

Joint Ownership of family land in Uganda: Examining the responses, challenges and policy implications

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Abstract

Many widows and orphans in get dispossessed of family land after the death of the head of household, but this could be countered by registered joint ownership of the land. Based on a study of two districts in Uganda, this paper examines the local responses, challenges and policy implications of joint ownership. Over 260 households, and a variety of key informants, were interviewed. The majority of respondents, especially women, agreed that joint ownership of family land is useful, arguing that it provides family security and enhances marital stability. Those who opposed joint ownership argued that marriage itself is unstable, and there is no trust between the spouses. In practice however, the family land is mostly male-owned. Most households do not have any ownership documents, and this is a challenge because joint ownership needs to be registered in order to be legally binding. The growing commercialization of land is also a challenge since it makes individual ownership more preferable. Joint ownership lacks strong support among both men and women, it is constrained by cultural beliefs and practices, and the institution of marriage in which it is anchored is getting weaker. Therefore in order to be effective, any policies and strategies for securing the interests of the family members in the family land must take account of these challenges.

Key words: *gender, family, inheritance, joint ownership, land, marriage*

Résumé

Beaucoup de Veuves et d'ont été orphelins dépossédés des terres familiales après la mort du chef de ménage, mais cela pourrait être contre la propriété par enregistré conjoint de la terre. Base sur une étude de deux en Ouganda districts, cet article examine les Réponses locales, les Defis et les politiques de la implications Copropriété. Plus de 260 ménages et divers informateurs clés ont été interviewés. La majorité des répondants, en particulier les femmes ont convenu que la Copropriété familiales des terres est utile, arguant qu'elle assure la sécurité de la famille et la renforce Stabiliti conjugal. Ceux qui se sont la propriété à opposés conjoint ont soutenu que le mariage lui-même est instable et qu'il n'y a pas de confiance entre les conjoints. Dans

la pratique Cependant, les terres de la famille sont pour la plupart des hommes. La plupart des ménages they disposent pas de documents de propriété, ce qui constitue un défi car la propriété conjoint doit être pour être enregistrée juridiquement contraignante. Croissant la commercialization des terres est également un défi car elle rend la propriété individuelle plus préférable. La Copropriété they bénéficie pas d'un soutien solide tant que chez les hommes chez les femmes, elle est limitée par les croyances et les pratiques culturelles, et l'institution du mariage où elle est ancrée s'affaiblit. Par conséquent, pour être efficaces, toutes les politiques et Stratégies Visant à garantir les intérêts des membres de la famille dans la terre familiale doivent tenir compte de ces Defis.

Mots clés: *the genre, famille, Heritage, Copropriété, terre, mariage*

Introduction

Women and children in Uganda face discrimination in land rights because of cultural and traditional practices that favour men in land ownership. Despite the tide of change that is engulfing the world in gender relations, achievements in gender parity in land ownership remains very meagre. The struggle for gender equality in land remains very visible on paper but hardly visible in practice. At the level of the family, gender inequality is very manifest in the way most land ownership is vested in men. Legal measures to correct this imbalance have so far been ineffective in trying to extract the cultural roots of inequality. The inequality not only damages the self-esteem of women, but also threatens their livelihood and that of the children. Women and children generally lack decision making powers over family land, and anything that threatens the stability of a family also threatens their livelihood and physical security. This paper examines the responses, the challenges, and policy implications of joint ownership of family land, in the belief that joint ownership has the potential to enhance women's and children's land and livelihood security. It is based on a 2013-14 study of two districts of Kayunga and Busia. The study was guided by three specific objectives namely (i) to examine the local responses and practices on joint ownership of family land (ii) to examine the challenges and opportunities for joint ownership of family land, and (iii) to analyse the policy implications of joint ownership of family land in Uganda. In this study, family land was understood to be that land on which the family lives and extracts a livelihood.

The family is the most basic social unit, united by blood, marriage, shared residence and shared consumption. It serves as an organizational unit in which members raise young ones, provide mutual love and support, share income, own assets, and have rights to use the family assets. Family members have mutual obligations, they influence each other's livelihood, and therefore have compelling reasons to jointly own the property on which their livelihood depends. However, joint family ownership of the property is elusive almost everywhere. The ownership tends to be characterized by male dominance, which is a function of the institutionalised gender inequality, and even threatens the very institution

of the family. The family, because of social change, is barely functioning as an enduring, secure and mutual support unit. The changing meaning and nature of the family, and its place in the social structure, provide context to our appreciation of the dynamics of joint ownership of family land.

Cultural and legal perspectives are very divergent on family land, joint ownership and on what constitutes a family. The African, and certainly Ugandan, view of family land is influenced by patriarchy, in which the male husband and father in the family controls the land and other productive assets, while the wife/wives and children have only rights of use to the land. The husband as the male head of the family is expected to keep the land securely in the family by applying the rules of patriarchy. Patriarchy therefore moderates the appreciation of joint ownership, and reinforces the need to have the land available to the present and future members of the nuclear and extended family. On the other hand, the legal perspective, with its origins in the culture and practices of the western world, appears to view family land from a detached position, without consideration for the importance of keeping the land in the family lineage. The legal perspective tends to commercialise family land, and in its practice appears to strip the land of its cultural value. Legally, joint ownership of the family land is viewed in terms of each party's proportion of rights to the land, and how the land should be divided if and when the joint owners can no longer own together, or when one of them dies¹. As regards what constitutes the family, the legal perspective tends to focus almost exclusively on the nuclear family, and pays almost no attention to the importance of the extended family and family descent. Whereas cultural practices and values attach a lot of importance to keeping the land in the family line through male inheritance, the legal practice seems to be less concerned about these issues in an attempt to be non-discriminatory. The cultural and legal perspectives are therefore often in conflict, embodying the contradictions between the traditional and the modern, and are a constant source of tension in the family.

