

POLITICIZATION OF LAND LAW AND GENDER RELATIONS IN UGANDA: A CASE STUDY

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ABSTRACT

This article explores the impact of custom on the right of women to effectively participate in land decision-making processes in Uganda based on a case study of Ibanda Town Council (ITC). It makes an analysis of issues of access, ownership, control and usability of land by both women and men in order to come up with a clear understanding of how each of them is related to custom, which have been politicized. It can thus be asserted that if these issues had not been politicized, their impact on women would have been different. In order to arrive at such a conclusion, this article gives a historical perspective of land law and gender relations in ITC. The history of land law and gender relations in ITC can best be understood by examining the broader history of Ankole Kingdom, in which ITC lies because not much has been written about its history. On the other hand, a lot is known about Ankole Kingdom in broader terms. In order to capture the broader issues of the land question in Ankole Kingdom, however, the article adopts a broader perspective on law and gender relations in Uganda.

I. INTRODUCTION

Issues of access, ownership, usability and control of land by women in Uganda, which traditionally were determined by making reference to customary norms of each group of people, were politicized at the time the country became a British colony in 1900 by virtue of signing the Buganda agreement. Ibanda Town Council, which was part of Ankole Kingdom did not become part of the British territory until 1901 when the Ankole agreement was signed.

The politicization of land in the country came up as a result of requiring that land which was a subject of customary land tenure before the advent of colonial rule in the country be subjected to statutory law and be administered in accordance with the whims and wishes of the colonial political administrators. Colonial administration in Uganda was entrenched through a number of agreements between the representatives of the Monarch of England and Ugandans, who were not, at that time literate or even aware of the potential value of the land they superintended over before the signing of

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the colonial agreements. The salient, and probably the most essential features of all the colonial agreements referred to was the appropriation of land, making it subject to the Registration of land titles and divesting the customary owners of their rights they hitherto enjoyed over such land. Women in Uganda were adversely affected by the registration and politicization of land under both the colonial administration and even during the post colonial period.

At the time of writing this article, many Ugandans were grappling with how to redress the historical imbalances created by colonial history in the law and gender relations sector. Women in particular had not yet attained the yearned-for gender equality in respect to access, ownership, usability and control of land in Uganda. That was the case in spite of constitutional and legal reforms ushered in the country by the 1995 Constitution, which in respect to gender equity principles; takes up a lot from the United Nations Women Conference that was held in Beijing in 1995 and the Declaration that ensued from the Conference proceedings. In a nutshell, the Beijing Declaration advocated for the involvement of women in decision-making processes, concerning all aspects of their lives. That point of advocacy was based on the understanding that women's rights are human rights, and therefore, they should enjoy all aspects of their lives without discrimination based on any grounds including sex and gender. By advocating for equal enjoyment of human rights by women and men, the Beijing Conference was restating the position taken earlier by the United Nations which adopted the Universal Declaration of Human Rights in 1948, a document that would be a point of reference for future initiatives by governments to address issues of gender imbalances in their jurisdictions.

In the case of Uganda, and for purposes of this study, specific attention was paid to aspects of land law and gender relations, which as asserted were politicized and rendered problematic to women and the enjoyment of their rights of access, ownership, usability and control of land. It was understood that land in Uganda forms the basis for livelihoods of the majority of Ugandans, and that most women are engaged in livelihood activities related directly to harnessing of the land resource. In order to come up with a clear understanding of the imbalanced relationship between land law and gender relations in Uganda, a case study method based on Ibanda Town Council (ITC) was adopted for this study.

II. THE POLITICS OF ACCESS, OWNERSHIP, CONTROL AND USABILITY OF LAND IN IBANDA TOWN COUNCIL

In this article, issues of access, ownership, control and usability of land in ITC are informed by the feminist perspective. This perspective, as internalized and expounded

upon by Freeman, would be understood as:

... a range of committed inquiry and activity dedicated first, to describing women's subordination—exploring its nature and extent; dedicated second, to asking both how—through what mechanisms, and why—for what complex and interwoven reasons—women continue to occupy that position; and dedicated third to change'... Feminism inquires into the politics of law, but its particular focus is on the [role of law] in perpetuating patriarchal hegemony.¹

The feminist perspective is imperative in analyzing the concept of patriarchy, which is informed by custom among other aspects such as colonial history that can be discerned from imported English law into the juridical norms of Uganda. In its politicized form, patriarchy is upheld in social settings where men are the organizers of society. An understanding of the patriarchal hegemony would then be important in articulating the impact of patriarchy on women's right of access, ownership, control and usability of land in ITC and also in other parts of Uganda.

Available literature indicates that customary law was the norm in the pre-colonial Uganda and as such in ITC.² Before colonialism, there were a few variations in the overall principle of access to land rights; these were based on occupancy acquired through lineage and inheritance.³ The occupancy of land during the pre-colonial Uganda was based on land tenurial systems that were largely informed by customary political settings.⁴

The land tenurial systems in the pre-colonial Uganda could be conveniently divided into two categories. The first was where the ownership of communal or tribal land occupied by a community or tribe was vested in the paramount leader of the community or tribe, who would be a man, as the owner, the latter holding it in trust for the people under his dominion. The second category was where ownership of clan or

1. M.D.A FREEMAN, LLOYD'S INTRODUCTION TO JURISPRUDENCE 1028 (1994). Freeman cited the views of other feminist proponents such as Clare Dalton and H. Wishik. See, e.g. C. Dalton, *Where We Stand: Observations on the Situation of Feminist Legal Thought*, 3 BERKELEY WOMEN'S L. J. 1 (1987-1988) (delineating historical stages of feminist theory).

2. See, S.R KARUGIRE, A HISTORY OF THE KINGDOM OF NKORE IN WESTERN UGANDA TO 1896 (1971). See also, E.I STEINHART, CONFLICT AND COLLABORATION: THE KINGDOMS OF WESTERN UGANDA (1977).

3. J.M.B. TUKAHIRWA, POLICIES, PEOPLE AND LAND USE CHANGE IN UGANDA: A CASE STUDY OF NTUNGAMO, LAKE MBURO AND SANGO BAY SITES (2002).

