenants vis-à-vis that of the landlords by controlling the land rents and protecting tenants from eviction (Nakirunda 2011).

A particular version of *mailo* tenure can be found in Kampala, where most land is *mailo* land, but where the predominant means of obtaining land, now, is through purchase of plots from either *mailo* owners or *mailo* tenants, thus reducing the role of the Buganda Land Board in land distribution (Nkurunziza 2006: 179).

Since it perpetuates overlapping land rights, *mailo* tenure presents one of the main challenges to the government's ambition of streamlining land tenure and land administration. Only some *mailo* owners occupy and farm their land. In many areas, occupation of land is overwhelmingly by *bona fide* occupants (Place and Otsuka 2002). Maybe that is the reason why conflicts over land seem to be more prevalent among households in central Uganda, where the *mailo* system of land tenure prevails (EPRC 2008).

#### *Ad. 4: Leasehold*

Leasehold has, since independence in 1962, been granted from public land vested in the government (the state). It is a tenure system which makes access to land on contract possible. An owner of freehold land or a district makes a grant of land to another person with land for a specified period of time and on certain conditions, including the payment of a rent. The grantee of a lease for a period of three years or more is entitled to a certificate of leasehold title for a certain period and on specific terms.

There is a significant premium for leasehold titled land in Uganda. This may be be-

cause, compared to customary land, it is often located close to economic centres (Alobo et al. 2011). It enables access to land by a wide range of users and land use functions and, thus, ensures an effective use of land (Bashaasha 2011; and Alobo et al. 2011).

#### *The Tenure Systems from a Gender Perspective*

Uganda's different tenure systems are regulated by different legal systems. Areas near urban centres tend to be governed by the more gender-sensitive state law whereas land in rural areas tends to be regulated by customary law. A study based on the 1999/2000 Uganda National Household Survey (UNHS) has shown that female-headed households constitute both around 25% of the households (of which almost half are widowed) and the same percentage of the households who participated in land market transactions (Deininger & Mpuga 2003: 339 & 341).<sup>11</sup> As such, once they are household heads, women seem to be participating in the land markets on an equal footing with men, even though woman-headed households' landholdings are still significantly lower than those of male-headed households (Nayenga 2008: 5).

However, the weak implementation of state law as well as customary practices may pose problems for women in all tenure systems. Women are more likely to experience land conflicts than men (Rugadya & Kamusiime 2008: 102; see also Kafumbe 2009; and Deininger & Castagnini 2004: 17).

Like elsewhere in Sub-Saharan Africa, women's access to land in Uganda is largely dependent on their relationship with a father, husband, brother or son (Gray & Kevane 1999; Joireman 2008; and Bomuhangi et al.

<sup>11</sup> According to the recent UNHS for 2009/10, this figure is 30%.

2011). The most common way for a woman to access land is through marriage (FAO country report on Uganda; and Joireman 2008: 1238). Scholars evaluate these customary practices differently. Tripp emphasises the flexibility of customary systems and finds that “women have found ways to claim land through a wide variety of mechanisms: through inheritance, gift, purchase, pledge, loan, lease, and sharecropping, as well as through their husbands or male relatives” (Tripp 2004: 14). Nevertheless, it has been argued that more formal certificates of customary ownership could be important for women, especially widows (Adoko & Levine 2005a).

Tripp notes that research by the Makerere Institute for Social Research (in 1995 and 2002) found that between 15-20% of women in different districts throughout Uganda owned land, and 45% of women owned land in the district of Mukono (Tripp 2004: 14). Another study, carried out in districts in central and western Uganda respectively, also shows that women’s control over land in these areas is related to the ways the land was acquired (Bikaako & Ssenkumba 2003: 25).

When talking about *customary institutions and practices*, it is important to remember that there is no unified and uniform body of customary law. Uganda has more than fifty ethnic groups, each of which consists of several smaller sub-groups who have a wide range of customary practices and laws, all evolving over time (Kane et al. 2005: 23). Women’s status thus varies in the different systems (Joireman 2008: 1238). Most ethnic groups practice patrilineal inheritance, which implies that it can be difficult for females to maintain access to land in case of either divorce or the death of the spouse. Indeed, 75% of a male property owner’s estate is allocated to lineage heirs (sons in patrilineal communities and sister’s sons in matrilineal

communities) while 15% is allocated to wives (Cooper 2011: 3).

The *mailo system* enabled women to inherit land, and to rent or purchase land under customary tenure (Obbo 1980: 44 in Gray & Kevane 1999: 28). Women in central Uganda are indeed more likely to own land both because of inheritance and land purchases. Still, Rugadya and Kamusiime find that even on *mailo* land “[w]omen are culturally frowned upon when they purchase *kibanja* land or other property in their own name” (Rugadya & Kamusiime 2008: 103).

Finally, urban and peri-urban plots of land under *leasehold tenure* are more easily acquired and kept by women.<sup>12</sup> Similarly, inheritance under *freehold tenure* follows statutory law and is less discriminatory. A study from Mpigi and Lira districts indicates that the main impediment for women acquiring land in these districts has to do with lack of money more than it has to do with discrimination (Eilor & Giovarelli 2002 cited in Nayenga 2008: 14).

### **1.3 Land Administration and its Implementation**

#### *Land Administration*

Uganda’s Land Act of 1998 provides for a new structure for the administration of land. Generally, responsibility is decentralised to a large number of new institutions for land administration and dispute settlement in order to provide for community involvement in decision making (Mugambwa 2002: 33; and Rugadya 1999: 7). The land reform represents a major change from the 1975 Land

<sup>12</sup> One can also note that among urban farmers in Kampala, more women than men are reliant on farming as their major occupation (Nabulo et al. 2004: 33).

Decree which nationalised land and primarily provided services related to registration and leasehold to the elites in and around the major cities (Mwebaza & Ziwa n.d.: 7).

Members of the boards and committees are appointed by local authorities. They are responsible for overseeing the administrative land bodies at various administrative levels. To some degree the reform thus also eliminated control over land by locally elected politicians (Wily 2000: 3). The land administration model is thus characterised by deconcentration more than by devolution. The model has been criticised for insufficient downward accountability (Joireman 2011: 63; Okuku 2006: 20; and Wily 2003: 72).

At the national level the *Uganda Land Commission* retains the responsibility for administering government land, for instance where state buildings and public infrastructure are or are planned to be located. Also at the national level, it is the responsibility of the government – the Ministry of Lands, Housing and Urban Development – to create procedural frameworks and guidance, and to monitor the function of the new land administration (Mugambwa 2002: 33; and Nsamba-Gayiiya 1999: 6).

The 1998 Land Act also provides for the establishment of *District Land Boards*, independent of the land commission. Their establishment is the responsibility of the District Councils, which also appoint the members of the boards (with the approval of the Minister for Lands). With the land reform, all public land in the cities which was not held in freehold, which was unclaimed in customary terms or unalienated in other forms of tenure, was to be vested in the District Land Boards, which hold them in trust for the citizens of Uganda (GoU 1998, section 59). The District Land Boards' functions are:

- To hold and allocate land which is not owned by any person or authority.
- To facilitate land registration and transfers.
- To take over the role of urban land authorities (with the exception of Kampala which is the only city that has a district status) (Hunt 2004: 178).

After a slow start, the District Land Boards in some places seem to have been established in conformity with the requirements and to be functioning, though their independence is under pressure from the interference of higher authorities and by corrupt land officials (Mwebaza & Ziwa n.d.: 22).

The Act also provides for the establishment of *Land Committees* at the lower parish level, and in gazetted urban areas and in each division of Kampala. Their primary function is to receive, assess and grant applications for certificates of customary ownership (Mugambwa 2002: 35; Hunt 2004: 179; Rugadya 1999: 7; and Nsamba-Gayiiya 1999: 7). A study conducted five years after the passing of the Act, however, indicated that these committees were largely absent and that District Land Tribunals had to do most of their assigned tasks (Mwebaza & Ziwa n.d.: 30). The Land (Amendment) Act 2004 reduced the number of prescribed land administration institutions. For instance, it abolished the committees at parish level and transferred their tasks to the sub-county level where the *recorder*, that is the one registering rights and updating registers of customary certificates, is located (Nakirunda 2011: 24; and GoU 2004a, section 27).

Finally, *customary* and informal institutions and practices persist (see, for instance, Khadiagala 2001; and Tripp 2004), partly because customary land makes up the bulk of land in Uganda and partly because customary authorities are granted some degree of authority over this land.

### *Land Administration from a Gender Perspective*

The constitution stipulates that one-third of the membership of each local government council should be reserved for women. The Local Government Act contains a provision for Council Secretaries for Women in local government (GoU 1997; and Hickey 2005: 999). At the national level, within Parliament, there is a Caucus system for representatives of five 'special interest' groups, including women (one seat per district) (Hickey 2005: 999), who have been influential in strengthening women's rights in the 1995 Constitution (*ibid*).

The Land Act itself requires that at least one of the five members of the Uganda Land Commission be a female, that one third of the District Land Boards be female, and that at least one of the four members of the land committees at parish level should be a female (Tripp 2004: 5). Still, the influence of women in policy making is often limited<sup>13</sup> (Bird et al. 2004: 23).

### *Land Administration and the Registration of Rights*

The 1998 Act aims at streamlining the different land tenure systems, making it easier to register individual rights and, with time, to convert them to freehold titles. The ultimate goal seems to be individualisation of rights, a goal which is confirmed in the Draft National Land Policy of 2011, which states that freehold is the tenure of the future (MLHUD 2011a: 22). However, the registration of both individual and collective (community) rights

is provided for in the 1998 Land Act. The procedures for the different types of registration differ, depending on the different types of land tenure.

On *customary land*, occupants can apply for a certificate of customary tenure occupancy when they have a piece of land without dispute on it. Such a certificate provides the holder with various transfer rights, albeit transfers have to be in accordance with customary law in the area. The certificates are to be provided at the sub-county level by the recorder on behalf of the district land board. Communities, if having established communal land associations, can also apply in order to protect their lands from subdivisions (Walker 2002: 59).

The holder of a customary certificate may apply for conversion from customary to freehold tenure. The ultimate goal seems to be fully individualised land ownership. The responsibility of the sub-county level, then, is to 'determine, verify and mark the boundaries of all interests in the land which is the subject of the application' (GoU 1998, section 4; GoU 2004a). However, the division of labour with customary land institutions, also recognised by the Act, is not clearly spelled out (McAuslan 2003: 288). The Constitution and the Land Act, thus, do not resolve the tensions between individual interests and the communal rights that constitute legal constraints to land transactions of customary land between individuals (Olanya 2011: 8; and Okuku 2006: 13-14).

*Mailo land* tenants and other tenants and 'bona fide' occupants who have occupied and used a plot or who have developed it unchallenged by the owner for at least twelve years, can apply for Certificates of Occupancy, which recognise and protect their interest in the land. With the agreement of the landowner, the land may be upgraded to a freehold title (Hunt 2004: 177).

<sup>13</sup> See Bird et al. 2004 for a more exhaustive list of reasons for this lack of influence. Among others they mention public meeting attendance vetoed by women's husbands, marginalization of women ministers from decision making, the fact that women tend to defend local elite interests (Bird et al. 2004: 23).

*Leasehold* offers and titles can be applied for at the District Land Boards. In the period from 1975 to 1998, this was the predominant mode of registration and the government was represented by the Uganda Land Commission. Since then this role has been taken over by the district land boards. All leasehold titles acquired before 1998 can now be converted into freehold upon application to the district land board (Mugambwa 2002: 9).

*Freehold land* is registered and held in perpetuity subject to statutory and common law qualifications. The holder is entitled to a certificate of title which offers exclusive rights. The tenure system derives its legality from the 1995 constitution and it is the prescribed system for most registered interests outside *mailo* land. It has a limited spread in Uganda, but the current land regime is aiming at gradually making it the predominant form of land ownership (Okuku 2006: 16, MLHUD 2011a: 22).

