

CUSTOMARY PRACTICES AND INSTITUTIONS AND LAND POLICY IMPLEMENTATION

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Abstract: This study sought to find out customary practices and institutions and land policy implementation in the Districts of Kasese, Sheema and Bushenyi in Uganda since the Uganda National Land Policy (UNLP) 2013. Using mixed methods design data was collected from 436 participants and respondents and was analysed using SPSS 23 for quantitative analysis and general content analysis for qualitative analysis. The study found out that customary institutions and practices are intervening in land policy implementation and should be further addressed for better land policy implementation. The study recommended compatible practices with the UNLP 2013 integrated into land policy implementation.

Keywords: Land policy implementation, customary practices and institutions, central-local governmental relations, land rights, land rights administration, decentralisation, UNLP 2013.

1. BACKGROUND TO THE STUDY

This study considered customary practices and institutions as a possible intervening variable in land policy implementation. Therefore they were addressed such as to be seen as not confounding central-local governmental relations but rather facilitating it. Customary practices and institutions embrace parallel institutions, gender bias, age bias and marital bias. Anderson postulated that community institutions can be employed in the administration of government programmes at the central and/or local levels and could affect policy implementation (Anderson, 1991). Since different institutions are involved in policy implementation, they contribute to different approaches in policy implementation. Land rights administration in Uganda function within a dual system involving; the traditional customary systems administered by customs and norms of given communities and; the formal state system administered by written law. The two are not in harmony. Institutional and systemic conflict resulting from parallel practices leads to confusion as distinct roles of the various institutions under customary and statutory institutions are not clear. In addition, Ministry of Lands Housing and Urban Development (MoLHUD) reported inconsistencies in customary system with regard to standards, rules and procedures (MoLHUD, 2013). Since central-local governmental relations also deal with the extent local citizens through their local authorities are allowed to manage the delivery of public services in their own areas (Agranoff, 2012) customary practices and institutions can either promote or hinder land policy implementation. The Economic Commission for Africa (2012) suggested that a key ingredient to preventing policy problems is community participation both in the formulation of the various land management frameworks and in managing land resources.

Consequently the UNLP makes a policy statement on land rights of women and children. Government shall by legislation, protect the right to inheritance and ownership of land for women and children. Government shall ensure that both men and women enjoy equal rights to land before marriage, in marriage and after marriage and at succession without discrimination. Women's access and secure rights to land must therefore be the cornerstone of national land policy implementation and of the related economic objectives of Vision 2040 and the National Development Plan (Kabanda et al., 2015; Republic of Uganda, 2010). The gender bias against women in land rights can be righted as Ethiopia and Rwanda have proven in their recent land legal reform and land certification programs (Byamugisha, 2014a). The entire course of the UNLP implementation will require a special emphasis on women's access and secure rights to land (MoLHUD, 2015).

1.1 Statement of the Problem:

Land policy implementation in Uganda continues to be problematic despite several policy interventions throughout its land governance history. There continues to be a legal dualism in the land system, a multiplicity of tenure regimes as well as multiple rights and interests overlapping in the same piece of land (MoLHUD, 2011). Land management institutions are generally weak and have not facilitated rapid progress to the goals laid out in legislation and policy (USAID, n.d). As a result land disputes and conflicts have become part of the definition of contemporary Uganda (MoLHUD, 2013). Odhiambo (2015) argues that, there continues to be a gap between policy development and policy implementation. Successive post-independence governments failed to address underlying issues in land governance and efforts in land policy remained unimplemented (MoLHUD, 2015). At this stage in the UNLP 2013 implementation process, it is yet unknown how strong it is to address the loopholes in land matters. Hence the need to investigate how customary practices and institutions affect the way land policy is implemented. Failure to address these loopholes will lead to continued land insecurity, land disputes and land conflict (Byamugisha, 2014b).

1.2 Objective of Study:

Establish the effect of customary practices and institutions in the delivery of land rights and land rights administration.