4. Interview with James Kahigiriza on the 16 July, 2007 at Kyamugorani, Kakiika, Mbarara. Kahigiriza, was the *Enganzi* (Prime Minister) of Ankole Kingdom from 1963 to 1967.

family land was vested in the clan or family, the latter holding it in trust for the whole clan or family. The clan and family institutions were crafted under the male figurehead.⁵ Relics of clan or communal land holding systems in Uganda can be traced in the northern region of the country, where the traditional leaders such as the Rwot in Acholi region still has a say on how land could be accessed, owned, used or controlled. That type of land tenurial system would not accommodate individual appropriation of interest in such land. Community or tribal interests took precedence over individual interests in any piece of land. Such clan or community interests could then be interpreted as male interests basing on the fact that the society of ITC was crafted on a politicized male figurehead, the Omugabe.

From the observation made, the relics of such tenurial systems in ITC could be identified in areas of communal interests in land such as water sources, clay and sand extraction points and in some cases hilly areas still reserved as communal agricultural and grazing land. In a few cases, road reserves were used as communal grazing land for domestic animals such as cows, goats and sheep. Some families still preserved family burial grounds for the burial of all their dead family members. However, to date, there are few families that keep communal burial parcels of land. Individual households have their own burial grounds. According to Godfrey Mwitani,⁶ in ITC, Kibubura's burial grounds (*ekituuro kya Kibubura*),⁷ could probably be the equivalent of clan land because some family members in Kibubura's lineage, since she did not beget a child of her own, wherever they live bring their dead to be buried at the same place. *Ekituuro kya Kibubura* is also regarded as communal land because most people in ITC regard it as their cultural heritage property and respect it as such. The graveyard is cared for by a male heir to Kibubura, much as the latter did not have any children. However, the initial area demarcated as Kibubura's burial grounds have been encroached upon by developers and no deliberate attempts have been put in place to maintain the place. It is asserted that if Kibubura had a son or a child at all, her estate would have been protected by that child and could not have been encroached upon as if it had no owner.

According to Mwitani, another communally revered piece of land in ITC was that upon which is located *amabare ga Galt* (Galt's memorial heap of stones) at

5. F.I. Kindi, Challenges and Opportunities for Women's Land rights in Post-Conflict Northern Uganda (MICROCON Research Working Paper 26, 2010). Retrieved from <http://www.microconflict.eu/publications/RWP26_KFI.pdf>, (accessed July 13, 2010).

6. Interview with Godfrey Mwitani, a retired Clerical Officer in his early sixties and son to the late Yairo Mujonjo, who was the Treasurer for the late Kibubura; Mwitani occupies part of Kibubura's *mailo* land, just a few metres from the spot where Kibubura was buried.

7. Kibubura was a *Gomborora* (subcounty) Chief of Ibanda at the time colonial administration was extended to the place.

Kamukuri on Ibanda-Kagongo road. Much as it was not a communal burial ground, it was a site of communal importance to all the people in the area because it was the place where the British colonial administrator, Galt was speared to death in 1905. The heap of stones on the former Rest House in which Galt was killed resurrects colonial cruelty memories which are handed down from generation to generation in the area. Such memories included the torture and humiliation men in ITC suffered under the hands of colonial administrators of Ankole while collecting stones and heaping them on the house in which the *muzungu*⁸ was killed.

From the study, it can be noted that under the customs of the people in ITC, women would not be regarded as able bodied persons when activities considered as hard tasks such as collecting of heavy stones in the case mentioned would have to be undertaken. They would also not be expected to participate in discussions relating to access to land, its ownership, use and control. That is why for instance, when Kibubura died, her land was taken care of by a man. This indicates how customary norms of the people of ITC placed women in a subordinate position compared to men in respect to land matters.

It can further be noted that the subordinate position women in ITC found themselves in followed them to the grave as illustrated in the case of Kibubura whose former male attendants and relatives shared her property and neglected to maintain her grave yard. In the *kinyankore* custom,⁹ when a woman died while a spinster or had no children, her death would mark the end of her legacy, since there would be no customary heir to her estate as is the case in *the kiganda* culture, where each person, irrespective of gender considerations, would have an heir.¹⁰ It can be observed that because Kibubura did not have an heir, her prominence would fade in the memories of the people of ITC after her death and that her grave yard would become of less significance to individual developers who would encroach on it. In fact what keeps Kibubura's name in the minds of the people of ITC is Kibubura Girls' Secondary School which was named after her in commemoration of her great contribution towards upholding the values of gender equality in the area.¹¹

It can thus be concluded that the *kinyankore* custom, which is the same custom for most people of ITC, women would not be permitted to own land in their sole capacities. They would access, own, control and use land *via* male members of their

8. This term is literally used to refer to a white person possibly from the western world.

9. This is a custom practiced by the Banyankore, one of the ethnic tribes of western Uganda.

10. This is a custom practiced by the biggest ethnic tribe in Central Uganda known as the Baganda.

11. Interview with Naume Bishaka, a retired Chairperson of Mothers Union in Ankole at her home, Bubare Ward, ITC on 26 July 2008.

society. In that regard, custom impacted negatively on the right of women to effectively participate in land decision-making processes in Ibanda Town Council.

In respect to the land law, the colonial administration in Uganda subjected the people of ITC to the same laws and regulations as were generally in force throughout Ankole Kingdom law.¹² The Ankole agreement made fundamental changes in the land tenurial systems in ITC. Prior to 1901, land in ITC was held under customary tenure systems and documentary evidence of occupancy to land was unknown.¹³ The 1901 Ankole agreement formed the core of the land tenurial systems that hitherto did not exist in ITC, namely *mailo*, freehold and leasehold. The land tenurial systems introduced in ITC disadvantaged women who were not allocated any land at the time of land redistribution under the colonial administration. Under the Ankole agreement, the *omugabe* and his notables (chiefs) who were all men were the only persons allocated *mailo* land in the kingdom.