Finally, less formal practices to register rights, for instance the *customary* practice of having witnesses during land allocation processes or the writing of the more modern buyers' agreements in case of land transfers, can be observed all over Uganda (Nkurunziza 2006; Nkurunziza 2007; and Adoko & Levine 2008).

#### *The Registration of Rights from a Gender Perspective*

There have been heated debates on the adequacy of the different tenure systems when it comes to the protection of women's rights to land. There are arguments for and against both formal registration and customary practices.

Women's movements in Uganda have been vocal in supporting titling of land for women and criticising the consensual approach of the state working alongside customary tenure

systems (Manji 2006: 105). They find that the privatisation of land, land scarcity and urbanisation put pressure on the kinship-based systems of land ownership. Clan leaders and groups seem to have become more protective of their land and less willing to allow women access to land. In Kigezi district, for instance, where most of the land is under customary tenure, an increasing number of women are trying to acquire titles to their land (Tripp 2004:15).

The advocacy for titling contradicts the critique of registration and titling put forward by many scholars (see, for instance Jacobs 2010: 185; Jacobs 2002: 889; Nyamu-Musembi 2008: 32; and Berry 1993: 173). In Uganda, similar scholarly critique has been raised by Adoko and Levine (Adoko & Levine 2008: 118, see also Rugadya et al. 2004: 18). For a long time colonial and some post-colonial governments sought to reform land tenure through titling. Titling, however, potentially undermined the secondary rights of women to access land. Often, as the household heads, men registered land in their names and thus strengthened their control over land (Tripp 2004: 8).

Scholarly work on Sub-Saharan Africa notes that the recognition that titling and privatisation of land potentially marginalised women was followed by a tendency to turn to customary systems and their flexibility (Whitehead & Tsikata 2003; and Tripp 2004). In Kabale in Uganda, Khadiagala finds that the weakening of the protection of women's rights to land may not be caused by a general weakening of the customary institutions, but rather by formal court judges' reinterpretation of customary law to "subordinate women's property rights under the authority of men as the natural head of household" (Khadiagala 2001: 62). Some scholars have described how this trend can be reversed and



how traditional institutions, if the new, more formal, land administration institutions fail to materialise, can be turned into allies for women (Daley & Englert 2010: 98; and Adoko & Levine 2008).

However, the return to the customary tenure by scholars and policymakers has also been challenged. Generally, the customary protection of women seems to be weakening. The authority of the customary elders has been eroded in many places. In the north in particular, rules of customary law which used to protect women's rights of use of land have been weakened or even eroded by war (Adoko & Levine 2005b: 10; Kane et al. 2005).

#### *Land Administration and its Implementation*

As in other Sub-Saharan African countries, the reality on the ground deviates significantly from what is laid out in national land laws and regulations (see for instance Joireman 2011). The implementation of Uganda's land reform is being described as either partial (Mwebaza & Ziwa n.d.; and Joireman 2007: 476) or outright lacking (Okuku 2006). Implementation projects have been carried out, using systematic demarcation, but geographically, in 2006, they were limited to three out of more than 5000 parishes (see Oput 2004: 10). The decentralised land registration system is still not functioning in many places. The records, in bad shape, are often kept at a central land registry and in former regional land offices. The land offices are often not equipped to take on their roles and corruption is rife (Mwebaza & Ziwa n.d.: 29; Nkurunziza 2006: 175). Land boards are often weak or absent (Rugadya 2009: 22). To understand the impact of the reform, in other words, it is necessary to focus on implementation on the ground.

Soon after the reform was introduced it proved to be too expensive. An implementa-

tion study was carried out which concluded that the costs of implementing the Land Act, with its prescribed committees and numerous employees (see, for instance, Government of Uganda 1998, section 59; Wily 2000: 3; and Manji 2001: 334), were enormous. A draft sector plan, the Land Sector Strategic Plan 2001-11, financed by the UK Department for International Development (DfID) on the request of the Ugandan government, was subsequently developed, which suggested reducing the number of new institutions. The Land Sector Strategic Plan was only approved in 2002 (Manji 2006: 71; Hunt 2004: 189; and Oput 2004: 3) and was extended to 2012. A new phase is currently under preparation (Zevenbergen et al. in Hilhorst et al. 2011: 9).

The lack of a plan for implementation also meant that implementation methodologies and administration procedures were invented and tested along the way. The Strategic Plan thus suggests applying a pilot project approach to demarcation methods (Bosworth 2003: 245). Implementation so far seems to have been largely marked by this pilot project approach, carried out in geographically limited pilot project areas, but with only partial overall effect (see for instance Oput 2004; and Joireman 2011: 63).

The lack of implementation is also due to the high cost of setting up and equipping a large number of new offices. Much of the implementation was to be carried out by cash-strapped local governments at various levels, but there is a general lack of funds and capacity, in particular at the lowest parish level (Nsamba-Gayiiya 1999: 12, Mwebaza & Ziwa n.d.: 29; and Rugadya 1999: 11). Even after cost saving, implementation costs would still exceed annual budget provisions by almost 400% (Hunt 2004: 187).

Finally, it has been pointed out that from the outset there has been a lack of coordination between the land legislation and other plans and policies. For instance the poverty eradication plans had much more focus on redistribution and improved access to land for the resource poor than the land reform did (Bosworth 2003: 245). The Land Act also did not fit the agricultural programme under the Poverty Eradication Action Plan of 1997 (Okuku 2006: 4).

The lack of implementation pans out differently for the different tenure types:

- *On customary land*, the procedures for the issuance of certificates of customary ownership are complicated and involve, according to law, a local level Land Committee, a District Land Board and, finally, a recorder, who is to issue the certificate (Olanya 2011: 8-9). Still, the certificates are not accepted as collateral by financial institutions (Bashaasha 2011). In 2004 no customary certificate was issued (Rugadya et al. 2004 in Deininger et al. 2006: 11). In 2008, in the northern part of Uganda, the district recorders were not in place. Generally, local councils and elders still play a crucial role when customary land is exchanged between people (Tukahirwa 2002: 19). Critics have also noted that the introduction of new formal land committees and boards will create a parallel structure, which will compete with the existing customary land institutions and render decision-making extremely complex (Rugadya 2009: 22).
- *On mailo land*, certificates of occupancy should enable a formal land market and, at a later stage, conversions to freehold. This does not seem to happen, largely because the landowners are unwilling to grant permission (Olanya 2011: 8). It points to an

inbuilt ambiguity in the legal framework. Whose rights to land are recognised: the tenants' or the landlords'? In Kampala, a lively land market exists and the use of home-made sales contracts and local witnesses is common (Nkurunziza 2007: 518; and Nkurunziza 2006). Such witnesses are, subsequently, relied upon in case of conflicts.

- Finally, the procedures and the fees for the issuance of *freehold and leasehold titles* are prohibitive for most people.

In other words, while the enactment of the Constitution and the Land Act changed the legal status of much of Uganda's land and recognised existing customary rights, it did not provide the necessary administrative infrastructure to operationalise the more formal tenure systems. Full-scale implementation has only happened as pilot implementation projects in geographically limited areas.

The reform has thus contributed to only one of its goals, the enhancement of tenure security of customary landholders and of tenants on *mailo* land, and the contribution has been partial and primarily on paper. The other goal, that of facilitating a more lively and formal market in land, is still far from being realised on the ground in most places.

#### *Land Administration and Pilot Implementation Projects*

Much energy has been devoted to formulating new land policies during the post-independence period, much less has been done to implement them (Joireman 2011: 5). However, a few pilot implementation projects have been carried out over the years (Kisamba-Mugerwa et al. 1989). The most recent pilot project was financed by the World Bank as part of the Second Private Sector Competitiveness Project (Zevenbergen et al. 2011, Annex 5:

11) and carried out by the Ministry of Lands, Housing and Urban Development under the Land Sector Strategic Plan 2001-11 (Oput 2004; and MLHUD 2011b).

The pilot contained several elements, including gradual capacity building within the Ministry of Lands, Housing and Urban Development and local governments, updating of land registries, etc. Pilot registration and titling was also carried out in a number of districts in Uganda. The pilot's approach was systematic demarcation, that is, "a process by which land rights of people living in a given area are identified, ascertained, established and marked in an orderly and uniform way" (MLHUD 2011b: 2). Around 1500 freehold titles were processed during the project, but even this relatively small number has led to a backlog in the central registry in Entebbe. No customary certificates have been issued. A main lesson from the pilot has been that many of the land administration institutions prescribed by the Land Act, for instance the district land boards, area land committees and recorders, do not exist or are not functioning in many districts. There also seem to have been clashes between the state law and local perceptions of rights to land (MLHUD 2011b: 11-12). An evaluation of the experiences is currently underway.

#### *Land Administration and its Implementation from a Gender Perspective*

Apart from the uneven implementation of the land reform described above, which leaves land administration institutions inaccessible to most people, women face other challenges. Policy implementation is also influenced by patriarchal culture and attitudes.

In other words, women may be vulnerable "not from defects in the protection offered by legislation, but in the actualisation of that legislation on the ground" (Adoko & Levine

2008: 117). Distrust and discriminatory practices of men in powerful positions persist at the local level communities and higher levels of government. Male power thus often resists the changes in land tenure relations which may favour women (Bikaako & Ssenkumba 2003: 41).

## **1.4 Dispute Resolution and its Implementation**

### *Dispute Settlement Infrastructure*

The occurrence of land disputes ranks the highest among any type of conflict country-wide. Pressure on land due to the population growth, the appreciation of the value of land and overlapping rights are the most likely explanations for the increase in the prevalence of land disputes. According to a household survey from the Ministry of Justice from 2008 – which provided "the most comprehensive survey of land disputes so far" – *mailo* land is the most affected tenure, with the highest dispute prevalence (Rugadya 2009: 3). The status of Kibaale District – the area taken from the Bunyoro Kingdom by the British and given to neighbouring Buganda Kingdom – is that of a long-lasting ongoing conflict on a large scale (Rugadya 2009: 9).

In all the other regions land under customary tenure is the most conflict prone (Ministry of Justice cited in Rugadya 2009). In particular, disputes involving pastoralists are on the rise, partly because national regulations and standards to spell out the Land Act's provisions for setting aside land for common use are lacking (Rugadya 2009: 12). Finally, as the internally displaced persons (IDPs) started returning to their homes in 2007, the north has witnessed an increase in the number of land disputes.



The change in dispute settlement provided for by the Land Act was a reaction to this increase in the number of land conflicts experienced in many areas of Uganda, which had overburdened the normal court system (Mugambwa 2002: 42). The Land Act changed the system for land dispute settlement, replacing the courts below the High Court with new land dispute settlement institutions: the land tribunals.

At the lowest level, the *Sub-county Land Tribunal* (local council level three out of a total of five administrative levels in Uganda) and each gazetted area in towns were to provide the first step in hearing disputes related to land, which were the subject of an application for a land certificate (Government of Uganda 1998).

At a higher level, land tribunals were also to be established in each district and division (in the cities). Their members should be appointed by the Lord Chief Justice (Hunt 2004: 179). They were to replace the dual system of justice based on Magistrates Courts and ‘popular courts’, known as Resistance Committees (Bosworth 2003: 238), as well as the *de facto* role of local council officials, but they were still the responsibility of the judiciary.

Finally, the Land Act also, for the first time in the history of modern Uganda, recognised the role of traditional authorities and mediators in dispute settlement by allowing the land tribunals to pass on cases to such authorities (Mugambwa 2002: 46; and Busingye 2002: 6). This part of the dispute settlement system seems, to some extent, to reflect actual practice, though the role of traditional institutions in administering land is deteriorating, in particular in northern Uganda (Rugadya 2009). Evidence suggests that such communitarian approaches may discriminate against women (Walker 2002: 59).

