

Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda

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ABSTRACT

Much of the literature on women and land tenure in Africa has viewed the introduction of land titling, registration, and the privatization of land under colonialism and after independence as a setback for women, leaving women in a state of even greater insecurity with poorer prospects for accessing land, and hence, obtaining a livelihood. The demise of the authority of clans and local elders has made women's land rights even more precarious. In this context women's movements in Africa have adopted a rights-based approach that challenges customary land and other practices. In doing so they have contradicted a new consensus among policymakers around the view that sees land tenure policy as building on customary systems and giving them legal recognition

This paper attempts to account for this apparent contradiction in the case of Uganda, which has gone further than most African countries in devolving land administration to the local level, while at the same time giving rise to one of the most active women's movements challenging customary land tenure practices. If women were benefiting from customary land tenure arrangements, as the development practitioners argue, one would think the preservation of customary rights or modifications in the customary systems would have been desirable goals of the movement. This paper explores this apparent divergence of approaches to women's land rights.

INTRODUCTION

Much of the literature on women and land tenure in Africa has viewed the introduction of land titling, registration, and the privatization of land under colonialism and after independence as a setback for women, leaving women in a state of even greater insecurity with poorer prospects for accessing land and hence obtaining a livelihood. Customary land tenure systems were eroded and transformed in ways that were disadvantageous to women. Today, the prevailing policy and much of the scholarly wisdom, from perspectives as ideologically diverse as the World Bank, Oxfam, and many feminist development studies scholars, seems to have converged around the view that sees land tenure policy as building on customary systems. The convergence does not, however, rest on identical premises. The World Bank, for example, sees the reliance on customary arrangements as a simpler and less conflictual route to the eventual titling, registration, and privatization of land ownership, whereas

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Oxfam sees the reliance on customary systems as a way to strengthen and democratize local communities, and promote bottom-up grassroots initiatives.¹

Thus, one of the most dramatic changes in land tenure reform today is that, for the first time since the pre-colonial period, states are giving legal recognition to existing African tenure regimes, which are being treated on par with the freehold/leasehold systems.² Unregistered customary tenure, which is the main system of land rights in Africa, is being recognized in the new policies. Ironically, at the very time that these gains are being won in the name of the rural poor, the pastoralists, women, and the landless, African women have mounted new movements to eradicate customary land tenure practices and fight for the rights of women to be able to inherit, purchase, and own land in their own name. Feminist lawyers working with these movements have argued that customary law in the present day context has been used to selectively preserve practices that subordinate women. Rather than seeing customary land practices as a basis on which to improve women's access to land, they are advocating for rights-based systems that improve women's ability to buy, own, sell, and obtain titles on land. This paper attempts to account for this apparent contradiction in the case of Uganda, which has gone further than most African countries to devolve land administration to the local level, while at the same time giving rise to one of the most active women's movements challenging customary land tenure practices. If women were benefiting from customary land tenure arrangements, one would think the preservation of customary rights or modifications in the customary systems would have been desirable goals of the movement. How then, does one account for this apparent paradox?

This paper situates the battles for individual land ownership in the context of a variety of strategies women have adopted to claim land. Because women's ties to land are mediated by their relationship to men in patrilineal societies, women's attempts to assert their rights in ways that challenge customary land tenure systems is often perceived as an attempt to disrupt gender relations, and society more generally. This explains why so much is at stake in these battles over women's rights to land, and why women's gains in this area have been so slow.

The paper shows how bases of customary ownership have been eroded since the time of colonialism, making women's access to land significantly more precarious as the protections traditionally ensured by the clan system have been peeled away. In recent years, with increased commercialization of land and problems of land scarcity, local leaders have felt mounting pressures to protect the clan system, and in so doing have placed even greater constraints on women's access to land. In particular, men and groups of men, organized through their lineage, have sought to renegotiate and redefine the formal and informal relationships that in the past supported women's access to land.³ However, the clan system they are seeking to preserve is no longer one that affords women the supports it is once said to have guaranteed. For this reason women, both rural and urban, have responded to the renewed interest in protecting customary laws and practices through collective strategies, which in Uganda have included a movement to ensure women's access to and ownership of land. Women have also adopted individual strategies of purchasing land and taking their land disputes to court. Purchasing land has, in effect, become a way of circumventing the traditional authorities.