Under the traditional communal tenure system that existed in ITC before the introduction of colonial land law, each household was entitled to claim use rights to any piece of land he or she would find available and not in use by others at that particular moment in time. According to Kigula, such a requirement provided some limited degree of gender equality.¹⁴ The introduction of the colonial land law further politicized land and gender relations which resulted into limited, and consequently diminished the right of access, ownership, control and usability of land by women in ITC. This was largely as a result of the introduction of the requirement of registering the hitherto customary interest in land by those persons who would be in position to do so—the majority of whom would be men. Men were already favoured by the patriarchal and patrilineal nature of the society they lived in, since under that system they would be the ones to inherit family customary land. As such, they were able to register that same land in their personal capacities because the law did not require a person applying to bring land under the Registration of Titles Act to co-register it with their spouses or other users of the same parcel of land. This played to the disadvantage of women in ITC because it divested them of the interests they hitherto held in customary land and vested it entirely on men.

12. Ankole agreement, 1901, art. 7.

13. Interview with Patrick Nathan Kirindi, a retired Lay Magistrate, on 30 December, 2006 at Omukatongole, Kikyenkye, Ibanda district and Michael Kibeihere in ITC on 28 & 29 July, 2008.

14. J. Kigula, *Land Disputes in Uganda: An Overview of the Types of Land Disputes and Dispute Settlement for Access to Land and Other Natural Resources in Uganda* (Makerere Institute of Social Research and the Land Tenure Centre, Wisconsin-Madison University, 1996).

III. BROADER ASPECTS OF LAND LAW AND GENDER RELATIONS IN IBANDA TOWN COUNCIL

An exploratory review of a number of studies on African gender relations and decision-making processes indicate that women's plight and gender discrimination, particularly during the colonial and post-colonial periods were deliberately neglected, ignored, misconceived and distorted by scholars and politicians.¹⁵ Gender inequality and biases against women particularly under customary systems, rendered land inaccessible to women in terms of ownership, control and usability due to the terms set for them by the politicized male dominated society. This situation was not only unique to Uganda, but also to the neighbouring United Republic of Tanzania where the ground was not levelled in terms of law and gender relations. For example, according to the findings of a study conducted by the Government of the United Republic of Tanzania, all major decisions on land were made by men or an assembly of men due to the traditional male domination and female subservience.¹⁶ It therefore becomes apparent that underpinning the problem of gender discrimination, women's marginalization and exclusion were the complex economic, social, cultural and political issues perpetuated through social institutions including the family, community, custom, religion, and the market and state ideologies.

Mamdani for instance, stated that the system referred to in Common Law Africa as 'Customary Law' was in fact a collection of rules, norms and institutions of dubious province, including judge-made law, mutations of inherited colonial practice, and indigenous values and practice of various African communities refined through decades, possibly centuries, of inter-migration and interaction with one another.¹⁷ This observation becomes equally apparent that issues of women subordination as a consequence of land law and gender relations in ITC were compounded by the introduction of an alien British legal system which when critically analyzed, was an amalgam of the complex concepts espoused by Mamdani. Mamdani's position and the findings of the study conducted by the government of the United Republic of Tanzania indicate that a number of factors, including mutations of the law, male biases and domination, female subservience and customary systems had an influence on the land

15. *See*, INTRODUCTION: PERSPECTIVE OF GENDER IN AFRICA (A. Cornwall ed., 2005); BARGAINING WITH PATRIARCHY (D. Kandiyoti ed., 1997); GENDER, POWER AND CONTESTATIONS: 'RETHINKING BARGAINING WITH PATRIARCHY (D. Kandiyoti ed., 1998); and C. OBBO, AFRICAN WOMEN: THEIR STRUGGLE FOR ECONOMIC INDEPENDENCE (1980).

16. UNITED REPUBLIC OF TANZANIA, REPORT OF THE PRESIDENTIAL COMMISSION OF INQUIRY INTO LAND MATTERS 124 (1994).

17. M. MAMDANI, CITIZENS AND SUBJECTS: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM (1996).

law and gender relations in Africa and thus prevented women from equally participating in land decision-making processes as men.

In Ibanda Town Council, clan leaders, who were hierarchically below the *omugabe* played a big role in the adjudication of land disputes. Land disputes were, however, rare in ITC, which was occupied by two groups of people; *abahima* (cattle keepers), and *abairu* (peasants). The *abairu*'s main economic activity was crop farming while for the *abahima* it was livestock keeping. The *abahima* lived a nomadic lifestyle, in search of water and pasture for their animals, while the *abairu* practiced shifting cultivation. None of those groups required permanent places of settlement and rarely did they engage in land wrangles.

In general terms, land in ITC during the pre-colonial period was largely viewed as a symbol of social empowerment in the case of the *omugabe* (king) and an aspect of production and reproduction for his subjects—the *abahima* and *abairu* equally. However, the situation changed during the colonial period. Land disputes which were rare in the pre-colonial ITC increased due to the privatization and conceptualization of land as a commodity during the colonial period. In the same vein, gender relations which were conditioned by the land law too were to change in a manner that would disadvantage women, who would have to seek for permission from their male counterparts—the registered owners of land before accessing or utilizing it. Much as there was an ideological shift in the land law and gender relations between the pre-colonial and colonial periods, there was no corresponding paradigm shift in the land law and gender relations between the colonial and the post-colonial periods in ITC. Indeed, the female-male gendered relations during the early post-colonial period were a continuation of the problematic patriarchal female-male gendered relations started during the pre-colonial period and reinforced by instruments of colonialism such as religion and education. In support of that position, Matembe while discussing the provisions of the 1967 Constitution of the Republic of Uganda in respect to gender relations, stated that:...one could have thought that this was a mere oversight, but in fact Article 20, Clause 4 of the 1967 Constitution, expressly allowed the enactment of laws that were discriminatory in relation to family matters.¹⁸ Article 20 Clause 1 of that Constitution provided that:

Clause (1) of this Article shall not apply to any law so far as that law makes provision...(d) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; (e) for the imposition of restrictions on the acquisition or use by

18. M. MATEMBE, GENDER, POLITICS, AND CONSTITUTION MAKING IN UGANDA 125 (2002).

any person of land or other property in Uganda.