### *Dispute Resolution and its Implementation*

Though the increase in the number of disputes has put pressure on the existing land tenure systems and subsequently on the dispute settlement institutions, government interventions that have aimed to reduce land conflicts do not seem to have been effective (Rugadya 2009: 2). Generally, the implementation of the new land court system, prescribed by the Land Act, has been extremely slow, thus causing a “deficit in dispute resolution” (Rugadya 2009: 21).

From the outset, the 1998 Land Act annulled the roles of existing lower-level courts and of local council officials in hearing land disputes with immediate effect and introduced land tribunals. The Act did not make the necessary provisions for activation of the new tribunals and there was no plan for raising funds, or for the implementation (Rugadya 1999: 10). Policies have changed repeatedly.

The absence of the prescribed land tribunals led to a growing backlog of cases and access to the justice system is difficult for most people. According to Deininger et al. local courts were already reinstated with the Land Act Implementation Strategy in 1999 (Deininger et al. 2006: 10). In 2001 a Land Amendment Act enabled Magistrates’ Courts and Local Councils’ Courts to continue handling land disputes until the new institutions were established (Oput 2004: 3).

The sub-county land tribunals were absent in most places several years after the reform and they were abolished with the Land Amendment 2004 (GoU 2004a, section 35). Supposedly, District Land Tribunals were not really established in Uganda until 2004, and then only in limited numbers, only to be abolished again in 2007 after a conflict between the judiciary and the Ministry of Lands, Water and the Environment (Joireman 2011: 63; Nakirunda 2011: 53; and Mwebaza & Ziwa

n.d.: 30). The draft national land policy of 2011 states that land tribunals should be 're-instated' and 'properly resourced', which indicates that the land court system is not currently functional (MLHUD 2011a: 39).

The inaccessible dispute settlement system has led to a vacuum that has given room to other actors. District Land Boards, i.e. the authorities responsible for registration of rights, are involved in settling disputes. Customary authorities and local councils, for instance local (village) council chairmen in the northern part of Uganda, and Magistrates' Courts have also been observed settling land conflicts without any legal backing (ULA 2010: 14). The President's Office and resident district commissioners are also often involved (Rugadya 2008b: 13). Finally, NGOs have played a role in geographically limited interventions (Joireman 2011: 86). There are advantages and disadvantages for all of these institutions in terms of accessibility, reliability, affordability, accountability and ability to enforce decisions (see, for instance, ULA 2010: 17-19).

#### *Dispute Resolution and its Implementation from a Gender Perspective*

The 1998 Land Act prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land, but that does not mean that discriminatory practices have stopped. Female-headed households, for instance, are more likely to be affected by a land conflict than households headed by a male. A survey from 2001 covering 430 households in all of Uganda's main regions shows that widows are 14% and separated women 48% more likely to have a land conflict (Deininger & Castagnini 2004: 14). In another study conducted in two districts (Luwero and Tororo), 29% out of a total of 204 widows indicated that property had

been taken from them following the deaths of their husbands, making them four times more susceptible to land grabbing than male widowers (Gilborn et al. 2001, in Deininger & Castagnini 2006: 7). Nevertheless, many more men bring cases to land tribunals than women (Ellis et al. 2006: 52).

The consequences of the conflicts can bear differently on women. Women are often discriminated against in the dispute settlement of customary land, but even formal courts may demonstrate respect for customary laws and set aside women's individual rights (Khadiagala 2001: 62). The lack of legal literacy, corruption, a limited access to legal advice and the lack of economic resources to pursue rights are also barriers to women's access to land and protection of their rights (see, for instance, Whitehead & Tsikata 2003).

In the absence of accessible formal land dispute settlement institutions and when the legislation furthermore allows traditional authorities to mediate in land matters, as does the Ugandan 1998 Land Act, there is a danger that the marginalised groups in the community will continue to be marginalised.

The less formal practices may be easily accessible, but they are thought to have some accountability deficits. The more communitarian ones, where local or customary decision makers are involved, are often male-dominated and are also likely to disadvantage women and the poorest in the community (Busingye 2002: 7; and Adoko & Levine 2008: 111).

A case study from Kabale District in southwestern Uganda indicates that local council practices are discriminatory and that women seem to prefer 'the rule of law' by magistrates' courts to 'the rule of persons' by local councils (Khadiagala 2001: 72). The situation may imply an inherent risk of an unequal access to justice, where those who can afford it use the state courts and tribunals, whereas those

who cannot have to rely on other, less formal, institutions (Joireman 2011: 77).

## 1.5 Tenure Security

### *Differences between Tenure Systems*

Whereas the 1998 Land Act accepts a certain degree of legal pluralism, it also aims at streamlining the tenure categories, transforming different tenure rights into fully individualised freehold tenure. It is part of a broad trend in Sub-Saharan Africa to individualise and register rights, often with the end goal of issuing title deeds in order to increase tenure security and promote a market in land. Because of the slow and uneven implementation of the 1998 Land Act, however, it is no surprise that customary tenure systems persist in many places in Uganda.

Furthermore, not much evidence supports the assumption that titling in itself increases tenure security. The existing empirical studies from Uganda do not provide a basis for final conclusions about the relationship between tenure type and tenure security. Indeed, one study has shown that formal registration of land may have no effect in itself if the hierarchy of the underlying overlapping rights, for instance between occupants and landowner, is not clarified. On the other hand it showed that full ownership or improved legal protection of an occupancy right, even without the full ownership right, would increase tenure security and be likely to increase the incentive for investment (Deininger & Ali 2008: 870). Another study, based on 309 households, suggests that poverty reduction is significantly higher, when efficient farmers acquire land through land markets compared to when land is inherited (Tatwangire & Holden 2009: 3).

Customary tenure, often derided by politicians in Uganda and elsewhere, also provides

tenure security. Historically, it has provided a high degree of tenure security (Kisamba-Mugerwa et al. 1989; Bruce 1993; and Plateau 1996). It may be destroyed, for instance by conflict, as happened in the north in the 1990s and early 2000s, by the increased market pressure on land (Adoko & Levine 2008: 110) or by state-led conservation efforts (Himmelfarb 2005).

In fact, a study has shown that the political environment influences the perceptions of tenure security, despite individualised tenure. In the late 1980s, the *mailo* owners, because of the prospect of a land tenure reform, felt their tenure security threatened whereas right holders of lands under customary tenure did not feel a similar insecurity (Place & Otsuka 2002: 108). Thus, government interventions, like registration of rights, may at the local level be seen as a threat to tenure security. The perception that corruption prevails in the land administration is also widespread and undermines tenure security (Rugadya 2009: 16; Olanya 2011: 10; and Bashaasha 2011). In general, there is a lack of research that compares the tenure security provided by the different tenure systems under different circumstances.

Customary tenure seems to be the predominant tenure system operating in the eastern and northern parts of Uganda (Place & Otsuka 2000b: 234). Under some customary arrangements, land is exclusively controlled by the clan. This, in theory at least, should provide security against investors or land grabbers from outside the area. The land under customary tenure is often held with no supporting documents (ULA 2010). Neighbours and members of the clan who were present at the time of its allocation or acquisition evidence ownership of a given parcel of land.

Other analyses of customary tenure in the north describe the evolution of semi-formal

practices, that is, the involvement of local village council officials or chairmen in land transfers (Adoko & Levine 2008: 111). In the eastern part of Uganda, local village council officials have also been observed taking part in land transfers, often without any legal backing to do so (Joireman 2011: 64; Baland et al. 2007: 291). The presence of such a witness may contribute to provide tenure security.

#### *Tenure Security from a Gender Perspective*

Again, the focus on women's access to land provides new insights into the not always straightforward relation between tenure systems and tenure security. All the Ugandan tenure systems have drawbacks, primarily because of conservative patriarchal practices that disadvantage women (Rugadya et al. 2004: 2; Ssenyonjo 2007: 341). Most people interpret gender equality as "disruptive of family harmony" (Mak 2005: 159). Improvement of women's tenure security is thus not achieved with a stroke of the pen or the formulation of a new law.

The more formal laws and institutions, despite an anti-discriminatory legal framework, may not in themselves provide tenure security for women. Much depends on implementation. Thus, it has been pointed out that the consent of spouses in case of land sales, which should protect women's rights to land, is not easily enforceable and that women may be forced into accepting (see for instance Khadiagala 2001: 69, Hunt 2004).

Generally, female-headed households on average report lower landholdings and at the same time are more involved in land conflicts. Women's land rights tend to be limited to access while men are more inclined to enjoy ownership rights (GoU 2010b; Bashaasha 2011). A study on men and women's ownership of land in the eastern, western and cen-

tral regions showed a large difference, not in reported ownership but in the possession of *documents* showing ownership (Bomuhangi et al. 2011: 15).

Unsurprisingly, then, women are active in seeking to enhance their tenure security in various ways. In Kigezi district, where most of the land is under customary tenure, an increasing number of women are trying to acquire titles to their land. Only a few people can afford to do it, as legal registering is costly. Still, any written proof of ownership witnessed by community members or local officials can stand up as legal proof of ownership (Tripp 2004: 15). A woman's marital status – whether she is married, a widow, unmarried, or divorced – is also important for a woman's ability to protect her rights (Adoko et al. 2011: 3).

As a way to better address women's tenure insecurity in customary areas, Adoko and Levine suggest establishing a partnership between the state and the customary authorities with the responsibility to protect women rights and, for instance, verify a wife's consent in land sales (Adoko & Levine 2008: 116). In other words, to improve women's rights to land and tenure security also requires changes in the attitudes within the local level institutions. This points to the importance of the state as a source of equity, even when customary tenure and practices persist, a point repeated by other scholars (see, for instance, Whitehead & Tsikata 2003: 102).

#### *Tenure Security in Post-Conflict Northern Uganda*

The land related problems faced by the population in post-conflict northern Uganda are unique and yet familiar, in that they seem to expose and exacerbate the existing weaknesses of land governance elsewhere in the country. The conflict started in 1986 and ended with

the Comprehensive Peace Agreement and the gradual exodus of the forces of the Lord's Resistance Army in 2005-6 (Allen & Vlassenroot 2010). The conflict displaced almost two million people who have only slowly been returning to their lands. A National Policy for Internally Displaced Persons (IDPs) has been introduced and the rights of IDPs are also protected by the 2011 Draft National Land Policy. Much, however, has been left to the local people and institutions as the IDP Policy lacks funding and mechanisms of enforcement (Rugadya 2006: 12).

The displacements created new uncertainties around rights to land and new demands for land administration services. People, after having lived for up to two decades as refugees, returned only to find their land taken by somebody else (Burke & Egaru 2011: 7; Hillhorst et al. 2011: 4). Those who had fled the furthest and had become totally detached from their land during the conflict found it hardest to return (Rugadya 2008b: 7). Problems with outright land grabbing, worsened by external investors' interest in the region, have been observed. A study has shown that almost half of IDPs fear for their ability to regain their land (Rugadya 2006: 19; McKibben & Bean 2010: 7). Land disputes account for 63% of all disputes in northern Uganda and have prevented some people from returning to their homes. Concurrently, the predominant customary land institutions have broken down and new formal ones are hardly present. Often, chiefs, elders or parents who could have witnessed rights to land, have died. Formal committees and courts are overburdened and many disputes over land remain unsolved (McKibben & Bean 2010: 8; Pham & Vinck 2010: 28; MercyCorps 2011; Rugadya 2008b: iii).

On top of this, poverty is rampant, with poverty rates at 65% compared to 31% for

the rest of the country (Allen & Vlassenroot 2010: 45). Distress sales of land are common (Rugadya 2006: 29) and unresolved land disputes inhibit agricultural productivity (MercyCorps 2011: 9).