Joint ownership can also be referred to as joint tenancy or co-ownership. Co-ownership of land is where two or more persons concurrently own an interest in land. Each co-owner is entitled, simultaneously, to the enjoyment or use of the land. They all have equal and mutual right to the land, and therefore none can individually claim a part of the land (Mugambwa, 2002). Co-ownership can be in the form of either joint tenancy or tenancy in common. Co-owners in joint tenancy do not have distinct shares in the land; they hold the whole jointly. Upon the death of one co-owner, all the interest in the land reverts to the surviving owner under the right of 'survivorship'. Mugambwa says that if a husband and wife own their matrimonial home in joint tenancy, whoever survives the other automatically becomes the sole owner. Tenancy in common, on the other hand,

¹ On the other hand, the land on which the family subsists is also known legally as marital property, which automatically bestows joint ownership to both spouses. Any other property acquired by either or both spouses during marriage also automatically becomes marital property.

gives individual shares in the land to each of the co-owners. Each tenant in common has a distinct share in the land, and that share can be transferred to his/her successors. Tenancy in common is not as good as joint tenancy for married people because the latter allows the surviving spouse to become the sole owner without need of probate (Mugambwa, 2002). The joint ownership discussed in this paper is mainly of the joint tenancy type.

The 2011 draft Land Policy alludes to the failure of legal instruments to safeguard the interests of women and children in family land. The policy states that much as the Constitution (1995) and the Land Act (1998) have tried to overcome the discriminatory cultural values and practices in land ownership, occupation and use, they have not been effective because of poor implementation. Recognizing the failure of past attempts, the draft land policy states that government shall by legislation protect the right to inheritance and ownership of land for women and children, and ensure that both men and women enjoy equal rights to land before, in and after marriage, and at succession. Some of the strategies proposed to achieve these policy statements include designing of matrimonial property law to protect spouses in and outside marriage, and making legal provision for co-ownership of family land and home. These strategies, among the many, are the most relevant to the formulation of a legal framework for realizing joint ownership of family land. Previous attempts to streamline ownership of family land and to reform marriage included the Domestic Relations Bill (2003) and the Marriage and Divorce Bill (2009), but these were frustrated by the legislative system. The two could not be enacted into law because of conflicting interests among the legislators.

Land and livelihood

In an economy such as Uganda where over 70% of the population is rural based, and where most of that rural population are dependent on agriculture for their livelihood, family and individual access to land is very important. Whereas the percentage of population that is rural based is declining because of urban growth, and the percentage rural population engaged in agriculture is also declining, the absolute number of people that depend on and need access to land is increasing. The population is increasing much faster than the ability of the non-farm sector to absorb the available labour. Even in peri-urban and urban areas, many households practice agriculture to supplement income. Families, whether rural or urban, also need land for settlement. Access and secure ownership of land is therefore critical to the livelihood of most families, although that access and ownership are not equitable even within the families. The women and children are often denied their right of access to the family land because the patriarchal system vests ownership and control of the land in men, and also bestows a superior status on men within the family. In the event of family instability or dissolution of the marriage, the woman and children are at high risk of displacement and decline in livelihood.

Methodology

The study was conducted in Kayunga and Busia districts. The study population included families that owned land in rural and peri-urban locations, local leaders, opinion leaders, staff of NGOs and CBOs operating in the two districts, and practitioners in land administration. The families were sampled randomly, while the rest were sampled purposively. Quantitative data was collected from 263 families in the two districts, while qualitative data was collected from the rest of the respondents using focus group discussions and key informant interviews. The key variables of the study were the social and demographic characteristics of families, land ownership, attitudes and practices on joint ownership of family land, and challenges to joint ownership. The quantitative data was statistically analyzed while the qualitative data was analyzed thematically.

Demographic and socio-economic characteristics of respondents

The demographic characteristics considered in the study were age, sex, marital status, type of marriage, number of children, education and religion. The 263 respondents in the quantitative sample were aged between 18-89 years, with an average of 43.6 years, a median of 40 years and mode of 30 years. The sex composition was 47% male and 53% female. Most of them were married (63%), 15% were separated, 14% were widowed, and 8% were single. Among the 243 married or previously married respondents, 50% described their marriage as religious marriage, 27% described it as customary, 22% as cohabitation, and less than 1% as civil marriage. Over 93% of the families had children numbering between 1 to 18, with an average of 5.4 (median=5 and mode =3). There was almost no difference in the average number of male and female children per family (3.1 vs 3.0). As regards formal education, 15% said they had received no formal education, 43% had completed primary education, 23% had O-level, 4% had A-level, and 13% had post A-level. The religious composition of the sample was 34% catholic, 22% protestant, 26% muslim, 10% adventist, and 1% other.

