

HARNESSING YOUTH SOCIO-ECONOMIC POTENTIAL THROUGH OPTIMUM UTILIZATION OF USER RIGHTS UNDER CUSTOMARY TENURE: THE UGANDAN CONTEXT.

INTRODUCTION.

Uganda is a landlocked country found in East Africa. It has a total area of 241,550.7 square kilometers. Open Water bodies cover 36,527.4 square kilometers (15.3 percent of Uganda's total area). Wetlands cover 4,500 square kilometers (1.9 percent of Uganda's total area). Land area is 200,523.2 square kilometers (83.0 percent of Uganda's total area). By 2010 Agricultural land was at 91,151.8 sq. km. Built up land area increased by more than 10 Fold between 2005 and 2010.¹ Despite an abundance of natural resources, Uganda is one of the poorest nations in the world. In 2012, 37.8 percent of the population lived on less than \$1.25 a day. Despite making enormous progress in reducing the countrywide poverty incidence from 56 percent of the population in 1992 to 24.5 percent in 2009, poverty remains deep-rooted in the country's rural areas, which are home to 84 percent of Ugandans.²

Land in Uganda just like many of the countries in Sub-sahara region is the most basic resource in terms of the space it provides, the environmental resources it contains and supports, and the capital it represents and generates. It is a commercial asset that can be used and traded. It is a critical factor of production and an essential part of the national patrimony. It is a key factor in shaping individual and collective identity through its history, the cultural expressions and idioms with which it is associated. It also influences spirituality and aesthetic values of all human societies. Land is perhaps, the most essential pillar of human existence and national development and is usually a political issue with potential to be volatile. In this regard, its control, management and use, continues to be a critical factor in Uganda.³

People in rural areas of Uganda depend on farming as the main source of income and 90 per cent of all rural women work in the agricultural sector. The Government of Uganda equally looks to the agricultural sector to drive growth and contribute to further reducing rural poverty. Accounting for 26 per cent of gross domestic product and employing 69% of the population, the sector has potential for vibrant and diversified growth. This implies that the agricultural sector which is a sub sector of the land sector plays a vital role in determining the economic growth rates of the country.

The land sector in the country is much broader than just the agricultural sector and encompasses also the mining, forestry, building and construction sectors among others. Forestry and savannah woodlands supply over 90% of Uganda's energy requirements and will continue to do so in the foreseeable future.⁴ The mining industry in Uganda reached peak levels in the 1950's and 1960 when the sector accounted for up to 30% of Uganda's export earnings. However, political and economic instability experienced in the country in the 1970's and the recent global economic slowdown led the sector to decline drastically. Currently, the mining and quarrying sector

¹ Uganda Bureau of Statistics, 2016 Abstract Page 1.

² Supra

³ National Land Policy, 2013 Chapter 1, Page 1.

⁴ The Role of Forests in Uganda's National Economy by Yakobo Moyini.

contributes 0.6% to the GDP although this figure is expected to go up with the discovery and subsequent exploration of oil in the Albertine graben.⁵

However, despite Land and agriculture being the economy's biggest steering points, the youth, have not been successfully integrated into the sector. Youth in Uganda continue to dominate ranks of most vulnerable and most powerless groups in the labour market and decision making spheres. It is therefore imperative to explore the dynamics of youth's involvement in the development process especially in regard to the land sector.

It should be noted that Uganda is famed for having the world's youngest population with 80% of its 36.6 million people being under 35 years of age.⁶ According to a 2008 World Bank Report, Uganda is among the countries with the youngest population and the highest youth unemployment rate of 83%.⁷

These statistics have by many been described as a ticking time bomb or a population crisis because of the problems it presents among which are unemployment, population pressure on limited national resources, increased rural-urban migration, increased burden on the state to cater for unemployed youth. However, these same demographics if properly exploited can be classified as a work force which can in turn help in the country's growth.