According to Matembe's discussion, it can rightly be asserted that the above constitutional provisions of the 1967 Constitution expressly allowed enactment of discriminatory laws in respect to among others access, ownership, control and usability of land in any part in Uganda. It can be observed that the continuum of unbalanced gender relations led to the maintenance of women in ITC in a subordinate and marginalized position in respect to the rights of access, ownership, control and usability of land. In support of that view, Kahigiriza stated that:

it is not a debatable issue that in Ankole women are subordinate to men; women derive their social prestige from their husbands. Even when Uganda was colonized, the British had no means of changing that situation. Women did not own land before colonialism, and could not own land after the British had colonized Uganda. The British, however, made it rather difficult for women to access land when they introduced a system of titling interests in land. Before Uganda was colonized, even men in general terms did not own land, land was for every person. A few notables such as the *omugabe* and his chiefs superintended over land for the benefit of all their subjects, who in turn paid tribute to them, these were not owners of land. I think the British gave land to men under the colonial agreements so that those men could be their allies in fighting wars. It was not because land had any special value to men by then, but the exercise of land redistribution turned out to limit women's rights of access to the same land later.¹⁹

Kahigiriza's narration indicates that the British colonial masters in Uganda having been informed by custom entrenched and augmented the position of men that was supported by the patriarchal and patrilineal nature and already problematic to women in respect to rights of access, ownership, control and usability of land. This was done by introducing land titling, which to date has remained problematic and disadvantageous to women because it was never intended to benefit them.

Women marginalization in ITC, like in any other parts of the Protectorate was a function of both Custom and colonial history.²⁰ In political terms, ITC became a British colony in 1901 by virtue of the Ankole agreement of 1901. At its advent,

19. Interview with Kahigiriza, *supra* note 4.

20. KARUGIRE, *supra* note 2; Matembe, *supra* note 18.

colonialism improved some men's gendered positions in ITC by according them more privileges than women in political, judicial, economic and social domains. For instance, the Ankole agreement awarded registered interest in land to men but none to women. Under the agreement, the *omugabe* and most of his notable subjects, who were largely men, acquired registered interests in land in addition to political and judicial offices.²¹ For example, Abdula Aziz, then *Gomborora* Chief of Ibanda at the time the British colonial administrator of Ibanda, *Bwana* Galt was assassinated in 1905 wielded both political and judicial powers. Abdula Aziz executed those powers ruthlessly against the natives of Ibanda while investigating the murder of *Bwana*.²²

The subordinate and marginalized position of women in ITC was strengthened through the active silencing of women's voices by the patriarchal structures constructed by custom and maintained throughout the colonial and post-colonial history in Uganda by statutory law. Kirindi stated in an interview that:

“a *munyankore* woman had limited rights in respect to decisions concerning access, ownership, control and usability of land. A woman's rights in that respect depended on her relationship with a man. When she behaved well, she enjoyed all those rights. When she asked for independent rights in land, she created problems for herself and even her parents. Asking for such rights would be interpreted by her husband and the whole family as an insult and a woman who dared a man in that respect would be brought before the family 'court' and would be adjudged an undisciplined wife. She would then be ordered to publicly apologize to her husband and the whole family, and pay a fine. The fine would be paid by her parents; if she refused, the sentence was automatic; she would be divorced by her husband's family. Such a woman would face further penalties at her parents' home. In fact very few women, if any, would dare men by demanding for rights in land. A *munyankore* woman would be instructed by her *ishenkazi* (father's sister) before her marriage not to bring shame to her parents by crossing the line that separated men from women; it was a red line and every *munyankore* knew it. Women were married into the family not only by their husbands alone. The husband's whole family observed their behaviour and determined whether they were good wives or not.”²³

21. Ankole Agreement, 1901, arts 5, 6 & 7.

22. K.K. NGANWA, *ABAKOZIRE EBY'OKUTANGAZA OMURI ANKOLE* (1948).

23. See *supra* note 13.

It was not until the promulgation of the 1995 Constitution of Uganda and later the Land Act of 1998²⁴ that women, just like during the pre-colonial period, were allowed to own land by custom. Prior to the 1995 Constitution, women were not facilitated by statutory law to acquire registered interest in land. That position had been entrenched by the provisions of Article 20 of the 1967 Constitution, which permitted the enactment of laws that discriminated against women. In ITC and other parts of the country, land was increasingly acquired by men for commercial and speculative purposes under the land tenurial systems introduced by the colonial regime and strengthened by the post-colonial State, namely *mailo*, freehold and leasehold. Consequently, women's rights of access, ownership, control and usability of land in ITC were increasingly becoming problematic and disadvantageous day by day. It was stated that:

land registration in ITC was a fairly new venture; however, men were registering land in unprecedented manner and very few women had come up to register their interest in land. That move was due to the rapid urbanization that was taking place in ITC. Some people, particularly men, would register land and eventually sell it when prices for land in particular areas of the Town Council went up. There was no specific law that prevented men from registering land in their sole capacities, what was in place under the Land Act was a requirement for obtaining consent of spouses, but that was not specifically enforced.²⁵

Dr. Gamurorwa's narration about land registration in ITC was a continuation of the legacy of patriarchy that was rarely interrogated when women's rights were at stake. Colonial land tenurial systems were let to operate alongside existing systems of customary law.²⁶ During the colonial era, the British administration introduced land titling in Uganda, under which system men were recognized as the heads of households. In Ankole, land titling was followed closely by land redistribution programme based on the 1901 agreement, only men were allocated land much as it was a fact that women needed land to continue their lifestyles started long before colonization.

The disadvantageous and problematic position of women in respect to enjoyment of rights of access, ownership, control and usability of land and in general

24. Cap. 227.

25. Interview with Dr. Gamurorwa, the Chairperson of Ibanda District Land Board at Ibanda District Headquarters on 28 July, 2008.