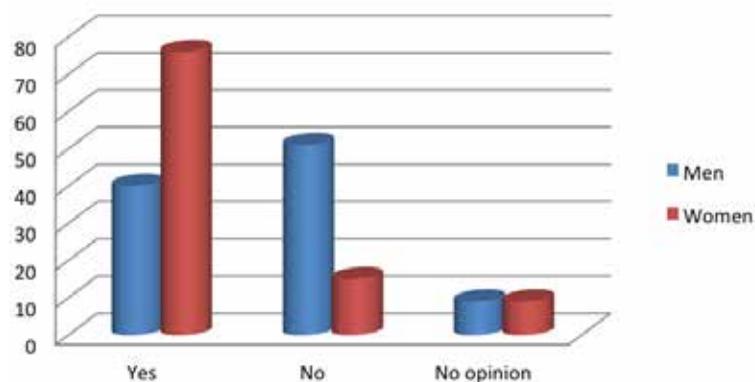
The socio-economic characteristics of respondents in the study included main occupation and land ownership. The variables in land ownership were acreage owned, how the land was acquired, the tenure of ownership, possession of ownership documents, type of documents, and whether any portion of the land had ever been disposed of. The most prominent main occupation of respondents was that of peasant farming (46%), while others were trading (22%), civil servant/salary earner (13%), craftsmanship (11%), casual labour (5%) and commercial farming (3%). All the families had some land, which ranged in size from less than an acre to as big as 36 acres, with an average of only 3 acres. Most of the families held the land on squatter or tenancy basis (84%), while 12% owned

the land on private (also called 'mailo'² in the Buganda Region where Kayunga District is located) tenure and 4% had registered leasehold. Private and leasehold tenure were commoner in Kayunga than in Busia district. Most of the families had acquired the land through purchase (64%), while 34% had acquired it through inheritance or allocation by the clan/community. Another 2% were not quite sure of how the land had been acquired. As regards the land ownership documents, 43% had purchase agreements, 17% had registered title of private or leasehold, 10% had inheritance documents, 26% had no documents at all, while in 4% of the families the respondent did not know.

Local responses and practices on joint ownership of family land.

The local responses and practices were assessed by examining the respondents' opinion on joint ownership, who is named on the ownership documents, whether there is consultation in the family about land matters, and whether the household had done anything to safeguard family land. Opinion on whether family land should be owned jointly between husband and wife was heavily skewed towards yes, 60%, while 32% said no and 8% had no opinion. Women had a much higher tendency to support joint ownership as shown in Figure 1, and this tendency was statistically significant. There was also an association between age and opinion on joint ownership, whereby the persons who supported joint ownership had an average age of 41 years, those who said no were 47 years, while those with no opinion were 53 years. Contrary to expectations, other parameters such as education or religion had no association with opinion on joint ownership.

Fig. 1: Should family land be owned jointly by husband and wife?



² The mailo land tenure was a result of the 1900 Buganda Agreement, which provided for the allocation of land to individuals in chunks of a square mile. The term mailo land therefore refers to land which had been allocated on that basis in Buganda, even if it has now been sub divided into smaller plots. Mailo land tenure provides nearly the same rights as freehold tenure.

Various reasons were provided to justify opinion on joint ownership. The reasons in support of joint ownership were categorized into security (40%), marital stability³ (32%) and economic stability of the family (28%). The reasons provided against joint ownership were more numerous and diverse so they more generously categorized into marriages are unstable (49%), husbands and wives have different plans (22%), women can't be trusted (14%), land is for men (6%), men have many wives (4%), men can't be trusted (4%) and joint ownership can cause misunderstanding (1%).

The respondent also provided the main factors that they would consider before consenting to joint ownership of land with the spouse. The variety of factors were categorized into stability of marriage (27%), personality of the spouse (27%), the type of marriage (16%), and whether the couple have children (10%). Over 19% of the respondents did not provide any factor. The considerations illustrate the variety of circumstances that influence people's opinion and response to joint ownership of family land. For example, whether a person considers his/her marriage stable or not would influence his/her decision to consent to joint ownership, although the indicators of stability may be relative. The following are the factors that were categorised into 'stability of marriage':

- There should be good communication in our marriage, and trust among ourselves
- The relationship should be good depending on the period we have stayed together. There should be persistence and perseverance in our family
- Good understanding between us
- If there is cooperation in the home, and if I know all about the land and how it was bought.
- If there is true love, and if we have common goals to achieve.
- If we can agree on most occasions, and don't keep secrets from each other.
- The love that we have, and obedience to each other.
- There must be friendship in the home, respect of each other and discipline.