#### *Tenure Security in Post-Conflict Northern Uganda from a Gender Perspective*

Women are facing particular tenure security problems in the north. The breakdown of customary land tenure systems due to the war has meant that the remaining protection of women's rights to land, provided by customary institutions, has often withered away. Since traditional customary land tenure does not allow women to own land, if their husband has died during the war, for instance, widows' access to land is threatened (Pham & Vinck 2010: 10; Rugadya 2008a: 5; Kindi 2010: 16). A large proportion of the people still living in the refugee camps are women.

The individualisation processes that concentrates land in the hands of men as 'owners' also seems to have accelerated during the conflict (Rugadya 2008a: 7) and the more formal institutions are typically weak and fail to protect women's rights.

#### *Tenure Security and Land Grabbing*

The acquisition of land belonging to people displaced by war in the north is one out of the many land alienation practices which are often imprecisely labelled 'land grabbing' (International Organisation for Migration [IOM] 2010: 7; Borrás & Franco 2012; and Cotula 2011). The land grabbing term is often used for illegitimate large-scale land acquisitions by foreign investors, but such deals are hard to separate analytically from the overall increasing commercial pressure on land that results in land deals on different scales and involves local and national



authorities and other actors (Anseeuw et al. 2012: 1).

Land grabbing is a hotly debated issue all over Uganda. The gradual strengthening of *mailo* tenants' and of other customarily acquired rights to land in the first decade of the 2000s reflects that the land grabbing anxiety has reached the upper echelons of government. There are newspaper reports about land grabbing on an almost daily basis. Still, solid evidence for large-scale land grabbing is not always easy to find (Green 2006: 375). In this context, scholars also point to women running the risk of being marginalised as their use rights are generally not documented (Bomuhangi et al. 2011: 15).

A particular variation of land grabbing can be found in the Albertine Graben in western Uganda, in the area around Lake Albert, where oil deposits have been discovered. The oil find has led to rapid individualisation with large areas being registered as leaseholds, but rarely to the benefit of the communities that were supposed to benefit: "This rapid and extra-ordinary transition is driven by individual scramble to strategically reap from the expected demand for land anticipated in the region due to oil discovery" (Rugadya 2009: 18).

## 1.6 Recent Changes

The 1995 constitution and the 1998 Land Act diminished the role of the state compared to the developmental state model embodied in the 1975 Land Decree, where the ultimate goal was to prevent that large areas were left undeveloped by their owners. The decentralisation, however, has been a challenge in Uganda with its tradition for top-down management (Rugadya 1999: 8; and Nsamba-Gayiiya 1999). There are, in other

words, differing views of the role of the state in the administration of land at the local level.

The final draft of a new national Land Policy was finished in March 2011. It came about after nationwide seminars and a land conference (Olanya 2011: 10; MLHUD 2011a; and ULA popular version from 2010). In some ways, it heralds the re-emergence of the state after a decade of decentralisation, strengthening of individual rights and belief in the structuring power of the market. It still vests the radical title in the citizens, but it declares that the state will exercise sovereignty over all land in trust for the citizens.

The state's role in the administration of land is strengthened to promote a more effective use of land (already seen in the 2007 Land Use Policy) and to speed up the clarification of property rights, the convergence towards more formal, registered types of ownership and to improve the market in land (Olanya 2011: 11). All these changes are proposed to enhance economic development. Indeed, on a more critical note, critical voices fear that the National Land Policy will strengthen the power of the state 'on behalf of the citizen' (ULA 2010: 6).

## PART 2. LAND AND ECONOMIC ACTIVITIES

This part of the review analyses the literature on the relationship between land and economic activities in Uganda. It first describes how land and land tenure may be linked to investments and agricultural productivity, in the context of agriculture in Uganda. Secondly, it discusses land markets and, finally, it examines the relationship between land and access to credit.

## 2.1 Land, Investment and Productivity

### *Land and Agriculture in Uganda*

Although the contribution of agriculture to total Gross Domestic Product (GDP) has been declining over the years, the sector has continued to dominate the Ugandan economy and the Government of Uganda considers it one of the key productive sectors (see also GoU 2010b). It contributed approximately 21% of the GDP in 2010 at current prices and about 46% to the total export earnings in 2010. Nevertheless, the Government also acknowledges the slow growth of agricultural productivity over the last five years, with a decline in per capita food production – also due to a population increase (Ministry of Agriculture, Animal Industry and Fisheries [MAAIF] 2010). More investments in agriculture are considered by the Government of Uganda as key to lowering poverty: Uganda has experienced important growth since the 1990s as well as a significant reduction of poverty (Hickey 2005), but this does not seem to have benefited the chronic

poor very much (Okidi & McKay 2003), who, for the most part, are engaged in agricultural activities. Faster agricultural growth would, according to some scholars, benefit most households (Benin et al. 2008). However, the link between productivity and poverty reduction should not be simplified and might depend on other factors: Bahiigwa and Nabbumba (2003), for instance, comparing different farming systems on the basis of profit, price and yield, found that the maize farming system in northern Uganda is as productive as the coffee-banana farming system in central Uganda. In that region, poverty may therefore not be due to low productivity or profitability of agriculture, but perhaps due to exogenous factors such as the war that has afflicted the area since the late 1980s (Bahiigwa & Nabbumba 2003).

Uganda has a total area of 241,550.7 square kilometres (km<sup>2</sup>), out of which open water and swamps cover 41,743.2 km<sup>2</sup>, while 199,807.4 km<sup>2</sup> is land. Cultivated land cover increased from 84,010 km<sup>2</sup> in 1990 to 99,018.4 km<sup>2</sup> in 2005 (Uganda Bureau of Statistics [UBOS] 2011, see table 2).

Table 2. Major Land Uses by Region (km<sup>2</sup>), 2005

Region	Built-up areas	Bushland	Commercial farmland	Cultivated land	Grassland	Impediments*
Central	165.8	1924.2	230.3	19398.5	9350.5	3.3
Eastern	88.4	517.4	159.9	19831.5	5727.0	3.8
Northern	46.5	7289.3	31.3	36320.1	22836.2	15.2
Western	65.1	2162.6	263.0	23468.3	13239.0	14.9
National total	365.7	111893.6	684.5	99018.4	51152.7	37.1

Source: UBOS 2011, 89-90

\* areas covered by rocks or sand, unable to support plant life (communication from UBOS and the National Forestry Authority)

Land is held to play an essential role in agriculture, as stated in the NDP and the Agricultural Sector Development Strategy and Investment Plan of 2010 (DSIP) (MAAIF 2010). Furthermore, 65.6% of the working population is employed in the agriculture, forestry and fishing industry (UBOS, 2011: 43).<sup>14</sup> Access to land is therefore considered key in poverty reducing policies and programmes. In Uganda, about “50 per cent of most (...) households’ wealth is in the form of land” (Rugadya et al. 2008, in Cooper 2011:5). Research in Adjumani district showed that the amount of land owned was the most important determinant of wellbeing (Bashaasha et al. 2006: 7). Depletion of assets such as land has been associated with chronic poverty (Hickey 2005: 998), and the lack of access to land has been shown to significantly affect both the intensity of land management and rural poverty (Pender et al. 2004a: 3).

According to Uganda’s Plan for Modernisation of Agriculture (PMA), the land tenure reforms are to have the potential to positively impact the modernisation of agriculture (Petracco and Pender 2009: 26). The PMA set out policy priorities which included reforms in commercial law and its application, as well as land registration. One of the immediate objectives of the DSIP is to enhance factor productivity (land, labour, capital) in crops, livestock, and fisheries. Achieving the DSIP objectives entails promoting private sector investment and raising farmer productivity. At the same time, achieving the above objectives of the NDP and DSIP requires the implementation of the Land Act and formulation of a national land policy as an integral part of transforming agriculture (MAAIF 2010).

<sup>14</sup> Out of the projected population of 34,131,400 in 2012, 29,099,100 will live in the rural areas and 5,032,300 in the urban areas (UBOS 2011)

### *Agricultural Production*

Most Ugandan households depend directly or indirectly on agriculture. Unsurprisingly, therefore, most of the literature that discusses the relation between land and economic activity focuses on how land tenure affects agricultural productivity or agricultural investment. Consequently, this brief, more general, background section outlines the importance of agriculture in Uganda.

Uganda is self-sufficient for most of the staples it consumes (apart from wheat and rice) but is also an important exporter to the neighbouring countries. Of the food exported, maize makes up over half (Benson et al. 2008: 515). The following crops are cultivated in the different regions of Uganda: cotton is grown in the eastern and northern regions; *matooke* (plantains) in the central and western regions, while maize, beans and cassava are cultivated throughout the country. For all these commodities, much more land is allocated in rural than in urban areas where land scarcity is a limiting factor. Other commodities grown equally by all household types include sorghum, millet, potatoes and mangoes.

Between 1999/2000 and 2005/06, the production trends of the major crops are inconsistent. While positive increases were recorded for cereals (maize, millet, rice and sorghum), beans and sesame, significant declines were noted for root crops (cassava, Irish and sweet potatoes) and export crops (cotton and coffee) (see tables 3-5). The performance of crops in terms of yields also varied significantly (table 6). Between 1999 and 2006 eight major crops showed substantial reductions in yield while only four crops registered increased yields. Of these four, only sesame had a significant increase (see MAAIF 2010, table 2.5, page 24).



Table 3. Area Planted for Selected Crops ('000 hectares), 2008-2010

Crop	2008	2008 /09	2009	2010
Plantain bananas	919	916	942	978
Cereals (millet, maize, sorghum, rice)	1602	1739	1560	1642
Root crops (sweet potatoes, Irish potatoes, cassava)	1304	1344	1275	1271
Pulses (beans, field peas, cowpeas, pigeon peas)	725	715	718	717
Oil crops (groundnuts, soybeans, sesame)	579	557	605	637

Source: MAAIF and Uganda Bureau of Statistics, 2011

Table 4. Production of Major Food Crops ('000 metric tonnes), 2008/09 to 2010

Crop	UCA 2008 /2009	2009	2010
Maize	2362	2355	2374
Millet	277	250	268
Sorghum	351	374	391
Rice	183	206	218
Beans	929	925	949
Field peas	16	17	17
Cow peas	10	11	12
Pigeon peas	11	13	13
Ground nuts	237	258	276
Sesame	101	115	119
Soya beans	23	27	27
Bananas (all types)	4300	4522	4594
Cassava	2894	2952	3017
Sweet potatoes	1819	1943	1987
Irish potatoes	154	162	167

Source: MAAIF and UBOS, 2007; 2011

Table 5. Production of Major Crops (MT), 1999-2006

Crop	1999 /2000	2005 /2006
Maize	739177	2440000
Millet	184197	188800
Sorghum	113240	162400
Rice	41896	880000
Beans	495652	665000
Ground nuts	125617	219000
Sesame	97000	166000
Cotton	21439	18870
Irish potato	208359	154600
Coffee	154700	120139
Sweet potato	2620065	1696000
Cassava	2245882	1656000
Matooke	6129724	5360500

Source: MAAIF 2010, p. 24

Note: Cotton data obtained from CDO in bales converted to kg @ 1 bale =185kg and divided by 1000 to get equivalent in tonnes.