26. G. Gopal, Gender-Related Legal Reform and Access to Economic Resources in Eastern Africa (World Bank Discussion Paper No. 405, 1998); P. MCAUSLAN, LEGAL PLURALISM AS A POLICY OPTION: IS IT DESIRABLE? IS IT DOABLE? (2006).

terms was also affected by other instruments of the colonial legacy including education, religion in addition to law.²⁷ On this point, Obbo wrote that:

But the vast of the majority of women who survived training, fieldwork, degree-getting and publishing to give us information were themselves trained by men. Some scholars claimed that if they dealt with questions concerning women, their data would be regarded as 'soft' and their work not academically serious.²⁸

Still on the impact of colonial education on women in Uganda, Nakanyike Musisi stated that:

Missionaries sincerely attempted to raise the status of women through education. The education they offered, however, first single-handedly and later in conjunction with the colonial government did not go beyond preparing women for the domestic life, nor did it differ significantly from pre-colonial education for women. ... In 1926, the government declared its commitment to leaving girls' education in missionary hands, as long as the curriculum emphasized domesticity.²⁹

On his part and in support of the views expressed by Obbo and Musisi on the impact of colonial education and religion, Rodney asserted that:

The Christian church has always been a major instrument for cultural penetration and cultural dominance. Equally important has been the role of education in producing Africans to service the capitalist system and to subscribe to its values.³⁰

The views held by Obbo, Musisi and Rodney on the relationship between pre-colonial education, colonial education and missionary work indicate that the forces that impacted on women's ability to overcome male dominance were reinforced by each

27. G. Mianda, *Colonialism, education, and Gender relations in the Belgian Congo: The 'Evolue' Case*, in *WOMEN IN AFRICAN COLONIAL HISTORIES* (2002); N.B. Musisi, *Morality as Identity: The Missionary Moral Agenda in Buganda, 1877-1945*, 23 *J. RELIGIOUS HISTORY* (2002); OBBO, *supra* note 15.

28. *Id.*, at 1.

29. N.B. Musisi, *Colonial and Missionary Education: Women and Domesticity in Uganda, 1900-1945*, *AFRICAN ENCOUNTERS WITH DOMESTICITY* (Karen T. Hansen ed., 1992).

30. W. RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* 26 (1972).

other and not easy to overcome. The views expressed by Rodney were in particular informative on how christianity and western education were the major instruments for entrenching western systems including capitalism into African social fabric. These factors greatly contributed towards the imposition of western patriarchy onto Africans. The imposed western patriarchal-capitalism partnership as analyzed by Obbo, Musisi and Rodney was not only problematic and disadvantageous to women but also impacted on the land law and gender relations in Uganda in general terms.

Women's problems in ITC in respect to access, ownership, control and usability started from the time land titling was introduced in Ankole under the 1901 agreement.³¹ According to her, *mailo* grants and individual freehold titles were acquired by a few prominent men in ITC. This meant that men had been deliberately empowered by the land law to have leverage over women in order to keep the latter in a subordinate position. It can also be observed that social forces prevented women from being participants in land transactions. According to Buruhwari, the land tenurial systems introduced by the colonial government escalated the already disadvantaged situation for women in ITC. She stated that:

The introduced land tenurial systems in ITC induced the acquisition of interests in land as a commodity, yet previously all land belonged to all members of the family in equal terms. Women never bothered about rights of access, ownership, control and usability of land because there was no contention about these issues. Everyone was an owner of land, I only learnt about registered land ownership when I went to school in the 1930s.³²

Available literature indicated that only one woman, Julia Kibubura, owned land in ITC and probably in the whole of Ankole Kingdom in her sole capacity. Kibubura was a female chief appointed by the British Administration in ITC.³³ Kibubura enjoyed the same respect as men; she was allotted land, though without a land title by the colonial administration.³⁴ Kibubura's *mailo* covered much of the Wards of *Bubaare*, *Kyaruhanga* and *Kyabugaija* in the present day ITC.

31. Interview with Dorothy Buruhwari in ITC at her home, Kagongo Ward, Ibanda Town Council on 27 December, 2009.

32. *Id.*

33. See NGANWA, *supra* note 22.

34. Interview with Eriseeba Kyamulesire at her home, Bubare Ward, ITC on 22 June, 2008; Michael Kibeiherere, nephew to Julia Kibubura, at his shop premises, ITC, on 26 July, 2008; and Godfrey Mwitani, a retired Clerical Officer and son to Yairo Mujonjo, who was the Treasurer for Kibubura, at his home, Bufunda Ward, ITC on 28 December, 2009.

It was observed that women in Ankole Kingdom were traditionally renowned for their diviner role; they provided divine guidance to male rulers.³⁵ Prominent women diviners in the kingdom included Murogo, Nyabuzana, Kishokye, and Kibubura, the last in the lineage of diviners whose origin is traced from Bunyoro Kingdom.³⁶ This indicates that women in ITC were never regarded with the same esteem as men in respect to land rights under the *kinyankore* custom. Women's prominence would be attributed to their "divine" powers. As diviners, for instance, women had an obligation to ensure that men, the rulers, remained in political power by giving them information which enabled them to conquer their enemies.³⁷

Political power in Ankole Kingdom was the basis upon which one accessed, owned, controlled and used land. Customary and later statutory land ownership legislation, were functions of gender power relations that were more favourable to men than women. According to Kibeihere, land law and gender relations in ITC were maintained through a continuous and active system of denial of women's rights in broad terms. Kibeihere stated that:

Women were never given an opportunity to air their views when decisions concerning access, ownership, control and usability of land were to be taken. Men knew that women were a strong pressure group, which would overpower them when given opportunity to articulate their demands in respect to land rights. As such, men manipulated and continuously denied them the right to participate in any fora that would be discussing serious matters concerning land. That was intended to maintain them in a subordinated position.³⁸

In general terms, women in ITC were disadvantaged by custom and colonial history in respect to their rights of access, ownership, control and usability and that their views were systematically suppressed by the patriarchal society they lived in. That disadvantaged situation continued up to the time of undertaking this study albeit, in a modified form to impact on women's rights of access, ownership and usability of land in ITC.

35. *Id.*

36. *See supra* note 22.