The individual's decision to consent to co-ownership of the family land also appears to be influenced by the personality of his/her spouse. Various aspects of a person's character combine to make that person different from others, and they also contribute to whether that person is perceived as interesting, attractive, likeable, etc. Indeed, the stability of marriage is partly a function of the extent to which the personalities of the husband and wife are compatible. The following are some of the factors which were categorized into 'personality of the spouse':

- A spouse who is not greedy for land
- A spouse who is committed to the marriage
- Faithfulness and being developmental

³ Further analysis showed that women had a higher tendency to associate joint ownership with marital stability

- I consider a calm spouse in behaviour, and trustworthy
- If the spouse is kind and understanding
- If the wife is a patient woman
- If the spouse is respectful, trustworthy and hardworking
- If the spouse is responsible and caring
- If the wife is disciplined and will not sell the land in my absence
- If the wife is tolerant to the challenges of marriage

As regards type of marriage, the responses show that persons would consider various objective attributes of the marriage before consenting to joint ownership of the family land. Indeed, some types of marriage may be more suitable than others for joint ownership of the family land, with a very high likelihood of the cultural and legal aspects of the marriage playing a big role. A spouse may consider whether the marriage has a cultural or legal basis for social acceptance while making the decision to consent or not to consent to joint ownership. Equally, whether the marriage has resulted in procreation of children, and the sex composition of the children, have a role to play in influencing the decision whether to consent or not. The following quotations are examples of the factors that I categorized into 'type marriage' and 'whether the marriage has children':

- If the marriage is official, we can own land jointly
- If we are married for a long time and we have children
- It depends on how long we have stayed together and how many children
- If people of my family are notified of our marriage
- If the husband has many wives, I would need joint ownership
- When the marriage is clean before God, we can have joint ownership
- The most important thing is the children which helps the woman to be recognized
- I look at the sex of the children. We may have only girls yet they are not allowed to inherit

In practice, the ownership of the land on which the family lives is in most cases in the hands of the men. The data shows that for most of the households with title deeds (for private or leasehold) the ownership is registered in the names of the husband. This was also true among households with only a purchase agreement, although husband-only ownership was more prominent among title deeds (84% vs 62%). Only very few title deeds (5%) were registered in joint ownership between the husband wife. The rest were between husband and children (7%), or whole family (5%). There were no titles with wife only or wife and children registered as owners. Households that had only purchase agreements as proof of ownership had a little more widely distributed ownership, including children only, wife only and wife and children. Table 1 summarizes the ownership as reported about the ownership documents.

Table 1: Ownership of the family land as reported about the ownership documents (n=149)

Ownership document	Owner(s) indicated on the document							TOTAL
	Husband only	Husband and wife	Husband and children	Children only	Whole Family	Wife only	Wife and children	
Title deed	36 (84%)	2 (5%)	3 (7%)	0	2 (5%)	0	0	43 (100%)
Purchase agreement	66 (62%)	23 (24%)	3 (3%)	3 (3%)	2 (2%)	6 (6%)	3 (3%)	106 (100%)
TOTAL	102 (68%)	25 (17%)	6 (4%)	3 (2%)	4 (3%)	6 (4%)	3 (2%)	149 (100%)

On whether husbands should obtain the consent of the family before selling family land, the majority respondents said yes (77%), and only 23% said no. Opinion about the consent was significantly associated with gender, whereby the women had a higher predisposition to believe that the consent was necessary. The opinion was also significantly associated with education level, whereby the respondents with a lower education⁴ were less predisposed than those of higher education to believe in the importance of the family consent (75% vs 88%). Support for the need for consent was justified with various reasons that I categorized into (i) it contributes to family stability (ii) security of family members (iii) it is a legal requirement. Those who did not support the consent said basically that land belongs to men, and that the institution of marriage is uncertain.

In practice, family consultations are actually held in the majority of households before family land is sold. Among the families⁵ that had at one time sold some of their land, 77% had had family consultations before the sale was effected. Among those where consultations had been held, the family consent had been obtained in 70% of the cases, but 30% had not given it. The reasons for sale of land were cited as general family needs, treatment, home improvement, school fees, payment of bank loans, acquisition of other assets, and support to relatives. However, most of the reasons for selling the land had not been achieved as shown in Table 2.

Table 2: Various aspects of family sale of land

	Yes	No	Total
Has family sold any land since you got it? (n=263)	12%	88%	100%
Was the family consulted before the sale? (n=23)	77%	23%	100%
Did the family give the consent? (n=23)	70%	30%	100%
Was the main objective of selling the land achieved? (23%)	45%	55%	100%

⁴ The education was recoded into 'lower' (none, primary and O-level) and 'higher' (A-level and above) and a cross tabulation done with opinion on family consent.

⁵ About 12% of the households in the study had at one time sold some of their land

The 163 married respondents were asked whether the family had done anything, and what they had done, to ensure that the family interests in the land were protected in the event of the death of the male head. Over 53% affirmed that they had done something, but 47% had not. What they had done to protect the family interests can be broadly categorized into will-making, arrangements related to ownership documents, interactions with relatives, and practices on the land itself. Examples of strategies that represent these categories are presented in Table 3.

Table 3: Strategies that some families had adopted to safeguard family interests in land

1. Write a will
2. Obtain ownership documents
3. Keep ownership documents safely
4. Make the ownership joint
5. Make several copies of ownership documents and distribute them to different people
6. Be open to family members about land
7. Utilise the land so that it is not idle
8. Keep land boundary clear and marked
9. Sensitise children on the importance of family land
10. Give the children some powers over the land
11. Inform relatives about the family land
12. Inform local leaders about the family land

When specifically asked if they (the husband or wife or both) had a written will that showed how the land would be administered after death, over 30% of married respondents agreed that there was such a will⁶. Further analysis showed a number of patterns about will-making:

- Respondents in a religious marriage had a higher tendency to have a written will than those in customary marriage or cohabitation
- Adventists and muslims had a higher tendency to have a written will than the protestants or catholics
- There is no association between level of education and having a written will
- Respondents that have documented ownership of land have a higher tendency to have a written will than those without any documentation.
- Respondents owning land on freehold or leasehold tenure have a higher tendency to have a written will than squatters or tenants
- Older respondents have a higher tendency to have a written will than the younger respondents (average age of 52.2 Vs 39.5 years)
- Over 75% of the married women did not know whether their husbands had written a will or not.