Table 6. Change in Yields of Major Crops 1999-2006

<i>Crop</i>	<i>1999/2000 Average yields (kg/ha)</i>	<i>2005/2006 Average yields (kg/ha)</i>	<i>Change (%)</i>
Sesame	114.06	277.80	144
Cassava	401.47	543.70	35
Sweet potato	1664.20	2070.20	24
Millet	583.08	718.70	23
Ground nut	679.55	635.90	-6
Irish potato	1457.20	1002.70	-31
Rice	1385.12	733.60	-47
Cotton	627.70	292.20	-53
Maize	1399.50	551.40	-61
Beans	988.36	358.30	-64
Coffee	1215.03	368.70	-70
Matooke	8593.96	1872.10	-78

Source: MAAIF 2010, p. 24

The overall low agricultural productivity is identified as resulting from “poor inputs, undeveloped value chains, and low public and private investment in the sector” (Ssewanyana et al. 2011: 54). The World Bank states that farm productivity in Uganda is declining largely due to population pressure causing increased intercropping and low input use (World Bank 2007). As a result, there is an overall low level of crop production and excessive soil degradation. Evidence suggests that average yields achieved by Ugandan farmers are far below the attainable potential and that output could be increased be-

tween 100-300% depending on specific crops. Uganda’s agriculture is characterised by low yields and this is partly a function of low application of modern technology. Use of modern inputs has been growing but remains among the lowest in the world (World Bank 2007). Fertiliser use, for instance, at an average of 1kg of nutrients per ha is among the lowest in the world (Bayite-Kasule et al. 2011; EPRC 2011; and MAAIF, Crop Production Department 2010). The use of other improved inputs is also minimal: improved seeds are used by 6.3% of farmers, while agrochemicals by a meagre 3.4%.

Table 7. Use of Agricultural Inputs in 2006, Percentage of Farmers Using (%)

<i>Region</i>	<i>Improved seeds</i>	<i>Manure</i>	<i>Chemical fertilizer</i>	<i>Pesticides, herbicides, fungicides</i>
Central	5.5	8.7	1.3	4.8
Eastern	11.9	4.1	1.1	4.7
Northern	7.6	0.5	0.7	2.6
Western	2.2	9.6	0.6	1.5
National	6.3	6.8	1.0	3.4

Source: UBOS (2007): UNHS 2005/06 Agricultural Module, April 2007

While supporting the agricultural sector, the World Bank notes that relying on the extensification of agriculture as a source of growth would be both environmentally problematic and lead to conflicts. This implies that future growth will have to rely on a combination of more intensive agriculture and a movement of labour out of agriculture (World Bank 2006).

### *Tenure Security, Productivity and Investments*

The general literature on the relationship between land tenure and investments is inconclusive and the same is true of the literature from Uganda. The idea that tenure security is needed to “increase efficient land use and agricultural production by easing land transfers, providing collateral for agricultural loans, and increasing incentives to adopt new technology, on-farm investment, and soil conservation practices” (Atwood 1990: 668) has been challenged by the literature. The impact of land registration (generally considered to provide tenure security) on productivity, land improvements or credit access in Sub-Saharan Africa has been questioned (Feder & Nishio 1999; see also Migot-Adholla et al. 1991; Bruce & Migot-Adholla 1994; and Besley 1995).

In fact, the relation between tenure security, land titling and investments is among the most contested in the literature about land in sub-Saharan Africa. Investments can take place without fully individualised and titled ownership and may occur in areas dominated by customary tenure (Place 2009). On the other hand, land titling does not consistently lead to increased investment (see e.g. Hunt 2005; Bruce & Migot-Adholla 1994; and Haugerud 1989). The analytical distinction between tenure security and land titling is

important to maintain, even though these terms have often been used interchangeably.<sup>15</sup>

Issues of agricultural productivity are also related to distribution. Recent studies point to agricultural growth benefiting the poor and underline the importance of land distribution in that process. In a cross-country study, Deininger and Squire (1998) found that initial land inequality had an important impact on the poor. According to them, this link illustrates the “collateral-based explanation according to which highly unequal distribution of assets excludes only credit-constrained individuals from making profitable indivisible investments” (Deininger & Squire 1998: 284). Jayne et al. (2003) see the rate of growth as likely to be affected by the distribution of assets, and of land in particular in the agricultural sector (Jayne et al. 2003: 255).

Empirically based studies on the impact of land tenure on investment in Uganda reflect this mixed picture (for a review of these issues, see Place 2009). Using data from a survey undertaken in all regions of Uganda, Pender et al. found that land tenure arrangements had little impact on agricultural production (Pender et al. 2004b; see also Place 2009).<sup>16</sup> In another study, however, the use of fertilisers and pesticides was shown to be greater for households with a larger share of freehold or leasehold tenure (Pender et al. 2004a: 46). Pastoralists with individualised

<sup>15</sup> According to Deininger et al., it is perhaps methodological weaknesses such as the “failure to account for the multi-dimensional nature and complexity of land rights” which are behind the inconclusiveness of evidence (Deininger et al. 2006: 20), an assessment also made by Fenske (2011).

<sup>16</sup> According to Pender et al. it is because the different tenure systems provide enough tenure security but as the commercialization of agriculture increases, it might increase the demand for formal titles to access formal credit (Pender et al. 2004b: 193).

tenure were found to have a higher tendency to invest in the land (such as tree planting, planting pastures and drilling wells), “...even though households in both groups [individualised and not] made similar investments (...) in keeping their stocks healthy” (Kisamba-Mugerwa 1995 in Lastarria Cornhiel 2003: 9).

Taking transfer rights as an essential aspect of tenure security (instead of merely the presence of a document) Deininger et al. (2006) analysed data from a survey in six districts (covering *mailo*, customary and freehold tenure) and found for instance that transfer rights had an effect on productivity through tree planting (Deininger et al. 2006: 16; and Place 2009: 1330), though Place and Otsuka, on the other hand, did not find any effect of tenure on tree planting (Place & Otsuka 2002). The latter came to the conclusion that tenure “had no impact on the productivity of crop farming” (Place & Otsuka 2002a: 105). Other scholars found customary tenure was associated with higher agricultural productivity (Nkonya et al. 2008b: 94), while others that full ownership had a quantitatively large investment effect compared to occupancy on *mailo* land (Deininger & Ali 2008). An interesting finding is also that legal knowledge (e.g. on the land law) has an impact on long-term investments (Deininger et al. 2006: 16).

The type of tenure has also been linked to the selection of crop types, which can have an impact on productivity. According to Pender et al., legumes are planted more on rented land as they can yield sufficient profit in a short term to pay the rent (Pender et al. 2004a: 52). Kyomugisha (2008) found that crop rotation was less frequent on *mailo* than freehold, maybe due to insecurity about future access to land.

### *Tenure Security, Productivity and Investments from a Gender Perspective*

Concerning women’s access to and control over land, evidence from Uganda shows it remains limited (EPRC 2008), which is in line with what has been found elsewhere in the region. In most regions in Sub-Saharan Africa, most women gain rights to land through their relationships with men, as wives or kin (Gray & Kevane 1999; and Yngstrom 2002), as has been noted in the previous section. Despite their significant role in the agricultural sector, few Ugandan women own land in their own right (Rugadya 2010, see also World Bank 2011). Statistics indicate that while 83% of women in Uganda are engaged in agricultural production and over 90% in food production and processing, only 25.5% own or control the land they cultivate (ULA 2010). Their ownership of registered land is even lower at 7% (Rugadya 2010; and Bikaako & Ssenkumba 2003). Housing, often considered a combined asset with land, particularly in rural areas, is also overwhelmingly owned by men (Rugadya 2010).

There is not much literature on the relationship between the effect of land titling and women’s ability to undertake long-term investments. More generally, the relationship is disputed. On the one hand, in her seminal ‘A Field of One’s Own’, focusing on South Asia, Agarwal makes the case for women’s ownership of land based in part on the argument that women’s land ownership would increase productivity (Agarwal 1994). On the other hand, Place 2009 notes that the literature provides no conclusive evidence about the link between women’s tenure security and investment. For instance, as Walker notes, studies have not been able to establish that women owning land individually invest more in that land than in household land (Walker 2002: 67).

Using a combination of data including the Uganda National Household Surveys (UNHS), the Forum for Women in Democracy (FOWODE) states that 80% of the population depends on agricultural production (FOWODE 2012). It is also the main occupation of women: 72% of all employed women and 90% of all rural women work in agriculture (*ibid.*). According to the Uganda 2002 population census, the agricultural sector employed a higher proportion of women (83%) than men (71%). A recent study by the Ministry of Finance, Planning and Economic Development (MFPED) concluded that a 1% improvement in productivity in agriculture in Uganda would not only disproportionately benefit women but also contribute an extra 0.4% growth to GDP (MFPED 2008).

However, Peterman et al. note in 2010 that the literature “has not provided definitive conclusions on [gender and] productivity” (Peterman et al. 2010: 3).<sup>17</sup> In order to show a link between land tenure security for women and productivity, it is necessary to compare women and men’s productivity. Methodological difficulties in comparing men and women’s production have been identified as crucial weakness of this and other studies (see also Jackson 2003). One of the issues raising concerns is that often household headship has been used as gender indicator (Peterman et al. 2010). Another issue is that it is particularly difficult to examine women’s productivity within households (see Doss 2011; Jackson 2003; and Peterman et al. 2010). For instance, men and women often both contribute labour to food production (Doss 2011). Often, separate and joint fields “are part of a package

deal” (Jackson 2003: 474). Moreover, many other demands constrain women’s productivity (Walker 2002).

In Uganda, using data from a natural resource management survey covering eight districts,<sup>18</sup> Peterman et al. find that even when controlling for household-level unobservables, female-owned plots have the lowest productivity, but that results differ according to e.g. region and crop choice. Pender et al., using data from Uganda Agricultural Census, find less use of organic fertilisers and pesticides in households where more land is cultivated by women. They note this could be explained by labour and cash constraints experienced by women (Pender et al. 2004a: 46). However, also based on data from surveys in different regions, Nkonya et al. find a positive association between the proportion of farming land owned by women within households and higher crop productivity (Nkonya et al. 2008b: 88).

Agricultural production is also influenced by gender preferences with respect to the types of crops grown. Most female-headed households in the 2005/06 household survey (UBOS, 2007) had allocated less than 20% of the land to coffee, preferring to put much of their land to farming plantain, maize and beans. In comparison, the male-headed households allocated much less land to growing beans and cassava than the female-headed households and more were found to be growing the high value commodities such as rice, pineapples, oranges, cabbages, tomatoes, tea and tobacco than female-headed households.<sup>19</sup> More research could be done on the

<sup>17</sup> For instance, a study by Udry et al. in Burkina Faso, often cited in this respect, which had found that the value of household output could be increased by reallocating inputs to women’s plots (Udry et al. 1995) could not be replicated at national level (Peterman et al. 2010).

<sup>18</sup> The districts covered in the survey were Arua, Iganga, Kabale, Kapchorwa, Lira, Masaka, Mbarara, and Soroti.

<sup>19</sup> Relating to the difficulties mentioned above in measuring men and women’s productivity, it is important to note that this comparison only tells about men and women as heads of households.

impact of the tenure system and the types of crops grown by men and women.

### *Tenure Insecurity and Disinvestment*

Although empirical studies present divergent conclusions, one can note that several of them find that insecurity leads to disinvestment. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and risk losing land as a result of eviction. Insecurity of tenure can discourage land-related investments (Deininger & Castagnini 2006).

The role of institutions is particularly important: weaknesses in existing land regulations and implementation are listed as a constraint to agricultural production (EPRC 2008). In particular, there has been a failure to implement the issuance of certificates of occupancy to *bona fide* occupants as well as the spousal consent clause. In Nakasongola in central Uganda, many tenants have failed to develop the land because they are not sure about their rights over the land. At the same time landlords, some of whom are not aware of the land they own, seem to have also neglected the areas (EPRC 2008). The 2002 Uganda Participatory Poverty Assessment Report (UPPAP II) (MFPED 2003) highlights that due to the overlapping system of land rights, Uganda faces a situation of land shortages concurrent with the existence of large tracts of unused land.

Insecure land tenure is also linked to poor land use which in turn leads to environmental degradation: land occupants may not undertake soil protection measures, plant trees, and improve pastures if they do not hold the land long enough to receive the benefits of their investments and this inhibits development. The *mailo* tenure system is often considered illustrative of these issues. Deininger and Ali (2007), using the 2005/06 Uganda

National Household Survey, find that uncertainties faced by tenants of *mailo* land not only reduce investments in trees but also investments in soil conservation and agricultural productivity. The development of the land is also hindered by the fact that most *mailo* occupants belong to low and medium income groups and thus lack the resources needed to develop their land or acquire more land to allow commercial agriculture and invest in modern farming method (African Peer Review Mechanism 2007). However, in the study mentioned above 42.5% of tenants of *mailo* land in fact expressed a willingness to pay and acquire overall rights of the land they occupy at market rates (Deininger & Ali 2007: 14).