37. *Id.*

38. Interview with Kibeihere, *supra* note 34.

IV. LAND LAW AND GENDER RELATIONS IN ITC IN THE BROADER POLITICAL SETTING OF ANKOLE KINGDOM

The indigenous inhabitants of ITC, the *Batagwenda*, belonged to the larger community of the *Banyankore*, who traditionally owed their allegiance to the *omugabe*. Due to immigrations into the area, however, the composition of the people of ITC has changed; in addition to the *Batagwenda*, it consists of *Bakiga*, a few *Bahima* and many other ethnic groupings, the latter largely consisting of employees and business communities.³⁹ The *omugabe* was the traditional leader of the *Banyankore*. Symbolically, the *omugabe* was the owner of all land in his kingdom. His eminence was prominent in the period before the promulgation of the 1967 Republican Constitution of Uganda which abolished the institution of traditional rulers in the country.

The revival of traditional institutions in Uganda under the 1995 Constitution did not revive the glory of Kingdoms and particularly for Ankole Kingdom. Historically, the *omugabe* was referred to as the 'leading bull.' That attribute signified his status in the tribe, not only as a supreme ruler but also as the leader of all the heads of families and the richest cattle-owner in his own right. That attribute was based on the analogy of the leading bull in the kraal, which was the most prized animal for the *Banyankore* in any given herd of cattle.⁴⁰

Ankole and other Kingdoms existed in Uganda long before the country was colonized. These were, however, abolished by the 1967 Constitution of the Republic of Uganda, which formerly replaced the 1962 Independence Constitution. The 1962 Constitution had been temporarily interrupted by the 1966 Interim Constitution of 15 April, 1966; the pronouncements in the 1966 Interim Constitution were formalized when the 1967 Republican Constitution was promulgated on 8 September, 1967. The abolition of kingdoms was effected under the provisions of Article 118 (1) of the 1967 repealed Republican Constitution, which provided that:

The institution of King or Ruler of a Kingdom or Constitutional Head of a District, by whatever name called, existing immediately before the commencement of this Constitution under the law then in force, is hereby abolished.

Such institution was restored by the 1995 Constitution under Article 246 but with a number of restrictions imposed on such leaders. Unlike the period before the abolition

39. IBANDA TOWN COUNCIL, THREE YEAR DEVELOPMENT ROLLING PLAN, 2004/5 - 2006/7 (2004).

40. See KARUGIRE, *supra* note 2.

of the institution in 1967, after 1995 traditional leaders would not enjoy administrative, legislative or executive powers of government or local government. A person would not, while remaining a traditional leader or a cultural leader, join or participate in partisan politics and no person would be compelled to pay allegiance or contribute to the cost of maintaining a traditional or cultural leader. It is important to note that since 1967, some of the institutions referred to under Article 118 (1) of the 1967 repealed Republican Constitution of Uganda have not been legally recognized by the Government. Some sections of the people in those abolished institutions such as Ankole Kingdom, however, continue to owe their traditional allegiance to the heads of such institutions, their non-recognition by the Government notwithstanding. The people's insistence on recognizing such traditional institutions demonstrates the strength of customary law over written law, at least in practice much as the situation is different on paper.

Ankole Kingdom is one such kingdom that existed immediately before the promulgation of the 1995 Constitution of Uganda. Currently, however, Ankole kingdom is not legally recognized by the Government of the Republic of Uganda and other sections among the Ankole community on the basis of ethnic differences among the *Banyankore* and land ownership in the kingdom.⁴¹ On the whole, neither the issue of ethnic differences among the *Banyankore* nor the land question could be held to be the sole cause of the disagreement on whether or not the *obugabe* in Ankole should be restored and that none could simply be brushed off. The issue of ethnic differences among the *Banyankore* was as paramount as the land question because each of them is related to the institution of *obugabe* in a special way. The institution of *obugabe*, which was the preserve of the *Bahima*, discriminated against the *Bairu*; in addition, the *obugabe* as a dominant institution owned all land in the Ankole kingdom, while the *Bairu* were predominantly servants of the *Bahima* under the *obugabe*. It was, therefore, not a surprise that some sections of the *Banyankore*, particularly those with information about the institution of *obugabe* would come up to oppose its restoration and subsequent recognition by the Government.

However, the fear among some people in Ankole to resurrect the ethnic divide between the *Bahima* and *Bairu* created by history was a general reason advanced for the lack of unanimity among the *Banyankore* over the restoration of the institution of *omugabe*. According to Kate, this was a compounded issue.⁴² Furthermore, the *Bahima*

41. Interview with James Kahigiriza, *supra* note 4. See also, J.J. Barya, *Democracy and Culture in Uganda: Reflections on the (Non) Restoration of the Ankole Monarchy*, 4 EAST AFR. J. PEACE HUM. RIGHTS 14 (1998); STEINHART, *supra* note 2.

42. J. KATE, A HISTORY OF ETHNIC RELATIONS IN ANKOLE, UGANDA, DURING THE COLONIAL PERIOD 1989-1962 (2006).

section of the *Banyankore* asserted itself as the superior section in Ankole and generally despised the *Bairu* ethnic group;⁴³ and the latter were looked down upon because they did not own cows, which in Ankole were regarded as a symbol of prestige and wealth.⁴⁴

It can be observed that that relationship was not only problematic to the *Bairu* as a sub-group of *Banyankore*, but it was particularly problematic to the *Bairu* women who would be despised by both *Bahima* men and women; it was also problematic to the overall concept of land law and gender relations in Ankole. The fact that all *Bairu* were held to be subordinate to all *Bahima* in the kingdom meant that all *Bairu* women were subordinate to all *Bahima*, women and men equally. It also meant that because before the advent of colonialism all land in Ankole belonged to the *omugabe*, who was a *Muhima*, all *Bairu* women and men never owned land in the kingdom. That meant that all *Bairu* women in Ankole could not participate in decisions relating to access, ownership, control and usability of land because even their husbands could not.