⁶ The limitation here is that people often do not know if their spouse have written a will or not.

Those who had written a will said they did so for various reasons that were categorized into the need to ensure family security in the family property (39%), obligation to the children (21%), fulfillment of a normal adult obligation (11%), and security of the property itself (10%). Other reasons were that it is a religious obligation, that it gives peace of mind even in sickness, it is a male obligation, and that it allows one to die in an orderly way. On the other hand, the reasons for not having a written will included problems with the ownership of the property (12%), having little property (10%), a feeling of still being young and healthy (8%), ignorance about the importance of a will (6%), a belief that it is not cultural to make a will (6%), not having children or the children being young (5%), fear of writing a will (5%), uncertainty about the marriage or the family (4%), being a woman (4%) and being polygamous (1%). Other reasons cited were laziness and inability to write.

In practice, some families do actually lose land upon the death of the male head of households. The 31 widows in the study were asked whether the family land had in any way been affected by the death of the husband. Of these, more than half (16) said that the husband's death had indeed affected the family land. The most prominent effect was that some of the land had been grabbed by the late husbands' relatives (eight cases), while another four said that new disputes had erupted over the land. One said that an old dispute over the land had resurfaced, while another two said they had to sell some of the land. Besides land, other property was also lost as a result of the husbands' death. A total of 18 widows reported losses of other property which included house (5 grabbed by in-laws, clan members and heir), livestock (3 grabbed by in-laws and heir), household property (4 grabbed by in-laws and clan members) and 1 bicycle which had been grabbed by late husband's friend.

Opinion on whether joint ownership of family land could contribute to family stability was varied. Over 65% of the respondents believed that joint ownership would create more family stability, but 35% thought otherwise. The women had a much higher tendency to believe in the contribution of joint ownership to family stability. Belief in the contribution of joint ownership to family stability was supported with various reasons such as: it would enhance development in the family, it would increase trust, it would increase security, it would increase unity, and it would reduce conflict. All these reasons implicitly indicate the respondents' perceptions of what makes a family stable. On the other hand, the respondents with the opposite view said joint ownership can cause family instability because it may result in misunderstandings in the nuclear family, and that it could cause conflicts with relatives in the extended family.

Interestingly, some respondents (28%) believed that it would be okay for a person to buy land elsewhere without the knowledge of the spouse. Gender did not seem to influence this belief, although the men and women gave varying reasons to justify their beliefs. In general, the reasons provided for and against buying land elsewhere without the knowledge of one's spouse were related to issues of trust in marriage, personal rights and quality of the relationship. Those who believed that it is okay argued that men and women are free to do what they want, and that they all have rights to their privacy. It was also argued that women need their own property, which can be used as a safety net for themselves and for their children. They said women need a secret plan for their children, and that everybody in marriage has a secret. In addition, it was argued that there is no longer any trust among men or women in marriage. In particular, the men were accused of being jealous of their progressive wives and of interfering a lot. Some said it is okay for spouses to act independently because marriage was becoming temporary, and therefore people need a fallback position. On the other hand, respondents who thought persons should not buy land without informing the spouse said that doing so would be a sign of marital mistrust. They said marriage unites man and woman into one and therefore the two should plan together. They also argued that land that is bought secretly can be easily lost. Other reasons were that women are subject to men, and that women have no right to property. It was also argued that married women become insubordinate when they acquire property.

Challenges to Joint Ownership of family Land

The challenges to joint ownership of family land are examined in the relation to how factors such as gender, personal characteristics, attitudes to marriage, and culture influence the responses and practices on joint ownership. Other dynamics such as land administration, and the interactions between the cultural and legal dimensions of land at family level, are also important to the examination of the challenges to joint ownership. The study found that support for joint ownership is not only relatively low at only 60% of respondents, but it is also unevenly distributed between men and women. The most opposition to joint ownership comes from the men, and this is a challenge because men are the major power holders and decision makers. In the circumstances, joint ownership of family land becomes difficult to implement; any policies and programmes are likely to meet resistance from the men, who tend to dominate decision-making institutions such as the parliament. Interestingly however, there are also many female respondents who were opposed to joint ownership. Overall, 15% of the women said no to joint ownership, and 9% were undecided. This may sound surprising because joint ownership is thought to be pro-women and pro-children, and one may wonder what motivates this proportion of women to say no or be undecided about it. Of course it would be naïve to

expect total support from the women, or to imagine that women are a uniform category with uniform opinions and responses. They cannot all support joint ownership, but this constitutes a fundamental challenge. Social changes have ushered in new gender and economic dynamics in which many women have themselves become property owners in their own right. Such women are constrained to support joint ownership for the same reasons that many men oppose it. The social changes that are transforming the women's position in the economy are also affecting the gender and economic relations in the family. Such changes are a challenge to any strategies that overly assume female subjugation in the home.