2. METHODOLOGY

This study adopted a mixed methods design using a concurrent triangulation strategy. The total target population was 2419 from which a sample of 394 was derived for quantitative data and 48 for qualitative data. Concurrent sampling which supports mixed methods was used. Stratified sampling, purposive sampling and simple random sampling were used in the study. Questionnaires, interviews and documentary review were used and data obtained was analysed using SPSS v.23 for quantitative data and general content analysis for qualitative analysis.

3. FINDINGS

The objective of this study was to establish the effect of customary practices and customary institutions relations on central and local governments in the delivery of secure land rights and land rights administration. This has been done by looking at quantitative data and qualitative data concurrently. The findings on this objective are hereunder presented in tandem.

3.1. Concurrent quantitative and qualitative analysis of Customary Institutions and practices and land policy implementation in the three districts:

Quantitative data was obtained from 394 respondents and using SPSS v.23 frequencies and percentages were computed and responses interpreted. The questionnaire used had a four point scale interval. That is strongly agree, agree, disagree and strongly disagree. The statements analysed were the following:

1. Customary land practices are contrary to the Uganda National Land Policy 2013
2. Customary land institutions are contrary to the Uganda National Land Policy 2013
3. There is conflict resulting from similar land responsibilities between customary and government land institutions
4. Local customary practices protect the right to ownership of land by women
5. Local customary practices protect the right to inheritance of land by women
6. Local customary practices protect the right to ownership of land by children
7. Local customary practices protect the right to inheritance of land by children
8. Customary right to land among men is influenced by marital status

3.1.1 Concurrent quantitative and qualitative analysis of the statement: customary land practices are contrary to the Uganda National Land Policy 2013

Table 1 shows frequencies and percentages for the statement: customary land practices are contrary to the Uganda National Land Policy 2013.

Table 1: Customary land practices are contrary to the Uganda National Policy 2013

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	62	15.7	15.7	15.7
Disagree	101	25.6	25.6	41.4
Agree	174	44.2	44.2	85.5
strongly agree	57	14.5	14.5	100.0
Total	394	100.0	100.0	

Source: Primary Data

Results in Table 1 show that 174 (44.2%) respondents agreed whereas 57 (14.5%) strongly agreed that customary land practices are contrary to the Uganda National Land Policy 2013. An official of the lands ministry however felt that it was too early to determine the impact of customary land institutions and practices on the UNLP 2013. He said, it is a 30 years policy and results are not yet seen (Official MoLHUD in Kampala, interviewed on 26/6/2017). This response may be collaborated by the words of the Chairman Uganda Land Commission, in Kampala, interviewed on 27/06/2017 who traces a pilot colonial freehold policy which over 50 years has impacted today's Sheema and Bushenyi Districts but was not piloted in Kasese District. He said, the British turned every native hold to freehold in North Kigezi and West Ankole (Sheema & Igara) This transformed their socio economic life. This provided secure land holding reducing land disputes other than family land disputes. Those in these counties (now districts) were able to use their freehold titles to access bank credit. This also encouraged inflow of resources. Local people were empowered. Locals were enabled to send their children to good schools and to university. Locals also bequeathed land to their children more securely. It created a liberated local population that created independent thinkers. Freehold titling also led to planned development due to survey and titling. Kasese on the other hand has had an ethnic dimension to land. It can be traced to the early 1960s maybe 61, 62 when Tooro governors were evicted in Kasese and Bwamba.

Kisamba-Mugerwa and others observed that with regard to land rights and tenure security, persons with titled and registered land had a fuller set of rights than persons and households without titled land. This includes rights of transfer of land. They also felt they were more protected in case of land disputes and evictions (Kisamba-Mugerwa, et al., 1989 as cited in Lastarria-Cornhiel, 2003). This means that we can expect a positive impact of the UNLP 2013 but this may be seen after many years. Today it would suffice to focus on removing confounding factors such as customary land practices.