According to Karugire, when a *Mwiru* acquired cows or ascended to a position of political leadership in Ankole, he ceased to belong to the category of *Bairu* although he never became a *Muhima* at all. Such a relationship between the *Bairu* and *Bahima* could be one of the possible reasons that might be hinged upon by the current Government to refuse to restore the monarchy in Ankole. That could largely be for fear of resurrecting the old ethnic divide between the two groups of *Banyankore*, which has currently been at low. According to Barya, the disagreement among the people of Ankole kingdom on the issue of the restoration of *obugabe* is due to the unresolved land question in the country as a whole.⁴⁵ He sums up the issue of land ownership in Ankole in relation to the non-restoration of the Ankole monarchy thus:

The return of the lands and properties to a controversial king in the case of Ankole, however, would deprive those settled on them of their property rights otherwise enjoyed by other people directly holding from the state either as customary tenants or title owners. A resolution of the monarchy question in Ankole thus also requires a democratic resolution of the land question.

By proposing a democratic resolution of the land question in Uganda, Barya probably was contemplating setting in motion the provisions of Article 246 (2) of the Constitution. Article 246 (2) provides that:

43. Interview with Kibeihere, *supra* note 34 and Kirindi, *supra* note 13.

44. See *supra* note 2.

45. Barya, *supra* note 41.

In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament.

According to Kahigiriza, the Government lacked the will to have the problem resolved in a manner that might be contrary to the stand it had already taken about the kingdom in light of the vivid division among the *Banyankore* on the matter. The land question in relation to *omugabe*'s land in Ankole had its roots in the long history of the kingdom, but it was magnified at the time when Kingdoms were abolished and their properties all over the country appropriated to the State.

Prior to the abolition of kingdoms in Uganda in 1967, a number of persons oppressed by the *obugabe* as a patriarchal institution lived on *omugabe*'s land as tenants and paid tribute to him. After the abolition of the Kingdoms and all the rights attached to them, persons who had previously been tenants on *omugabe*'s land were 'liberated' from the oppression of the *obugabe*, ceased to be tenants of that institution and remained on such land deriving their interest from the State. Their position was probably better because under the 1967 Republican Constitution, all land in the country was taken over by the Uganda Land Commission, which was empowered under Article 108 (3) to hold and manage any land vested in it by the Constitution or any law or acquired in Uganda by the Government of Uganda and had such powers as could be conferred upon it by Parliament. This could be interpreted as holding land in trust of all Ugandans since the Commission was the one that granted, on application, interests in land of any sort to Ugandans.

Article 118 (4) of the 1967 repealed Constitution empowered Parliament to make revision for the devolution of any property held by any person by virtue of his or her office or by any other person or authority, being property connected with or attaching to the institution of the King or Ruler or Constitutional Head. Parliament never made such a revision until 1995 when the 1967 Constitution was repealed. On the face of it, it would appear that the abolition of the Kingdoms was *inter alia* intended to redress the land law and gender relations problems whose origins could be traced to the pre-colonial Uganda, but which were over politicized by colonialism and maintained by the post-colonial State until 1967. The reasons for abolishing the kingdoms, however, seem to be more political than socio-economic. The souring relations between the then central government and the traditional leaders, particularly the *Kabaka*⁴⁶ of Buganda played a central role in providing a fertile ground for the Obote Government to abolish kingdoms in the country.

46. This is the title given to the traditional king of Buganda kingdom.

As mentioned earlier, the controversy surrounding the institution of *obugabe* in Ankole Kingdom notwithstanding, some of the people in Ankole region still regard themselves as subjects of the *omugabe*, much as they do not uniformly agree that the institution should be restored in the present era.⁴⁷ As pointed out by Barya, it would be important for the Government of Uganda to resolve the current land tenorial problems in the country so that all Ugandans are assured of their rights in respect to the land they occupy before the people of 'Ankole Kingdom' can resolve the *obugabe* issue.

In other words, the land question in Uganda cannot be resolved in a piecemeal manner; it requires a holistic approach for instance, by promulgating a comprehensive land policy for the country and then revisiting the specific provisions of the existing land legislation concerning access, ownership and general rights in land to align them with the policy. Uganda is in advanced stages of promulgating a comprehensive land policy for the country, the draft policy document has been revised four times; the fifth revision was still on-going. However, the whole process of promulgating a comprehensive land policy for Uganda has been surrounded by controversies largely in respect to land *mailo* tenorial system.

In order to address the issue on the restoration of the *obugabe*, there is need to first address the land question, the political question, and the relationship between the Central Government and the Kingdoms. Persons who have settled on the *omugabe's* land since 1967 and claimed interest in it or have made developments on it would also have to be compensated first before they vacate such land. Their interest in such land would be recognized by law by virtue of Article 237(8) of the Constitution, which provides that:

upon the coming into force of this Constitution and until Parliament enacts an appropriate law (*sic*), the lawful or *bonafide* occupants of mailo land, freehold or leasehold land shall enjoy security of occupancy on the land.

The *omugabe's* land was registered under the *mailo* tenure system. Owners of *mailo* tenure interests in Uganda today hold it subject to the rights of customary interests' holders in the same land as long as the latter interests inhered over it before the coming into force of the 1995 Constitution. After the abolition of kingdoms in Uganda in 1967 and prior to 1995, there were people who occupied the *Omugabe's* land, they either became lawful or *bonafide* occupants of that land after the promulgation of the 1995 Constitution. Therefore, the argument of resolving the land question before restoring

47. Interview with Patrick Nathan Kirindi, *supra* note 13.

the Obugabe becomes valid.⁴⁸ This is because once the *obugabe* is restored basing on the experience of other Kingdoms such as Buganda, Toro and Bunyoro, demands to regain the *obugabe* land would arise which could also result into demands for compensation by the current occupants in accordance with the provisions of Article 26 of the Constitution. The Article provides:

No person shall be compulsorily deprived of any interest in or over property of any description except where:

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and
- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for:
 - (i) Prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and
 - (ii) a right of access to a court of law by any person who has an interest or right over the property.