That association between age and support for joint ownership raises interesting questions. How come that the younger people are more supportive of the joint ownership while the older ones are less supportive? Is it possible that attitudes change as people get older, and perhaps more experienced and more wealthy? If so, what realities make people change their mind about joint ownership as they get older? It is possible that younger persons are more idealistic and romantic about the unity of property in marriage, but this idealism gets redefined as new realities unfold during the marriage. With time, people may become more skeptical about marriage and the centrality of the family in their lives, while at the same time becoming more concerned about personal welfare. They become more concerned about having personal property because it symbolizes personal security, as opposed to having joint property which symbolizes collective family security. When people become less instead of more supportive of joint ownership as they get older, the prospects for joint ownership are weakened. However, it can also be argued that the higher support for joint ownership among the younger people is a sign of what the future holds; it is possible that the younger people's support represents a new thinking while the older people's lack of support represents the traditional attitudes.

While it may be comforting to speculate that the older people's opinions represent traditional attitudes that provide ground for gender discrimination, and that these attitudes may be on their way out, we must also take heed that they still influence many decisions over family land. The tension between the traditional and the modern in land ownership and land use is still very real and poses a challenge to female access to family land. Beliefs such as 'land is for men' are anchored in strong cultural convictions about male superiority in the home, supported by patriarchy. Family land is very intimately and intricately tied with the family heritage and identity in most African societies, and the patriarchal system tends to favour keeping that land under male control. Since joint ownership opens up possibilities for the family land to pass on to another lineage if the wife outlives the husband and marries someone else, it is not likely to be wholly embraced in patriarchal societies such as Uganda.

The variety of reasons that the respondents advanced for not supporting joint ownership are helpful to the discussion of the challenges to the ownership. The reasons included instability of marriage as an institution, husbands and wives having different plans, women and men lacking in trust, a belief that land is for men, and that joint ownership can cause misunderstandings. Most of these reasons point to a serious disillusionment with the institution of marriage, in which the strategy of joint ownership is grounded. Whereas it is argued that joint ownership of the property can glue the marriage and the family together, it may also be argued that people need some reasonable confidence in marriage before they voluntarily embrace joint ownership. They need to have a high expectation that the marriage would remain cohesive. However, with the increasing disillusionment with the marriage institution, coupled with the beliefs that men and women cannot be trusted, the society needs to rethink the assumptions that it makes about joint ownership. The task therefore is to find ways of promoting joint ownership of land that take account of the fact that many people are already disillusioned with marriage.

The respondents have questioned the notion of oneness in marriage. While the Christian view is that husband and wife become one upon marriage, and therefore presumably do what they do and own what they own together, it is becoming increasingly difficult to sustain this view. Some respondents in the study said that men and women need their own property, they each have their own rights, and that they should be free to do what they want. These views manifest the changing perceptions and functions of marriage, in which individual interests and rights are increasingly taking centre stage. Economic considerations and personal material gain are now an important feature of marriage, and are overtaking the conventional functions such as emotional support, sexual gratification and the reproduction and raising of children. Modernity is making the conventional functions achievable without formal marriage, and therefore persons tend to think more broadly before they marry. Studies such as Arland Thornton and Deborah Freedman (1982) have found that more people are actually opting for a single life because they can get what they want even without marriage.

The argument that men tend to have many 'wives' potentially constrains joint ownership of the family land. Whereas many men begin their early married life in seemingly monogamous unions, they tend to slip into polygamy over the years, adding to themselves responsibilities which compromise the security of the family members. The very likelihood that a man will take on another wife makes him hesitant to totally commit the family land to the current wife, other cultural values notwithstanding. That likelihood may also make the current wife skeptical about joint ownership of the family land, especially if she has put her own resources into securing the land. In conditions of polygamy, questions arise as to who should jointly own what with who, and especially if

the man is not able to provide for all his wives equally. On the other hand, questions also arise as to what would happen if a widow who took over total ownership of the family land marries another man. As one male respondent in Kayunga put it:

I cannot own my land with my wife because if I die today she marries tomorrow. She can take away my family land if she gets married to another man, then what will happen to my family and the family graves? So when I marry a wife she can use my land but she cannot own it.

There are several ramifications of joint ownership, depending on the circumstances of any particular marriage. While some men are worried that ownership of the family land may eventually get transferred into the hands of 'foreigners' in case the wife marries another man, others are worried that the wife may alienate the children from the land. It is possible for the widow who, because of the automatic assumption of full ownership, may want to use the land as her personal property, without due consideration for the interests and rights of the children. She may want to sell the place in order to buy another one where she feels that she has total and unencumbered ownership, but this would certainly be a cause of serious conflict with the children and members of the extended family. As one respondent in Kayunga put it:

You cannot totally trust a woman to keep the land for the family. Some women have sold their husbands' land and gone to buy land somewhere else where they feel free to do what they want. Women cannot be committed to the dead husband forever and sometimes they move on, but they must leave the land behind for the children.