The Uganda National Youth policy recognizes that the major causes of a high youth unemployment rate are lack of employable skills, lack of access to resources like land and capital, lack of focus by the existing programs on the informal sector and agriculture, overemphasis on experience, lack of apprenticeship schemes, negative attitudes by the youth towards work especially in agriculture, lack of a comprehensive employment policy and negative cultural attitudes such as gender discrimination et cetera.⁸

The above notwithstanding, Uganda is blessed with an abundance of land and land based resources which remain largely underutilized. Land has continually been recognized as a fundamentally important resource in Uganda, and is the basis of income, sustenance, and identity for the majority of Ugandans. Despite this, evidence reveals that youth engagement in agriculture is declining amidst rising youth unemployment yet the services and industrial sectors which are preferred despite growing at considerably faster rates have not created enough jobs for the burgeoning youthful labour force. This has negative implications on food security, poverty reduction and economic prosperity

⁵ Ibid.

⁶ The Uganda Youth Survey Report by Aga Khan University, August 2016.

⁷ World Bank Annual Report, 2008.

⁸ The National Youth Policy 2013, Uganda.

UGANDA'S LAND TENURE SYSTEM.

Land in Uganda belongs to the citizens and vests in them in accordance with the stipulated land tenure systems⁹. These include; Mailo, Freehold, Leasehold and Customary tenure.

The holder of land in freehold has full power of ownership. This includes the power to use and develop land for any lawful purpose, to sell, dispose of by will, lease, mortgage and create rights and interests for other people in the land as they see fit.

Leasehold tenure is a form of tenure whereby one grants to another a right to exclusive possession of land for specified period, usually though not necessarily in return for periodic payment of rent. In Uganda, the maximum period for which one can be granted a lease is ninety-nine years. The law also requires that leases granted for a period of three years or more must be registered. Owners of land parcels held under the other three tenure systems are also at liberty to grant leases.

Mailo tenure is unique to Uganda and derives its legality from the Constitution and its incidents from written law. The tenure had its origins in the 1900 Uganda Agreement between the British colonial administration and the chiefs of Buganda. Under the agreement, about half of the land in the kingdom of Buganda was allocated to chiefs and notables as their private property in perpetuity and the rest of the land became crown land. The allocations were expressed in multiples of fractions of square miles. Hence the term 'mailo' which is a luganda language corruption of the English word 'mile' was adopted to describe this new system of land holding.¹⁰ Although initially only a few privileged people owned mailo land, gradually through sale, donation and inheritance the land was subdivided and fragmented. Mailo land just like freehold tenure entails holding registered land in perpetuity and a mailo owner is entitled to enjoy all powers of a freehold owner subject to the customary and statutory rights of lawful and bonafide occupants of the land.

Customary tenure is unique because it is governed by both the Land Act 1998 and custom all at the same time and first became recognized as a form of tenure upon the enactment of the 1995 Constitution. Before this, the land had been declared by then president Idi Amin Dada in 1972 to be public land and all those who lived on it were customary tenants at sufferance, whose rights were limited to use as long as the government did not require it for development or as long as it was not issued out as a lease to another person.

With the exception of land in Buganda and urban areas, most land in Uganda is owned under customary tenure and accounts for more than 80% of land owned. Owing to the fact that under customary tenure, land holding is according to the norms and practices of a particular community or group, it varies from one community/tribe to the next although there may be similarities that cut across. These cultural norms have evolved over time to take into account changing dynamics of the society similarly, customary tenure has evolved over the years to cater to these changes. The largest portion of the land held customarily remains unregistered.

Customary tenure as provided for in the Land Act 1998 exists in three forms namely: Individual ownership, Family land and Communal land. Under individual ownership, the full bundle of

⁹ Article 237 (1) of the 1995 Constitution Of Uganda.

¹⁰ Principles of Land law in Uganda by John T. Mugambwa, Page 2.

rights may be vested in a single individual as with mailo and freehold land. This form of customary tenure is common in western and south-western parts of Uganda where the population density in these regions is slightly higher than in the northern and eastern region.

Family customary land is that on which a group of individuals who share ties of blood, marriage or adoption have the family home or from which the family derives sustenance and that which is treated as family land according to the norms, customs, traditions or religions of the family.¹¹

Communal customary land according to the Land Act, 1998 is land held by a community under customary tenure out of former public land. A community according to the third schedule of the Constitution means an indigenous community of Uganda and includes any clan or sub-clan of any such community. It is therefore land held by a specific community or group of people recognizing individual rights in that land and regulating its use and management.

THE NATURE OF CUSTOMARY TENURE.