3.1.2 Concurrent quantitative and qualitative analysis of the statement: customary land institutions are contrary to the Uganda National Land Policy 2013

Table 2 shows frequencies and percentages for the statement: customary land institutions are contrary to the Uganda National Land Policy 2013

Table 2: Customary land institutions are contrary to the Uganda National Policy 2013

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	54	13.7	13.7	13.7
Disagree	119	30.2	30.2	43.9
Agree	172	43.7	43.7	87.6
strongly agree	48	12.2	12.2	100.0
Total	394	100.0	100.0	

Source: Primary Data

The above table shows results where 172 (43.7%) of the respondents agreed that customary land institutions are contrary to the Uganda National Land Policy 2013. This together with the respondents who strongly agreed represents a majority 220 (55.9%). Yet those who disagreed were 119 (30.2%) and strongly disagreed 54 (13.7%) meaning these respondents did not think customary land institutions are contrary to the Uganda National Land Policy 2013. Even though it may be too early to assess the UNLP 2013, the policy maker which is central government has a track record to refer to. Customary institutions and central government have been seen to have conflicting positions on the same land. An example from Kasese's Kahendero was described as follows,

“There is an ongoing case in Kahendero where community land was encroached on by central government surveyors and this led the community to ask Parliament to intervene. The case is still in Parliament. Uganda Wildlife Authority also encroached on peoples land and these cases are also in Parliament. There is no compensation when animals come into people’s field.

I have just spent the night in my maize garden keeping away wild animals. The parish receives only five million shillings, about 20% of what is sent to it through the District, as revenue sharing with Uganda Wildlife Authority which cannot cover individual losses which collectively are in hundreds of millions per year. The Parish receives 15-18 million shillings per annum as revenue sharing for proceeds from the park as communities neighboring park but the District remits only 5 million and retains the rest. The community is using the money received to build a trench at the boundaries of the park to keep animals out. The trench will cost up to 200 million shillings.”

(Member Area Land Committee, Muhokya in Kasese, interviewed on 23/10/2017). Customary land institutions seem to have been ignored entirely in this case. This preceding narrative shows the level of desperation of the community to undertake a very costly project with very limited funds. Their proximity to the park may explain the reason why Muhokya Sub County which is the genesis of urbanization and civilization in Kasese now is one of the poorest in Kasese (Renno et al., 2012)

3.1.3 Concurrent quantitative and qualitative analysis of the statement: there is conflict resulting from similar land responsibilities between customary and government land institutions

Table 3 shows frequencies and percentages for the statement: there is conflict resulting from similar land responsibilities between customary and government land institutions

Table 3: There is conflict resulting from similar land responsibilities between customary and government land institutions

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	65	16.5	16.5	16.5
Disagree	89	22.6	22.6	39.1
Agree	182	46.2	46.2	85.3
strongly agree	58	14.7	14.7	100.0
Total	394	100.0	100.0	

Source: Primary Data

The findings from Table 3 show that on this aspect of the research, those who agreed that there is conflict resulting from similar land responsibilities between customary and government land institutions were 182 (46.2%) and 58 (14.7%) strongly agreed. This means that 240 (60.9%) agreed and strongly agreed that there is conflict resulting from similar land responsibilities between customary and government land institutions. It is worth noting here that customary tenure is functioning only in one District that was studied that is Kasese. This is because Kasese was selected for piloting the issuing of Certificates of Customary Ownership (Mugula, 2015). This conflict is clearly elucidated in the preceding immediate narrative of this study captured in Kasese.

Since customary tenure is not yet operational in Sheema and Bushenyi, when a participant from Bushenyi was asked he responded in the context of the existing common freehold tenure system where conflict of customary institutions and formal land institutions is minimal. He explained that,

“The aunts, uncles, bataka (local inhabitants) work together with Local Council 1 and the Sub County Chief. A copy of all documents must go to Local Council 2 or Local Council 3. They come together for boundary marking and to hear land complaints. They even challenge biased wills in case a man is married to two wives and makes a will biased to one family.”

(Member Area Land Committee Central Division, in Bushenyi-Ishaka Municipality, interviewed on 09/11/2017). It is therefore probable that for the time being customary institutions are in conflict with government institutions in Kasese where there are existing land issues between formal and informal institutions. Whereas in Bushenyi where locals and government do not have existing land problems there is no conflict between the two institutions.