Whereas some respondents argued that joint ownership can help prevent family conflicts, others also argued that it can actually cause the conflicts. There is therefore no guarantee that joint ownership would secure the land interests of the family members that it is supposed to protect. The modern values enshrined in joint ownership are very likely to be misunderstood by the family members, including those in the extended family, who have a strong traditional orientation. Whether a family effects joint ownership of the family land or not may be inconsequential to the family conflicts. Not only have women and children continued to be deprived of property mainly by the relatives of the deceased husband, but also internal conflicts within the nuclear family over property are common. It is common for adult children to want to share the land among themselves, or among a few of them, at the expense of the widow; their mother!

Security of tenure appears to be associated with support for joint ownership. The data of the study showed that the respondents with more secure tenure over the family land tend to have less support for joint ownership. The respondents who had registered land titles, which provide maximum tenure security, were less predisposed to support joint ownership than those with only purchase agreements. Having a registered title provides the land owner with the most secure and legally verifiable ownership. It is the most desirable form of ownership, but it comes at a cost. The data also shows that in practice, registered land titles have a lower incidence of joint ownership than the purchase agreements, but this is a constraint to the prospects of joint ownership. It means that Uganda's strategy of enabling more people to acquire registered interest in their land through land demarcation could actually be an unforeseen hindrance to joint ownership. The more secure the ownership over the land is, the less incentive among landholders to share the ownership, yet shared ownership makes legal sense under conditions of registered title. Unfortunately the majority of Ugandan landholders do for various reasons not have land titles⁷, so they are constrained to have a truly legitimate joint ownership even if they wanted it.

Contradictions between the traditional culture and the modern law, which are manifest in the antipathy between the formal and informal dimensions of the African social system, are a real challenge to joint ownership of family property. There are legal provisions to safeguard the interests of the family members in the family land, but those provisions are compromised by the cultural practices which are oriented towards keeping the family land firmly under male control through patriarchy. Patriarchy discriminates against female inheritance of family land, although legal provisions such as in the Succession law and the Land Act allow both males and females to inherit or buy land. The traditional values of gender inequality in the home have also led to the defeat of the DRB and MDB, which attempted to promote equity between husbands and wives. Therefore while many people are still bound by the cultural values and practices on family land, and while the cultural dimensions of land are still very strong, the prospects for accelerating joint ownership remain cloudy.

Policy Implications of Joint Ownership

Joint ownership has the potential to enhance the security of family members in the family land in the event of any disruption to the family, such as the death of a spouse. It also has the potential to forestall the inequality that patriarchy has entrenched into land inheritance and ownership. However, to achieve reasonable security of tenure for the

⁷ *Most people live on customary or communal land, while many live as long-term bonafide occupants of someone else's freehold or public land. In addition, the processes and costs of land administration are cumbersome and costly, and this hinders many eligible applicants from actually getting the land titles.*

family members through joint ownership, a combination of policy and legal measures need to be carefully and deliberately crafted. The policy and legal measures must take into account lessons learnt from the failures of previous attempts, and the variety of challenges to joint ownership.

The fact that marriage as an institution is becoming more shaky calls for a reflection on the modus operandi of pursuing joint ownership. The security of family members which joint ownership attempts to promote works best in conditions of stable marriage, therefore strategies to strengthen the institution of marriage must also come into play. Many people are in marriage but with a lot of uncertainty and skepticism about what that marriage holds for the future. Motivations for marriage have changed a lot, and marriage has come to mean different things to different people. The traditional culture and the modern law have become divergent on what marriage is, and this further complicates the issue. For example, Ugandan law does not recognise cohabitation as marriage, yet very many people perform marital roles in cohabitation. Many men and women stay in cohabitation and take advantage of the immediate benefits of the 'marriage' without committing themselves legally, and without committing to the legal obligations such as planning for the future of the spouse and children. This is a loophole which many men have taken advantage of. Attempts to recognize cohabitation in law have so far failed. The Marriage and Divorce Bill 2009, which had proposed that cohabitation should be recognised as marriage in relation to family property, and that matrimonial property should be owned in common by the spouses (Section 116), was frustrated. This bill needs to be tabled again in parliament because it would help awaken the spouses' consciousness about their obligations to each other, and hopefully help to strengthen the institution of marriage.

Many attempts to protect the rights and interests of family members tend to focus more on women, in the name of affirmative action for women. However, when modern social change is taken account, continued affirmative action towards women's rights becomes questionable. Does affirmative action really help society achieve its objectives? In the modern age, many women would feel uneasy about either of the spouses assuming automatic joint ownership of property in the family. Many women are property owners in their own right and are hesitant to share it. The idea of a wife becoming an automatic joint owner in the family land is based on the notion that women must be provided for and is now old fashioned. This is why the women that have made their own material achievements may not support automatic joint ownership because it is patronizing. The modern women may also resist joint ownership because of its potential to create complacency and dependency, yet modern times require individual hard work and self determination. Therefore the affirmative action that is implicit in joint ownership of family property may sometimes be counterproductive.

Many social problems in developing societies such as Uganda are rooted in the mismatch between the traditional and the modern. While the state policies and legal provisions to the management of society and property are guided by modern principles, many of our people are still struggling to transit from traditional thinking. They have neither substantially embraced the modern nor have they relinquished the traditional values. Of course the two do not always have to be in conflict, but quite often they are, such as in gender relations, gender roles, inheritance and property relations in the home. Any attempts to address social problems such as family conflicts over property need to be guided by a comprehensive analysis of the mismatch between the traditional and the modern, and the extent to which this mismatch accelerates those problems.