Customary tenure is structured in such a way that there are different bundles of rights found within one parcel of land. These are categorized into two main sets. Estates of administration (ownership rights or controlling rights) and estates of production (user rights). The former refers to rights of allocation, user control and disposal restriction whereas the later refers to the rights of beneficial use. The control of this resource is often a reserve for male elders in a family, clan or tribe save for where the land is individually owned. This implies therefore that women and youth usually have only access to use the land and not to control it. The land laws in place have tried to address this anomaly especially for women but practice in most communities has not changed much even with the laws in place.

Throughout history and through instruction, we have been taught and instructed that customary tenure is backward and not progressive. This tenure is often associated with the following problems;

- It doesn't provide security of tenure for landowners. Given that a large proportion of land under customary tenure is unregistered, it's believed that the community mechanisms in place are far from adequate to guarantee owners security.
- It impedes the advancement of land markets since transfer of rights in land is more difficult under this tenure.¹² Where the land that is subject of sale is owned either communally or by family, obtaining consent of all parties may prove futile
- Because it has its roots in a patriarchal system, it discriminates against women.
- The dual legal approach used for land administration creates more confusion than clarity among others. Various researches have shown that in most rural areas where the education levels are quite low, cultural practices and norms continue to take precedence over written law even where there is inconsistency.

¹¹ Section 39 of the Land Act Cap 227.

¹² The National Land Policy, 2013 Clause 4.3

CHALLENGES YOUTH ENCOUNTER WHEN DEALING WITH CUSTOMARY LAND TENURE

In specific reference to the youth, the line up of challenges associated with this tenure gets even longer.

1. Its unregistered nature makes it difficult to access to credit. Access to financial services such as savings and loans is of fundamental importance to start any business activity within the land sector be it agricultural or otherwise. In both developed and developing countries, most Financial Service Providers(FSPs) provide few savings or insurance services for youth, focusing more on credit, despite the fact that savings remain extremely important to youth for building up assets for investments and In addition, few, if any, financial products are specifically tailored to youth.

Research shows that while the majority of micro-finance institutions (MFIs) do serve young people above the age of 18, they are rarely recognized as a specific client group, and few products are developed to meet their unique needs. In addition, before releasing funds to youth, many FSPs ask for loan guarantees, such as formal land titles steady employment, personal guarantors, solidarity group guarantees or more informal guarantees (motorcycles, furniture etc.) all assets that youth typically do not possess because they are economically disadvantaged.¹³

2. Youth often only have beneficial rights over the land but no control thus limiting the manner in which they may utilize the resource. In order to elevate these rights, inheritance also seems to be the major mechanism youth can use however, due to the high life expectancy now; inheritance comes at a much later stage. Given that life expectancy is increasing however, rural youth may not be youth by the time they actually inherit the land. Moreover, due to explosive population growth, the number of young Ugandans among whom the land must be divided has expanded tremendously. Therefore, when the youth do inherit some of their family's land, they may end up with a very small stretch.

Moreover, the challenges faced by young men in accessing land are multiplied for young women given the patriarchal nature of cultural norms and practices. The National Land Policy 2013 recognizes that even with the existence of statutory law that protects the interests of women enforcement of the same has been poorly done and as such practice and cultural continue to prevail to their detriment.

3. Limited or no access to information and knowledge. It has been widely documented that education is key to overcoming development challenges in rural areas. Not only is there a direct link between food security and education of rural children, but it has also been shown that basic numeracy and literacy skills help to improve farmers' livelihoods (FAO, 2007).¹⁴ In specific reference to agriculture youth's access to knowledge and information is crucial for addressing the main challenges they face. As earlier stated customarily held

¹³ Derived from 'Youth & Agriculture: Key challenges and Concrete Solutions' Food and Agriculture Organization(FAO), Technical Centre for Agricultural & Rural Cooperation(CTA) and International Fund for Agricultural Development(IFA).

¹⁴ *ibid*

land is found in rural areas of Uganda. This implies that most of the youth that interact with this tenure are from rural areas with low levels of education and lacked access to even the most rudimentary formal education. In order for these rural youth to shape agricultural policies affecting them directly, in terms of access to markets and finance as well as green jobs and land, they need to receive appropriate information and education. Formal primary and secondary education can provide young people with basic numeracy and literacy, managerial and business skills, and introduce youth to agriculture. Meanwhile, non-formal education (including vocational training and extension services) and tertiary agricultural education can offer youth more specific knowledge related to agriculture. Furthermore, the education is not holistic in nature and there is often a mismatch between the kind of training offered and the requirements of the labour market in an evolving agricultural sector (UNESCO, 2010). Rural youth repeatedly reported lack of training in areas such as leadership and business management as well as the need for apprenticeship opportunities.