3.1.4 Concurrent quantitative and qualitative analysis of the statement: local customary practices protect the right to ownership of land by women

Table 4 shows frequencies and percentages for the statement: local customary practices protect the right to ownership of land by women

Table 4: Local customary practices protect the rights to ownership of land by women

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	53	13.5	13.5	13.5
Disagree	111	28.2	28.2	41.6
Agree	171	43.4	43.4	85.0
strongly agree	59	15.0	15.0	100.0
Total	394	100.0	100.0	

Source: Primary Data

Most (58.4%) respondents believed that local customary practices protect the right to ownership of land by women. This may mean that traditional attitudes biased against women ownership of land are changing for better. Participants interviewed revealed a tolerance towards women owning land as opposed to inheriting it. This is a possible explanation for the positive disposition respondents showed to the statement put to them. Literature reviewed revealed that women toil on land more than any group of people in society, but they endure bias in all issues involving land ownership. Their rights tend to be limited to access, while men are more disposed to benefit from ownership rights (MoLHUD, 2008). In Western Uganda, during the drafting of the UNLP, it was resolved that family land should be kept in trust of the family though there is need to clarify in whose names it should be registered. It was recommended that rights of vulnerable groups need to be protected under each tenure system through sensitization, facilitation with registration and ensuring that family land is held in trust (MoLHUD, 2009).

3.1.5 Concurrent quantitative and qualitative analysis of the statement: Local customary practices protect the right to inheritance of land by women.

Table 5 shows frequencies and percentages for the statement: Local customary practices protect the right to inheritance of land by women.

Table 5: Local customary practices protect the rights to inheritance of land by women

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	57	14.5	14.5	14.5
Disagree	142	36.0	36.0	50.5
Agree	131	33.2	33.2	83.8
strongly agree	64	16.2	16.2	100.0
Total	394	100.0	100.0	

Source: Primary Data

Table 5 showed that those that strongly disagreed and disagreed (collectively 50.5%) almost equalled those that agreed and strongly agreed (collectively 49.5%) that local customary practices protect the right to inheritance of land by women. Respondents who all hailed from Western Uganda seemed to embrace the idea of women owning land but not very disposed to women inheriting land so as not to lose customary land to others since marriage makes women members of other families. Some participants interviewed were of the opinion that land must be divided among the boys as custom requires and maybe girls who do not get married. Yet some were quick to add that their houses are left for the wives and daughters to inherit and not the sons. Sons are expected to build their own houses where they have been apportioned land. One participant observed that the daughters are the ones who take care of men in their old age nowadays and so deserve to be rewarded with rights to the family house. The boys on the other hand have proved to be selfish and choose to drive good cars and cannot remember to bring even a kilo of meat he lamented.

3.1.6 Concurrent quantitative and qualitative analysis of the statement: local customary practices protect the right to ownership of land by children

Table 6 shows frequencies and percentages for the statement: Local customary practices protect the right to ownership of land by children

Table 6: Local customary practices protect the right to ownership of land by children

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	58	14.7	14.7	14.7
Disagree	127	32.2	32.2	47.0
Agree	140	35.5	35.5	82.5
strongly agree	69	17.5	17.5	100.0
Total	394	100.0	100.0	

Source: Primary Data

It is noteworthy that a majority 209 (53%) respondents agreed 140 (35.5%) and strongly agreed 69 (17.5%) that local customary practices protect the right to ownership of land by children. The Land Policy in chapter four stresses the right of ownership of land by children. Yet in an interview with a Member of the Area Land Committee Kyeizoba, in Bushenyi, on 10/10/2017 he said,

“Land is not owned by children. They can sale it and waste the money.”

Traditionally land was held in trust for the children therefore the notion of children owning land may still be foreign among some people in Western Uganda. Therefore the view of participants such as the one captured above represents the 47% who disagreed and strongly disagreed. It is also possible that people do not fully understand land rights. This notion is upheld by a land ministry participant who said, people do not know their rights (Member MoLHUD in Kampala interviewed on 26/6/2017).