### *Land Conflicts and Productivity*

The literature is unequivocal that land conflicts have a negative impact on land-related investments and on agricultural productivity (Deininger & Castagnini 2004; and Rugadya 2009). Land disputes do not only render land redundant and unproductive but they also consume productive time through litigation, are costly and often perpetuate poverty (Deininger & Okidi 2003), therefore negatively impacting equity (Deininger & Castagnini 2006: 7).

*Small-scale land conflicts* or land disputes have been a major focus of research on land in Sub-Saharan Africa. Examples of empirical studies in the recent past include: Deininger et al. 2006; Deininger & Castagnini 2006; Fred-Mensha 1999; and van Donge 1999. Most of these studies find that land under dispute is indeed often left unused, while as a result of a dispute people may lose their land. The “large output-reducing impact of land conflict (...) over and above the social tensions that are associated with it” means that implementation of land reforms is likely “to be justified, both



from an economic and a social perspective” (Deininger & Castagnini 2006: 17-18).

*Larger scale conflicts* also have an impact on land and productivity. In northern Uganda, the civil war has affected both social and economic activities. Households in that area are less likely to engage in long term investments such as cultivation of perennial crops given their situation that creates a lot of uncertainties. Ssewanyana et al. (2006), for instance, found that in any one year, 64% of the communities in northern Uganda experienced difficulties cultivating crops due to rebel incursions.

#### *Conflicts from a Gender Perspective*

Women have been shown to bear the brunt of most land conflicts. Analysing the results of a household survey in five districts from Uganda’s main regions (Lira, Mbale, Kibale, Mbarara & Luwero), Deininger & Castagnini (2004) find that female-headed households, especially widows, have the highest probability of being involved in land conflicts. Furthermore, they find that the institutions set up under the 1998 Land Act to resolve conflicts, i.e. district land tribunal and area land committees, were ineffective in protecting the land rights of women. Another study based on Kenya—a country with an extensive land certification system, find that widows are 13% more likely to be involved in an ongoing land conflict in situations where land was registered under the husband’s name (Yamano & Deininger 2005). In northern Uganda, the larger scale conflict had an impact on women by eroding traditional authorities and dispute resolution mechanisms that would have protected women (Rugadya 2009; 2008b).

#### *Other Factors Linked to Investment and Agricultural Productivity*

Productivity and investment are also influenced by other factors than access to land

and/or tenure security. Scholars have pointed to access to inputs (e.g. seeds, fertilisers, labour), functioning financial markets, as well as access to markets for produce (Feder & Nishio 1999: 37) as playing a central role alongside titling. Due to better, all-weather, road access for instance, crop production has a higher value in the eastern and western regions (Pender et al. 2004a: 76). Among other factors one can cite education, agricultural extension, market information, credit and off-farm opportunities (ibid: p. iii).

Farmers’ decisions to invest might also be determined among other things by “agro-climatic conditions, population density, farm size, presence of perennial crops on the land, access to local markets, and distance of the plot from the homestead, especially for bulky products” (Kyomugisha 2008: 2). The type and quality of soil also impacts on productivity: land of lesser quality will affect the value of crop production and income (Pender et al. 2004a: 80).

#### *Constraints to Women’s Productivity*

According to Lucas, the majority of women in agriculture are working on an unpaid basis, on family farms (Lucas 2007:105). Women’s labour inputs, according to the International Labour Organisation (ILO), “are perceived as a property of the family under the control of the male head of household” (ILO 1995: 241). Control over the proceeds of agricultural production is also an issue: women regularly report that although they grow the crops and provide labour, their husband takes the crop to market and does not share the proceeds of whatever is sold (Ellis et al. 2006). For instance, a survey by Ravnborg et al. (2004) finds that the percentage of women having no influence on how to spend proceeds from crop and animal sales ranged from 16 to 37% in the five districts surveyed.

At the same time, women's productivity is also hampered by time constraints, as a substantial amount of their time is taken up by household chores and care-providing activities. A multi-country study by Blackden & Bhanu (1999) found that in Tanzania, reducing the time burden of women could increase the labour productivity of smallholder coffee and banana producers by 15%, and capital productivity by 44%. In Kenya, they found that yields of women farmers would increase by more than 20% if women and men had equal access to agricultural inputs and education. In Zambia they concluded that if agricultural inputs, including land, would be provided to women to the same level as men, total output could increase by up to 15% (Blackden & Bhanu 1999: 12).

### *Land and the Non-Farm Sector*

The importance of the non-farm sector in contributing to economic development should not be underestimated, and has also been shown to be linked to land. There is ample evidence from Africa and elsewhere that growth in non-farm sectors "starts from a robust stimulus to agriculture, which generates rural purchasing power for goods and services" (Jayne et al. 2003: 272). Elsewhere, landlessness in rural areas has been shown to hamper the participation of the poor in the growth of the non-farm sector (Ravallion & Datt 2002: 396). In Uganda, poverty reduction has been highly associated with the performance and growth of the non-farm household enterprises (World Bank 2009b). For instance Ravnborg et al. find better-off women significantly more likely to have non-farm sources of income than less wealthy and the poorest women. In comparison, other income sources (farm and non-farm) are more evenly distributed among women from different wellbeing levels (Ravnborg et al. 2004: 54).

At the same time, it is often said that the lack of capital for investment and expansion remains the biggest challenge to the performance of non-farm household enterprises (World Bank 2009b). Rural diversification is also hampered by lack of infrastructure (Canagarajah et al. 2001: 418); more research is needed on the extent to which land plays a role as a form of investment or as collateral in relation to non-farm enterprises.

## **2.2 Land Tenure and Land Markets**

The role and importance of land markets has been debated. Although land markets have long existed in Africa,<sup>20</sup> the prevalence, evolution and activeness of land markets has been linked to population size and growth, pressure on land and economic and historical developments. Recent empirical research in Africa points to that land transactions are on the increase, as are efforts to formalise them (see Colin & Woodhouse 2010; Holden et al. 2009; and Deininger & Mpuga 2009).

In Uganda, Bosworth notes that there seems to be a growing demand for formal recognition of claims and rights, due to commercialisation of land and population pressure, especially on "land transacted through market mechanisms, for example for tenancies purchased in urban areas or for land purchased in rural areas" (Bosworth 2003: 235). It is not an entirely new phenomenon, however. Baland et al., in a survey in two areas of Uganda, find that land sale markets in the areas studied had been active for at least the preceding two decades (Baland et al. 2007: 291).

<sup>20</sup> Land markets have been a longstanding feature of Africa, even in the pre-colonial period (see e.g. Berry 1993; Bassett & Crummey 1993; Deininger & Mpuga 2003; and Chimhowu & Woodhouse 2006)

Many studies have shown that functioning land markets and in particular rental markets can raise productivity and help households to diversify their incomes (World Bank 2007). For instance, land sales markets in Uganda can provide households with the capital to start a business (Deininger & Mpuga 2009). However, these markets may also lower overall productivity in situations of high risk, in imperfect credit markets and when “non-agricultural uses drive land purchase demand” (Deininger & Mpuga 2003: 335). The fact that land can be marketed can also contribute to increasing the collateral value of land and hence access to credit (Feder et al. 1988 in Nkonya et al. 2008a: 83). Illustrating the interrelatedness of land markets and investment, the marketability of land can in turn provide people with incentives to invest.

Land markets’ impact on equality is also up for debate. Literature based on studies in Africa points to the fact that the political and social aspects of the land markets have not been sufficiently investigated (Colin & Woodhouse 2010). More research in Uganda might be interesting in this respect, particularly in a context of increasing land transactions. Likewise, there is a lack of knowledge about whether formal land administration services would enhance land transactions and, if so, to the benefit of whom.

One study from Uganda shows that rural land markets can provide an opportunity to acquire land to farmers who have not inherited land, “thereby mitigating inequality in land rather than concentrating assets in the hands of a few” (Baland et al. 2007: 303).<sup>21</sup>

<sup>21</sup> However, Baland and colleagues note that their findings leave unanswered “the question as to whether land inheritance could be unequal because of the presence of active land markets or whether land markets developed more rapidly in areas where the inheritance practices were more unequal”. (Baland et al. 2007: 306)

However, in some cases an active land market can actually be responsible for land inequality when land purchases are made by wealthy individuals and land sales are distress sales, as was shown in Rwanda by Andre & Platteau 1998 (cited in Baland et al. 2007: 285).

### *Sales Markets in Uganda*

Land markets vary from region to region (Nkonya et al. 2009) and a recent study shows that land values are higher and land sale markets are livelier in central and, to some extent, western Uganda where individualised tenure and higher degrees of urbanisation can be found compared to the north and the east (Alobo et al. 2011). However, Baland and colleagues find that land markets are also very active in eastern Uganda, to the extent that almost 50% of all land in one study had been purchased (Baland et al. 2007: 290). Evidence suggests that land acquired through the market is now more common than through inheritance or gifts in all other regions than in the north (Bosworth 2003: 234).

### *Sales Markets from a Gender Perspective*

For women, participation in land markets may be critical to their ability to sustain a livelihood. In central Uganda, for instance, Troutt finds that female heads of households were increasingly seeking ownership of land and most of them were accessing land through purchasing (Troutt 1994). These findings suggest that land markets can “improve social equity, at least with regard to gender” (Lastarria-Cornhiel 2003: 6) and is consistent with the traditional view on the equalising role of land markets. At the same time, women may be negatively affected by land transactions when e.g. husbands sell land without their consent (Tripp 2004: 13) or when pressured by husbands into consenting to sell (Hunt 2004: 185).

### *Rental Markets in Uganda*

As Colin and Woodhouse note, several empirical studies have shown that rental and sharecropping arrangements are widespread in Africa (Colin & Woodhouse 2010: 2). According to Deininger and Mpuga, rental markets in Uganda have been on the rise following the recent economic growth (Deininger & Mpuga 2003: 335-336). These authors, for instance, using data from the Uganda National Household Survey from 1999/2000 and Integrated Household Survey from 1992/1993, find that land rentals, more than land sales, allow for a transfer of land to “more efficient and relatively poor producers thereby providing an opportunity for the landless to access land” (Deininger & Mpuga 2003: 335 and 347). In agreement with these findings, Place (2009) finds that rentals and tenancies are mainly used by the land-poor to acquire more land and reduce inequality, though the size of leased land is often small (see, for example, in Rwanda, Blarel 1994; in Ethiopia, Pender & Fafchamps 2006; in Malawi Holden, Kaarhus & Lunduka 2006; in Uganda, Baland, Gaspard, Place & Platteau 2007; in West Africa, Lavigne-Delville et al. 2001). This is consistent with Lyne *et al.* who, in a study of land rental markets for agricultural land in Uganda found that renters (smaller and possibly younger families) are generally land-poor relative to other households, and that renting tends to equalise areas operated (Lyne et al. 1997). Their results conform to the view that land rental, as a voluntary market response, is neither inherently nor inevitably damaging to the interests of the poor (Bell 1990: 162).

### *Rental Markets from a Gender Perspective*

Deininger and Mpuga find that rental markets, contrary to sale markets, do not discriminate against widows (Deininger & Mpuga 2003:

346). Women’s participation in the land rental market as landlords also increases options to obtain returns from owned land. According to Quisumbing and Pandolfelli, women may find renting in land easier than buying land because renting in “does not create long-term secure property rights in the borrower/lessee” (Quisumbing & Pandolfelli 2010: 582); male landlords would for instance be more willing to lease out to women than men as the former would be less able to claim ownership. Women as landlords, on the contrary, might experience difficulties in evicting tenants (*ibid.*).