CUSTOMARY LAND TENURE AS THE AVENUE FOR YOUTH CAN ACCESS SOCIO-ECONOMIC EMPOWERMENT.

The major challenge affecting youth participation in the land sector is access to land as a resource for development. Under customary tenure, a good proportion of youth are guaranteed access to land without the need to purchase it. The most common system to obtain land is through traditional customary inheritance. Although women are often disinherited on the basis of sex, this can be addressed through massive sensitization of the elders to achieve attitude change. Given that the youth are already economically disadvantaged owing to unemployment and the ever growing market value for the dwindling resource, this advantage cannot be ignored. Even in instances where one's immediate family may lack land it may be easier to pursue the option of obtaining a short term lease from a kin with large parcels of land. This process should be formally done with a land lease contract in written form to avoid instances where lessees later turn around to claim the land

One of the challenges identified as applying to customary tenure is insecurity of tenure owing partly to its unregistered nature. The Land Act of 1998 provides a mechanism to avoid this, by providing inter alia, that customary land owners may acquire certificates of Customary Ownership (CCOs). Acquiring a certificate under customary tenure reduces the danger of unlawful appropriation associate with rapidly increasing land values, land grabbing, eviction among others. In addition, where the land is owned either by the family or by the community, the law requires that during the process of registration all persons with interests in the land including women and youth must be included as having such interest in the land. This would subsequently open doors for youth to access credit from financial service providers given that they would have titles to present as collateral. This would equally place a burden on the government that the customary registry mentioned in the National Land Policy is put in place to ensure that this is made achievable.

Given the economic and social value attached to land, disputes arising from its use or misuse, acquisition or management should be resolved with relative ease and in a timely manner. Customary tenure offers the option of dispute resolution through established clan, family or

community mechanisms. These are mechanisms that the community would understand and appreciate better. It would also take a shorter time for an issue to be resolved through these informal justice systems than if the formal justice systems were to be employed. It cannot be denied that these informal courts fall short in some areas especially in granting equal justice to both men and women this however can be resolved through continuous capacity building of community elders on issues of access of justice. In comparison to the formal justice system where a land case would take an average of five years to be resolved during which time a caveat may be placed on the land disabling both parties from utilizing the land, with the informal customary courts disputes are disposed of in less time enabling the land to be utilized quicker.

Lastly, land under customary tenure can be reserved as a basic social security for the youth in their later years in a country where formal social security is a reserve for very few. The international Labour Organization (ILO) convention 102 describes social security as guaranteeing a stable income through medical, sickness benefits, unemployment benefits, old age benefits, employment injury benefits, family benefits, maternity benefits and invalid benefits. Social security recognized as a human right is a key mechanism to ensure social and economic quality. It is estimated that only about 3.6% of Ugandans have some kind of social security scheme and even these are not complete in the real sense of the word as defined by ILO. This implies that in the event that unemployed youth lose their stable source or upon getting old there is no fall back plan to enable them live a decent life. Given that ownership rights in customary land are mainly transferred through inheritance, the land is usually left in safe custody of the elders for future generation. This implies that in the event that the need for a social security plan arose and there was none, the youth with rights in customarily held land have a source from which to derive a source of sustenance.

CONCLUSION.

There is often a misunderstanding of the nature and role of customary law and practices. Customary law and practices are regarded as negative factors and evidence of bad practice yet on the other hand if it is conceived as dynamic, adaptable and progressive the advantages identified in this paper could be maximized to ensure that majority of the youth in Uganda who live in rural areas are made aware of the advantages of the tenure the land on which they live and derive a sustenance.

Africa's growing youth population comes with high energy, creativity and talents, which are "also the key to future prosperity," notes the [*African Economic Outlook*](#). If properly harnessed and guided the youth have the ability to turn things around for Uganda and Africa as a whole and as such a lot of energy needs to be focused on equipping them with skills and knowledge to make this a possibility.