The land tenure regimes in the country must also be quickly revised in order to have a lasting solution to the confusion created by multiple tenure. Whereas the 2011 Land Policy states that the state would resolve and disentangle the multiple, overlapping and conflicting interests on land, the perseverance of the customary tenure and dual tenancy on freehold land remains a big issue. The fact that the status quo allows two independent entities to have independent ownership over the same piece of land causes confusion. For example, I can have a registered freehold ownership over a piece of land, but another person occupies the land and holds customary tenancy on it, as a bonafide occupant. Similarly, I may have customary ownership over a piece of land in an area where communal ownership is practiced, meaning that my ownership over the land is proscribed to the interests of the community. Over the years, government has tried to address the dual ownership problems, and to streamline the relationship between lawful owners and bonafide occupants, but with hardly any success. This is clearly a hindrance to many families that may be willing to implement joint ownership of their family land, but cannot do so because of the limitations and confusion imposed by the existence of multiple tenure regimes. The 2011 Land Policy made the correct observations about this problem, but the observations must be quickly translated into practical interventions.

Indeed, the existing policy and legislative guidelines of ownership of family land must be honestly and equitably implemented before new ones are formulated. There needs to be evidence that the land administration system is committed to the implementation of the guidelines, to create confidence and win the trust of the people. It is not enough for policy guidelines to say, for instance, that there would be no gender discrimination in land ... yet there are no practical measures to ensure that the discrimination does not happen. It is also not enough to legislate for the consent of the spouse before a man sell family land, without following it up with legally enforceable measures. At the local level, some of the community leaders are trying to involve wives in the land transactions initiated by their husbands, and this is a good attempt but it is not what one would expect, legally. The land administration system should make special provisions for

transfer of family land, which clearly provide for the consent of the spouse. At present, the land transfer form that is in use is the same one that has been used for many decades, and does not make any provisions for evidence of spousal consultations or consent to the sale or transfer of the land.

Community views on how to promote joint ownership

The community views on how joint ownership of family land can be promoted resonate quite strongly with the policy implications discussed in this paper. The most prominent view expressed by the community was that joint ownership will work better if marriage is strong, and that marriage, and the religious values on which it is based, should be strengthened through sensitization. Programmes must be established to sensitize people on the importance of marriage as one of the pillars of society. Another view was that communities need to be sensitized on family land ownership, so that there is an understanding of the rights and obligations of all the parties to the land. The implication here is that many people lack an understanding of who has what rights, what obligations the rights entail, and the forms of ownership. The mechanisms for actualizing the rights and for performing the obligations are also either not clear or are hindered by several constraints. The communities also proposed that cultural beliefs and practices on land need to be reviewed. Needless to say, cultural beliefs that exclude women from land ownership, or practices that tie up land to particular lineages, are a concern to many people. The view that people need to be sensitized on land therefore comes naturally from the community, which has lived experiences of the pain of ignorance on land issues. Lastly, some community members were of the view that joint ownership of family land between husband and wife should be made into law.

Conclusions

Joint ownership of family land has the potential to protect the interests of the family members in the land, so that the death of the husband does not have to be followed expulsion of the wife from the land, as is often the case. Joint ownership allows the surviving spouse to assume full ownership of the land, but it must be backed by proper and legal documentation of the ownership, which is for various reasons difficult for many families. Even among families that have legally documented ownership over the land, joint ownership is hardly practiced, despite the fact that they know about it. The knowledge, attitudes and practices on joint ownership are inconsistent. Almost everyone knows about joint ownership, the majority are in favour of joint ownership, but only a very small minority practice it. Cultural factors seem to be very central to the attitudes of the people towards joint ownership of the family land, but economic considerations

also have a role to play. Women are more in favour of joint ownership than the men, but it is also remarkable that there are many women among those opposed to it. This paper has argued that, among other reasons, some women are opposed to joint ownership because many of them have themselves become property owners in their own right, and want to protect their hard earned property. The discrepancy in the attitudes and practices suggests that joint ownership is faced with many challenges, which include the dominance of cultural values that propagate discrimination of women in land ownership, disillusionment with marriage, the conflict between the cultural and legal prescriptions on land, the multiple land tenure regimes in the country, the cumbersome and costly land administration system, and the poor political support for the joint ownership. Therefore in order to be effective, any policies and strategies for securing the interests of the family members in the family land must take account of these challenges.

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References

- Arland Thornton and Deborah Freedman (1982): Changing attitudes towards marriage single life; *Family Planning Perspectives*, Vol. 14 No. 16, Nov 1982, Guttmacher Institute
- Kabumbuli, R., Mubangizi, J., Kindi, F., Sebuliba, J.; (2008): Land Ownership and Food Security in Uganda: A study of Land Use and Control among Households of Women Living with HIV in Four Districts; <http://www.ifpri.org/renewal/pdf/RFbrief18.pdf>.
- Mugambwa John Tamukedde; 2002: Principles of Land Law in Uganda, Fountain Publishers, Kampala.
- Government of Uganda: The Constitution of the Republic of Uganda 1995.