### *Constraints to Land Markets in Uganda*

Some hindrances to the functioning of land markets should be mentioned, which stem largely from two sources: (i) either the user does not have exclusive land rights or (ii) the risk of losing land as a result of a transaction is too high.

The *mailo* tenure system, for instance, is seen to be hindering the renting and sale of considerable proportions of land in the central region, and has a negative impact on reallocation for optimal use and income diversification. Baland et al. find for instance that the propensity to purchase land is lower under *mailo* than customary tenure (Baland et al. 2007: 302). Similarly, EPRC (2008) found that in Nakasongola – a district in central Uganda – 90% of the land is owned by absentee landlords. In Kiruhura district, land use planning is said to have been frustrated by the rigid land tenure structure in the area, characterised by absentee and influential landlords with large tracts of land (Bashaasha 2011).

It is also often said that traditional tenure systems are constraining to the land market, for instance because of the requirement to seek approval from relatives to transfer land (Platteau 1996: 49). Here again, evidence is

inconclusive in Uganda. The fact that land transactions do take place under different tenure systems illustrates that the lack of access to formal registration of ownership does not per se hinder land transactions.

Baland et al. (2007) find that traditional leaders are rarely involved in transactions on customary land. Sales often take place without written documents, but sometimes with the involvement of formal village authorities, even though they do not have any legal backing in the Land Act to get involved (Joireman 2011). It feeds into an ongoing development where traditional authorities are increasingly losing out (Adoko & Levine 2005a; and Adoko & Levine 2008: 109).

### 2.3 Land, Credit and Financial Services

Returning to the first arguments outlined previously, land registration has been considered to promote economic growth by, among others, making credit more accessible and enabling investment. In theory, and in certain contexts (for instance where there is already a demand for credit) formal titles can help in getting access to formal credit and help the functioning of financial markets (Deininger 2003: 48). This sub-section will look at the relation between land and credit and also examine issues related to finance and access to financial services.

#### *Land Tenure and Access to Credit*

Regarding the impact of the type of *tenure* on access to credit and the use of land as collateral, studies in Africa are inconclusive, and studies on this particular issue in Uganda are few (see Petracco & Pender 2009). A study in a titling project area in Uganda found, for instance, no link between titling and access to credit (Roth et al. 1994).

Petracco and Pender 2009, using UBOS data from 2005/2006 (classifying household by *mailo*, customary, freehold and leasehold status),<sup>22</sup> find no significant difference between all freehold households and all customary households and access to any credit. At the same time, the limited impact of tenure and title on formal credit in Uganda may be caused by the limited supply of formal credit and may therefore not necessarily mean that titling has no effect.

Deininger and Feder note that land registration alone may not be sufficient for credit markets to develop. Indeed, for this to happen banks need to be able to foreclose in functioning land markets, which is often not the case in a poor rural setting (Deininger & Feder 2009: 246).

Reviewing empirical research on land registration and access to credit, Domeher and Abdulai (2012) attribute the lack of evidence of a link between the two to (i) the fact that “collateral is not always a necessary requirement for credit, and even where it is, it is not sufficient to cause a loan request to be approved” and (ii) the fact that landed property can be accepted as collateral even when it is not titled/formally registered (Domeher & Abdulai 2012: 174).

According to the World Bank (2007), collateral requirements by banks still pose a huge hindrance to accessing agricultural finance in Uganda. Titled land or buildings (Mpuga 2004: 17), mostly on urban residential land, constitute the most important source of collateral for commercial banks (Hunt 2004:

<sup>22</sup> Interestingly, less than 10% of households reporting owning freehold land actually had a certificate of title. Reasons could be not having, or not yet having obtained the title, not having kept the title up-to-date, or misreporting. Petracco and Pender note that people may “assume that they have freehold status without this being legally true” (Petracco and Pender 2009: 17), which may imply a high level of perceived security on the part of the respondent.



183).<sup>23</sup> These formal institutions, however, are mostly absent in the rural areas (Mpuga 2010: 117).

In fact, previous studies indicated that land did not play any major part in access to credit, but according to the newest statistics from the Ministry of Lands there has been an important increase in the number of registered and released mortgages on *mailo* and leasehold titles in the last couple of years (MLHUD 2010: 22, 24 & 27). Hunt also notes that microfinance institutions sometimes rely on land, without a formal title, as collateral (Hunt 2004: 182). Petracco and Pender (2009) find that land tenure instead of land titles have an impact on access to credit. These authors indeed find a significant positive impact on access to credit for freehold without title holders compared to customary without certificate holders, implying that it is the tenure and not the title which impacts credit access for rural households. They also note that freehold tenure has an impact on *informal* credit access. A possible explanation for this is that informal lenders, although not able to use land as formal recoverable collateral, use the tenure status as a screening device rather than as collateral (Petracco & Pender 2009: 17). At the same time, Kasirye finds that financial service providers tend to move away from securitised loans as landed households are unwilling to use land as collateral to access credit (Kasirye 2007: 12). Indeed, some financial institutions are trying to expand access to finance, for instance by using the leasing of equipment or machinery (World Bank 2009a: 35).

#### *Access to Credit and Productivity*

Access to financial services has been shown to not be sufficient in itself (Musunguzi

& Smith 2000: 19). Asimwe and Nolan (2001) found that financial capital endowments in all their study areas were low and many people lacked the *cash stocks* necessary to make investments on their land and improve output. Hunt cautions against too optimistic a view of the role of credit in raising farm output: stagnating output may be due to problems in accessing markets or lack of market and not lack of credit (Hunt 2004: 181). However, Nkonya et al. (2008b)<sup>24</sup> found that access to credit was positively associated with higher crop productivity (for farmers from median and upper quartiles) (Nkonya et al. 2008b: 95; see also Nkonya et al 2004).

#### *Financial Services in Uganda*

Over the last ten years, finance has been recognised as an important driver of economic growth (Claessens 2006: 233). Access to financial services can be defined as broad financial inclusion or broad access to financial services in a specified location (World Bank 2007: 27). Across Sub-Saharan Africa, access to financial services and specifically access to microfinance has been identified as an important component of poverty reduction strategies, and identifying policies for inclusive financial systems has become a priority (Beck 2008: 62, see also World Bank 2008). Access to land plays an important role, in that it has an impact on the ability to access financial markets (Manji 2010).

As early as the 1960s, improving the poor's access to credit had been identified as a key strategy in Uganda, as banks were seen as neglecting the agricultural sector (Okurut et al. 2004: 2). State-owned banks were created to provide access to credit to the rural sector, mainly through schemes aimed at sup-

<sup>23</sup> However, the Land Act, by recognising parallel claims to land, may make it more difficult for banks to ascertain ownership (Hunt 2004: 183).

<sup>24</sup> Using survey data from eight districts.



plying productive inputs. In the 1980s the controlled interest rate and the credit allocation policies were considered to contribute to the inefficiency of the financial sector. Reforms were implemented, aimed at liberalising interest rates, removing credit allocation and privatising state-owned banks (Okurut et al. 2004). While rural areas were at first left out of these reforms (Bategeka 1999 in Okurut et al. 2004), more recently, they have been provided access to financial services through non-governmental microfinance institutions. Now, the Poverty and Eradication Plan (MFPED 2004) identifies the microfinance sector as central to growth, while it consolidates the role of the government not as delivering credit but as the provider of an enabling environment for the private sector to do so (Okurut et al. 2004: 3). However, according to the World Bank, a majority of people in Uganda still lack access to financial services (World Bank 2009a), even if financial inclusion has been noted to have increased (FinScope 2010: 30). The ability to maintain prosperity, for instance, has been linked to access to savings or microcredit (MFPED 2007: 29).

#### *Access to Financial Services in Uganda: the Legal Framework*

Financial services in Uganda can be classified as formal, semi-formal and informal. Two laws enacted by the parliament of Uganda aim at streamlining the operations of Uganda's financial sector (see the National Development Programme [NDP], GoU 2010b). The Microfinance Deposit-Taking Institutions Act (MDIA) 2003 (GoU 2003) was designed to facilitate efficient regulation of the activities of formal and semi-formal financial institutions – banks (Tier 1), credit only institutions (Tier 2), and Microfinance Deposit Taking Institutions (MDIs) (Tier 3). The Fi-

ancial Institutions Act (FIA) 2004 was designed to facilitate efficient supervision and smooth functioning of the Central Bank (GoU 2004b). The Tier 4 institutions, which include the Savings and Credit Cooperative Organisations (SACCOs), Village Savings and Loan Associations (VSLAs), and the Rotating Savings and Credit Associations (ROSCAs), were meant to be regulated by a third draft law, the draft Microfinance Act (MFA). Uganda's legislative body, however, has never enacted this act. The absence of an amended law regulating the Tier 4 microfinance institutions in Uganda has been seen as a constraint to the efficient operations of these institutions and to access to agricultural finance (World Bank 2009b: 34). The extent to which the current regulatory framework has streamlined or constrained the overall performance of the financial sector in Uganda, however, is not clear.

#### *Access to Financial Services in Uganda in Practice*

According to the DSIP, while financial services in Uganda have developed, the majority of smallholders “do not or cannot access the services they need to compete in the market and to improve their livelihoods.” (MAAIF 2010: 39). These constraints are more pervasive in the agricultural sector than in other sectors (ibid.)

Commercial banks account for about 83% of the financial sector assets of the country, but most rural households rely on access to financial services through the Tier 4 microfinance institutions (GoU 2010b; and Mpuuga 2004). The demand for formal financial services is low: Bashaasha (2011) and UBOS (2010) noted that only 17% of the population demands for loans. In rural areas only 6% of households access commercial bank branches while 21% of households access

Microfinance Institutions (MFI) (Kasirye 2007). On the other hand, in the urban areas about 80% of households access commercial banks and about 89% of households access Microfinance Institutions.

Microfinance is defined as the provision of financial services for low-and-moderate income businesses or households (African Development Bank 2006). According to the NDP 2010, Uganda has over 1,340 Microfinance Institutions and less than ten licensed Microfinance Deposit Taking Institutions (MDIs) (GoU 2010b).

Table 8 presents statistics from FinScope Uganda (FinScope 2010) highlighting the level of access to financial services in Uganda. Access to financial services varies greatly by level of urbanisation and region. At the national level, a larger percentage of house-

holds (86%) are located within less than five kilometres of an informal financial institution compared to 57% of households located at a similar distance of formal institutions. These data highlight the fact that access to financial services in Uganda takes place mostly through the informal sector. Although more households in the urban areas access financial services from the formal institutions, access through informal institutions in urban areas is not different from that in rural areas. Across regions, more households in the central and northern regions than in the eastern and western are accessing financial services through formal institutions. However, greater access to informal institutions is reported for the western and northern regions compared to the eastern and central regions.

**Table 8. Access to Financial Services in Uganda by Region**

<i>Nearest formal / semi formal institution</i>							
	<i>National</i>	<i>Urban</i>	<i>Rural</i>	<i>Central</i>	<i>Eastern</i>	<i>Western</i>	<i>Northern</i>
<i>Weighted base</i>	14112506	3527284	10582222	4796134	3435653	3813139	2067582
<b>Distance</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>	<b>%</b>
<1 km	19	35	6	18	24	11	34
1-5 km	38	50	28	45	27	36	35
5-10 km	24	11	34	24	26	28	12
> 10 km	17	2	29	10	22	23	17
<i>Nearest informal institution</i>							
	<i>National</i>	<i>Urban</i>	<i>Rural</i>	<i>Central</i>	<i>Eastern</i>	<i>Western</i>	<i>Northern</i>
<1 km	63	65	62	49	59	70	65
1-5 km	23	29	21	34	23	18	24
5-10 km	9	3	11	12	12	7	4
>10 km	2	2	3	2	3	2	3

*Source:* FinScope Uganda (FinScope 2010)

*Access to Credit from a Gender Perspective*

The consensus in the literature is that it is more difficult for women to access formal sources of credit (Ellis et al. 2006; and Nayenga 2008). Consistent with other findings (e.g. Seibel and Almeyda 2002), a study by FinScope reports that women are more likely not to be served with financial services compared to men (table 9) (see FinScope 2010). The study specifically finds that more males (31%) than females (26%) are formally served and more

males (24%) than females (18%) are banked. However, the report also notes that a slightly higher percentage of females (8%) than males (7%) use formal financial services. Overall, the study finds that a slightly higher proportion of females (43%) than males (41%) are excluded from financial services in Uganda. Moreover, Ellis et al. (2006) had earlier on reported that only 9% of available credit is accessed by women entrepreneurs, and only 1% in rural areas (Ellis et al. 2006: 45).