3.1.7 Concurrent quantitative and qualitative analysis of the statement: local customary practices protect the right to inheritance of land by children

Table 7 shows frequencies and percentages for the statement: local customary practices protect the right to inheritance of land by children

Table 7: Local customary practices protect the rights to inheritance of land by children

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	86	21.8	21.8	21.8
Disagree	69	17.5	17.5	39.3
Agree	127	32.2	32.2	71.6
strongly agree	112	28.4	28.4	100.0
Total	394	100.0	100.0	

Source: Primary Data

Concerning whether local customary practices protect the right to inheritance of land by children it is evident from the cumulative percent (39.3%) that less people strongly disagreed and disagreed. Therefore like children's right to ownership of land, children's right to inheritance of land by children had a majority agreeing and strongly agreeing that local customary practices protect the right inheritance of land by children. It is worth noting though that respondents were more positive to children's right to inheritance (60.6%) than to children's right to ownership of land (53%). It is therefore fair to conclude that customary practices protect the right to children inheriting land than owning it. Participants who were interviewed generally upheld this view.

3.1.8 Concurrent quantitative and qualitative analysis of the statement: customary right to land among men is influenced by marital status

Table 8 shows frequencies and percentages for the statement: customary right to land among men is influenced by marital status

Table 8: Customary right to land among men is influenced by marital status

	Frequency	Percent	Valid Percent	Cumulative Percent
strongly disagree	78	19.8	19.8	19.8
Disagree	100	25.4	25.4	45.2
Agree	162	41.1	41.1	86.3
strongly agree	54	13.7	13.7	100.0
Total	394	100.0	100.0	

Source: Primary Data

From Table 8 results from quantitative analysis show that 54.8% of the respondents agreed and strongly agreed that customary right to land among men is influenced by marital status. Rao (2006) observes that in South Western Uganda men cannot claim patrilineal land until they marry, and once married they get land from their father's side. The findings from the above table indicate convergence with Rao's observation. In Sheema marital bias was expressed by a participant as follows,

"If the man does not get married ekyo nekifire (that is a hopeless case) he cannot get his father's land for he will sale it and drink the money (spend it all on alcohol)."

(Member Area Land Committee, in Kagango Sub-County, interviewed on 9/11/2017). Customs among the Banyankole of Sheema and Bushenyi often coupled bequeathal of land to marriage. This ensured continuity so men would bestow land to their sons who were ready to marry and build a marital home and continue the family legacy on that land.

4. CONCLUSIONS

Customary land institutions and practices are confounding delivery of land rights and land rights administration. This means that even if central-local governmental relations are improved, if customary institutions and practices are not addressed then land policy implementation may not be successful.

There is dual legalism in the land sector with both formal and informal institutions mandated to deliver land rights and administer land rights. There is need for a thorough analysis of the existing land rights administration institutions both formal and informal aimed at identifying existing gaps and make necessary recommendations on how to incorporate inclusive land governance in the delivery of land services and further decentralize land rights administration functions to traditional customary land governance levels.

There is protection of women and children rights to ownership and inheritance of land. However more can be done to harmonize formal and informal beliefs and practices. For instance community sensitisation of the land rights of women and children.

Gender bias against unmarried men's right to inherit land is still practiced especially in Sheema and Bushenyi. Though this practice may have lost its significance, since many men, married or not are acquiring land by purchasing it. Also probably because of population increase inherited land has been fragmented losing its economic significance.

5. RECOMMENDATIONS

Customary institutions and practices should be studied in depth and all compatible practices with the UNLP 2013 integrated into land policy implementation. There is dual legalism in the land sector and there is therefore need for further harmony. There is need for a thorough analysis of the existing land rights administration institutions both formal and informal aimed at identifying existing gaps and incorporate inclusive land governance in the delivery of land services and further decentralize land rights administration functions to traditional customary land governance levels.

Women's access and secure rights to land must be improved. Instead of the one third representations that accrue to most quotas securing gender balance, the percentage representation can be increased to one half. Studies can be undertaken in countries that have made extraordinary progress in women's representation such as Rwanda and India.

Lastly government should harmonize formal and informal beliefs and practices. This harmonization should be well documented and translated in all local vernaculars and education, sensitizations and trainings undertaken to appreciate and understand this harmonization at all levels.

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