According to some people currently occupying land that belonged to the *omugabe* before 1967, restoring the *obugabe* before the Government putting in place a clear land policy and law on their future status, would be rendered precarious since they derived their land rights from the 1967 constitutional reforms.⁴⁹

In the case of ITC, much of the current *Kyaruhanga*, *Bubaare* and *Kyabugaija*, which constitute much of Ibanda Township fall under the “*mailo* land” that was allocated to Julia Kibubura when she became the *Omukru w’ekyanga kya* Ibanda (equivalent of a sub-county chief). That land in essence belonged to the *omugabe* because Kibubura did not become the registered owner of it but she held it in her capacity as a royal servant of the *omugabe*. Some of the people on that land are not even aware of the exact boundaries of Kibubura’s “*mailo*”, yet they stand to be displaced if it were to be returned to the *obugabe*.⁵⁰ However, there are efforts by Kibubura’s relatives to identify the boundaries of her land with a view of petitioning the Government to designate that estate as a cultural heritage for the whole country.⁵¹

48. See, Barya, *supra* note 41.

49. Interview with the people occupying the *Obugabe* land in ITC, who were mainly from Bubare and Bufunda Wards of ITC.

50. Interview with Godfrey Mwitani, *supra* note 34. Mr Mwitani, who occupies part of Kibubura’s *mailo* land, just a few metres from the spot where Kibubura was buried, acknowledged not knowing the boundaries of Kibubura’s *mailo*.

51. *Id.*

Another informant, Kibeihere, who was a nephew to the late Kibubura, was, however, not aware of Mwitani's allegations of petitioning the Government to gazette Kibubura's burial grounds and her whole palace as a cultural heritage for Uganda.

On the whole, it seems that gazetting Kibubura's burial grounds as a cultural heritage for the whole country would be an important step towards recognizing the role of women in the overall decision-making processes in Uganda. That would be so because, not only would the burial grounds be gazetted, but Kibubura's achievements as a prominent woman leader in ITC would be documented and made available to the whole world. Making such information available to the whole world would complement other government initiatives to redress gender imbalances in the country caused by history, which according to Obbo, were over emphasized in the country's history by the colonial rule. Specifically, the availability of that information would correct the wrong information available or the lack of it to the effect that no woman was prominent in the area, and, therefore, that women had no basis to claim equality with men in the social arenas.

It was observed that laying claims by the *omugabe* for his properties in Ankole would mean that many people in ITC and even Government establishments such as Ibanda police station and all Ibanda district local government structures would be claimed.⁵² The claims would probably be advanced by Kibubura's relatives on behalf of the *omugabe*. However, according to Mwitani, the claims by Kibubura's relatives would only be confined to the burial grounds, which are identifiable and known by people in ITC, and that extending the claims to the whole *mailo* would be contested and probably defeated even in courts of law. Kibubura did not have registered interest in her *mailo* and that today, most of the occupants of that land are not only in the category of *bonafide* occupants, but largely in the category of registered owners because they had land titles issued to them by Government in respect of the land they occupy.⁵³ It was noted that women's agenda in Uganda today is considered with high respect. That came out clearly from President Museveni's averments in one of his books, *Sowing the Mustard Seed*. According to Museveni:

One of the principles the NRM is proud to have initiated is that of bringing women into the mainstream of the country's governance. Women constitute more than half of the country's population and carry out most work in the major economic sector that is agriculture. In spite of this, however, for a long time, they were relegated to the periphery.... The NRM has created opportunities for women which

52. *Id.*

53. *Id.*

were aimed at redressing this historical imbalance.⁵⁴

It can be observed that President Museveni's statement was an acknowledgement of the global awareness that women's rights should be respected by all governments, and not necessarily an invention of his Government.

Unlike the colonial period, when land was largely a means of subsistence production and prestige to the kings, land in Uganda, during the post-colonial period became the basis for the generation of wealth and the sustainability of livelihoods. The situation changed further in 1986 when the National Resistance Movement (NRM) ascended to political power in Uganda. Land gained more monetary value throughout the country, particularly in urban areas. Access, ownership, control and usability of land in Uganda thereafter, which were largely in the domain of men, influenced gender-power relations in the home, the community and nationwide. One who owned land, controlled access to it and its usability and other means of other people's livelihood that depended on it, whether that ownership was disadvantageous to others or not.

It can thus be observed that during the period 1986 to 1995, land in Uganda became a key resource for production and often the only capital available to the majority of Ugandans, particularly women. Consequently, access, ownership, control and usability of land in Uganda were the basis for livelihoods of most Ugandans and thus played a pivotal role in the provision of shelter, food and income to them, particularly the rural poor and women. That required secure rights in land, particularly for women, not only guaranteed, but also to have incentives and opportunities for household food security and investment created for them if they were to utilize the land sustainably. That meant that alongside the basic survival necessities, secure rights to land could act as a catalyst to sustainable land management and also improve access to capital by women.

V. CONCLUSION

Deriving from the analysis on the politicization of land law and gender relation in ITC in relation to access, ownership, control and usability of land in any part in Uganda, it can rightly be argued that the continuum of unbalanced gender relations led to the maintenance of women in ITC in a subordinate and marginalized position in respect to the rights of decision-making processes concerning access, ownership, control and usability of land.

54. Y.K MUSEVENI, *SOWING THE MUSTARD SEED: THE STRUGGLES FOR FREEDOM AND DEMOCRACY IN UGANDA* (1997), at 190-92.

It can also be observed that the disadvantageous and problematic position of women in respect to enjoyment of rights of access, ownership, control and usability of land in general terms was also affected by other instruments of the colonial legacy including education, religion in addition to law. Furthermore, the land law and gender relations in ITC were maintained through a continuous and active system of denial of women's rights in broad terms. It can therefore be noted that in ITC, all land belonged to the *omugabe*, who was a *Muhima*, and therefore, all *Bairu*, women and men never owned land in that part of the country. That meant that all *Bairu* women in Ankole could not participate in decisions relating to access, ownership, control and usability of land because even the *Bairu* men could not.

Basing on the observations, it comes to the fore that the feminist perspective provides key tools necessary for the interpretation of locations of gender imbalances and women's oppression in society. That in the *kinyankore* custom, women would not be permitted to own land in their sole capacities; and as such underpinning the problem of gender discrimination and women's marginalization and exclusion in ITC were the complex economic, social, cultural and political issues were expressed through social institutions including the family, community, custom, religion, and the market and State ideologies. Lastly, that no single factor such as custom or colonial history could be blamed for the lack of a gender balanced society when it comes to understanding the politicized matters of access, ownership, control and usability of land in ITC.