**Table 9. Financial Access by Gender in Uganda**

	Male %	Female %
Banked*	24	18
Formally Served**	7	8
Informally served	41	43
Excluded	28	31

\* *Banked*: using bank products

\*\* *Formally served*: using products from legally recognised financial institutions other than banks, including insurance companies and formally established microfinance institutions

Source: FinScope 2010: 27-28 & 31

In a study comparing Kenya and Uganda, women were found to be significantly less likely to be included via the *formal* sector than men (Johnson & Nino-Zarazua 2011).

Women's access to credit is influenced by different factors. One of the reasons for the difficulties in accessing credit might be the lack of ownership of land, which means that women face constraints in accessing mortgage financing (Rugadya 2010: 7 & 36). They may also not fulfil other conditions, such as having a salary. Other reasons are that few women have bank accounts and few have savings, a situation which is similar elsewhere in Africa. In Tanzania, Ellis et al. (2006) note for instance that only 5% of women have bank accounts.

A study of women traders and marketers in the informal sector in Uganda found that they financed their business ventures with private savings while women with small to medium scale businesses financed their enterprises with their own savings as well as with land, used as collateral (Snyder 2002). Even when women are eligible for a loan, the high interest rates, the costs of documentation, of transport, as well as the time burden, might deter them from doing so (Snyder 2000: 108).

It is also important to note that access to credit may be dependant on other factors than being a woman, and may affect women differently. For instance, female heads of household might be more able to engage in more lucrative work further from home than

non-female heads of household (Canagarajah et al. 2001: 418).

Women may not access formal credit sources but are more likely than men to subscribe to *microfinance* institutions, while men are more likely to subscribe to commercial banks (Johnson & Nino-Zarazua 2011; Seibel & Almeyda 2002; and Ellis et al. 2006). According to Seibel and Almeyda (2002), women dominate the microfinance market and over 60% of the borrowers in Uganda are women. Women are also more likely to be biased towards in the informal MFIs (Johnson & Nino-Zarazua 2011). However, formal MFIs such as SACCOS are more biased against women (ibid: 494), and less used by women because they are “based on cash crops and formal employment” (ibid: 491).

Globally there is a strong conviction that access to microfinance can play a huge role in reducing poverty and other forms of social inequalities experienced by women. Indeed, according to a study by Yawe (2002) when women were asked to rank their benefits from microfinance institutions their most important benefits featured enhancing household income. The same women were also found to have become more independent and able to cater for the needs of their children as a result of involving themselves in microfinance institutions. While the fact that women make use of the semi-formal and informal financial sector can be seen as positive, Ellis et al. (2006) point to the limitations of this kind of credit institutions for women wanting to expand their businesses (Ellis et al. 2006: 45).

Yawe (2002) reports that most MFIs lack the capacity to design, implement and monitor gender focused financial services (Yawe 2002: 7). The study specifically notes that since women’s needs and benefits differ from men’s, special packages tailored to the specific needs of women should be designed. For

instance, she suggests that linkages between MFIs and Business Development Services should be developed (Yawe 2002: 12). However, in conclusion Yawe notes that although increasing women’s access to financial services is an important step towards women’s empowerment, their ability to utilise credit remains a huge concern; accounting and management skills, literacy level, transaction time and size of loans combine to impact on the women’s effective use of credit (Yawe 2002: 13-14).

#### *Constraints to Accessing Financial Services*

A number of factors have been identified in several documents as major constraints to accessing financial services in Uganda. The World Bank, for instance, lists three broad constraints: the existence of a low saving rate in the country, a low lending rate, and the high costs and high margins of doing business in the sector (World Bank 2007).

The Financial Yearbook 2010 (Bank of Uganda 2010) states that despite the existence of many financial service providers, the country continues to have insignificant funding for the lower levels of the agricultural value chain, even though it is the principle driver of Uganda’s economy. According to the Financial Yearbook 2007 (Bank of Uganda 2007), the performance of the financial sector has largely been affected by, among others, high transaction costs, agricultural price and yield variation and collateral limitation, i.e. the failure to identify collateral substitutes that could replace land.

Banks may be reluctant to lend to farmers in rural areas because it is risky and because of the cost of administering small loans (Mpuga 2010: 117 & 137). This is consistent with Snyder’s view that these costs are the reason why banks discourage micro entrepreneurs (Snyder 2000: 108).

Even microfinance institutions do not easily lend to small-scale agricultural production (Zeller & Sharma 2000: 165), and the provision of microfinance is also affected by the cost of operations (Kasirye 2007).

On the part of the credit recipient, one study finds that the level of household income and ownership of a bank account are major determinants of formal credit demand in Uganda (Kasirye 2007). In the same vein, and in relation to access to banks, Beck identifies geographic access, documentation requirements and affordability as important potential constraints: e.g. maintaining a checking account is very costly (Beck 2008, see also Honohan & Beck 2007: 59). Mpuga finds that formal banks are not accessible by people in rural areas, who mostly use informal credit sources (relatives, friends, NGOs and cooperatives, savings and credit associations) (Mpuga 2010). Another study suggests that access to formal institutions is strongly influenced by economic but also social differences: level of employment, wealth, income, education, as well as age and gender (Johnson & Nino-Zarazua 2011: 492). Moreover, the often low credit limit might mean borrowers cannot borrow enough to meet their needs or not even try to borrow as they expect to be denied the loan (Zeller & Sharma 2000: 158). People may fear being in debt (Adoko & Levine 2005a: 52; and Kasirye 2007: 12). Social institutions as well as culture may also play an important role in people's willingness to access credit (see Shipton 2010 in Kenya).

Finally, Zeller and Sharma argue that, for the poor, savings might be of more importance than, for instance, access to microfinance, as they face many different constraints on earning opportunities (Zeller & Sharma 2000: 165). This is consistent with the finding that a large part of microcredit is in fact not used for investment but to meet consump-

tion needs, pointing to a demand for other kinds of savings products (Beck et al. 2009: 134). Also, access to financial services is not sufficient in itself: it might have to be accompanied by, for instance, training in the ways credit can be used in order to generate new opportunities (Musinguzi & Smith 2000: 19).

## CONCLUSION

This working paper has reviewed the literature related to the links between land and economic activities in Uganda. It has examined various aspects of land tenure in Uganda, including the legal and administrative frameworks and their implementation at the local level. It has also analysed the relations between these elements and tenure security in the country. Finally, it has discussed the various ways land may relate to economic activities.

The paper's point of departure is the 1998 Land Act, which with its recognition of all existing rights to land, including customary rights, is part of the new wave of land reforms that have been introduced in a large number of Sub-Saharan countries in the last couple of decades.<sup>25</sup>

Part 1 shows that the implementation of the reform has, so far, been partial and slow. Land administration is still marred by difficulties: some prescribed institutions have been established while others have not; the division of powers and tasks between the different institutions – state and customary – is not clearly defined and the relationship between the different legislative texts is often unclear.

Furthermore, the lack of implementation and continual changes of the laws and regulations outlining the land dispute settlement system have made dispute settlement hard to access for most people at the local level. In short, the legal and administrative framework,



as well as the coexistence of different tenure systems, present a more complex situation than that which is usually portrayed. This has implications for tenure security.

Women seem to be particularly affected by this situation. Even though they seem to be represented in land administration and in parliament, their influence is still limited. Studies and surveys from different regions in Uganda have also shown that despite a gender-sensitive and progressive legal framework, women's rights are still hampered on the ground in several areas and women are discriminated against in both the customary and statutory settings. In cases of dispute, for instance, women are less likely than men to bring their cases to court. There is, thus, a need to find ways to reinforce women's rights at the local level. Interventions should target the entire range of institutions that are important for women's access to land; that is, both the statutory and the customary ones.

The same complexity can be found in Part 2, which analyses the interrelationship between land, land tenure and economic activities. Uganda is an important food exporter to its direct neighbours, and self-sufficient in most crop production. The contribution of the agricultural sector to GDP, although in decline, is still important and the government considers this sector to be a priority, with land playing a central role. The low levels of productivity have been ascribed to a lack of inputs, lack of private investment and undeveloped value chains.

A strong strand in the general literature on land in developing countries holds that the issuance of individual land titles makes landholders more likely to invest, and hence increase their productivity. These links, however, have not been lent systematic credence. For instance, studies have not as yet found that titling has had a positive impact on pro-

ductivity in Uganda. Where they have been associated, there is no strict evidence of a unilateral causal relationship between them. On the one hand, while tenure security may lead to investment and enhanced productivity, it may exist outside formally registered ownership. On the other hand, investment and productivity may depend on other factors which may not be linked to land tenure.

The influence of land tenure on the land markets has also been questioned, as land transactions seem to be on the increase irrespective of the land tenure systems. There seem to be important regional differences with, for instance, land transactions being more prominent in central and western than northern and eastern Uganda. While land markets, and in particular rental markets, have been shown to lead to increased productivity, the limited number of studies makes it difficult to adequately analyse their exact role. It is not clear whether the formalisation of rights would enhance land transactions, as some theories suggest. More research is therefore needed to compare the impact of different tenure systems over time on the land markets.

Land transactions have had both a positive and negative impact on women: while women may have gained the opportunity to acquire land, and while evidence from some areas points to women increasingly applying for titles, cases have also been heard of women being forced by their husbands into consenting to sell land. However, a few studies point to the equalising role of rental markets, in particular as an avenue for women to access land.

Finally, studies have offered mixed results regarding the link between land and access to credit in several ways. The use of *mailo* and leasehold land as collateral is on the increase in Uganda. However, the exact relationship be-



tween the type of tenure and access to credit is still unclear. Some scholars hypothesise that with agriculture becoming more commercialised, titles might have a bigger impact on access to credit; in other words, that the degree of commercialisation may be more decisive than the type of tenure. The fact that studies have not provided conclusive evidence at this stage might be due to the limited supply of credit in Uganda in general. Indeed, a majority of people still lack access to financial services, with an important gap between access for rural areas and for urban areas. Women are also particularly affected and face more constraints than men, especially in accessing formal sources of credit.

Generally, access to credit is not necessarily the most decisive factor in raising productivity. Other factors (e.g. the lack of, or the difficult access to, markets, roads, labour and other inputs) play an equally important role in this relation.

Whereas the interrelationship between land, land tenure and economic activities is complex, an important finding of the working paper is the identification of the land conflicts that discourage investments (e.g. in terms of tree planting and land management). This, in turn, leads to a decrease in productivity. Land conflicts have a serious impact, and can lead not only to land alienation but also to land lying unused, and therefore unproductive, for as long as the dispute goes on. This has been a recurrent situation in the post-conflict context affecting the northern part of the country. The strengthening of effective dispute settlement institutions at all levels, whether statutory or customary, is thus a path that is most likely to strengthen agricultural production.

This review has illustrated that the relationships between the various tenure systems and economic activities in Uganda are

highly complex and context-dependent. Indeed, more studies are needed, as are more systematic comparisons between different tenure systems and their links to tenure security, productivity and investment, as well as investigations into the role of land in accessing credit.

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