EMERGENCE OF MOVEMENTS AROUND LAND IN THE 1990s

Women have been active in a variety of land alliances and coalitions throughout Africa, many of which have arisen in response to legislative and constitutional changes in tenure laws. New land laws were enacted in Uganda, Tanzania, Zanzibar, Mozambique, Zambia, Eritrea, Namibia, and South Africa in the 1990s. Rwanda, Malawi, Lesotho, Zimbabwe, and Swaziland adopted new land policies and Kenya is drafting a land bill. In Uganda, the reform of tenure administration has been the most extensive and decentralized of any of these countries. Newly created district land boards administer land, supported by a network of 4,500 local land committees. Tanzania similarly passed some of the most radical land laws in Africa in 1999. The laws shift land tenure administration to the elected government of each village, which is in charge of adjudication, registration, titling land, and land dispute resolution. This means that there are 9,225 discrete tenure administrations that are in charge of all but property held directly by government. By keeping control of land within the communities, the

aim is to prevent the appropriation of customary land by wealthier outsiders, often through unscrupulous means.⁴

Women have been at the forefront of organizations like the Uganda Land Alliance, the National Land Forum in Tanzania, the Zambia National Land Alliance, National Land Committee in South Africa, Kenya Land Alliance, Rwanda Land Alliance, and the Namibian NGO Federation (NANGOF) — all of which have fought for the land rights of women, pastoralists, the landless, and other marginalized people. Regional networks like Landnet in East Africa have also formed to network between countries. At the same time, key women's organizations have been active around land issues in all these countries and have often played a leading role in forming the broader land alliances. At the regional level in East and Southern Africa, Women and Law in Development in Africa (WILDAF) has been active since the early 1990s on land and other issues, as has Women and Law in Southern Africa (WLSA) in seven southern African countries. These movements have been especially pronounced in the former British colonies of Eastern and Southern Africa, although one is increasingly seeing similar movement pressures for land rights in Nigeria and francophone countries like Mali, Senegal, and Madagascar, where women have formed their own organizations to ensure that any changes in land laws incorporate women's concerns

The new movements have been galvanized by mounting land pressures in some countries that are placing undue constraints on women, who do not have sufficient access to and control over land. While the focus of the women's movements has been on customary land practices, they have also been concerned with the negative effects of the privatization of land and land grabbing as governments have increasingly sought foreign investment through tourism, mining, and other businesses. Women have joined forces with pastoralists, who have often found themselves shut out of vast grazing lands in many parts of East Africa, Botswana and Namibia as a result of large land sales.⁵ The Beijing UN Women's Conference in 1995 and the national and regional discussions leading up to the conference also heightened awareness regarding land issues and helped foster these movements

Women's movements have been particularly concerned that heightened protection of customary land tenure arrangements has taken place in a context where the customary and religious laws and practices that have been retained have selectively preserved those elements that subordinate women. These arrangements have included customary divorce and inheritance practices, keeping women as minors (e.g., Swaziland, Lesotho, Zimbabwe), bridewealth, widow inheritance (levirate), dehumanizing rituals pertaining to widows, early childhood marriage, polygamy, and female genital cutting.⁶ It should be noted that there are a few countries where some women's organizations (e.g., Women for Change in Zambia) are fighting for women's rights by seeking to preserve and at the same time encourage traditional authorities to adopt more pro-women policies. But these are the exception not the rule

The movements have taken up a variety of concerns. For example:

- In Zimbabwe, the Women and Land Lobby, Kubatana, and women business leaders have criticized existing land legislation and the government's land reform exercise for largely excluding women, in spite of a quota of 20 percent land allocation to women. Approximately 80 percent of Zimbabwean women live in communal areas, where they make up 61 percent of all farmers. These women spend an average of 16 hours a day in cultivation, childcare, and care of the household, and over half are heads of household.⁷ Yet only a small fraction of the women headed households were resettled in the accelerated Land Reform and Resettlement Implementation Plan dubbed the "fast track" program. Moreover, the 1998 Draft Land Policy allows married women to register land jointly as wife and husband, but in practice, when married women purchase land, they are still asked to register only their husband's names.⁸
- Women's efforts were dealt a major setback in a 1999 Supreme Court ruling that gave precedence to customary law in a land inheritance dispute between a brother and sister.

The ruling deemed that women were minors and that women could not be considered equal to men before the law because of African cultural norms and "the nature of African society." In this suit, Venia Magaya, a 58-year-old seamstress, sued her half brother for ownership of her deceased father's land after her brother evicted her from the home.

- Women and Law in Southern Africa, Malawi Chapter (WLSA-Malawi), along with other organizations, have been lobbying for legal reforms and policy changes. In particular they have been working on the National Gender Policy, the Land Reform Policy, and have sought to amend the Wills and Inheritance Act. They have sought legislative change, providing legal literacy to women, and pursuing cultural change through civic education.⁹
- Women's organizations were active in Tanzania, where they won the right to acquire, hold, use, and deal with land in the Land Act 1999 and Village Land Act 1999. These laws also ensure that women are represented in land administration and adjudication bodies. The Land Act overrides customary law if it denies women their right to use, transfer and own land. Women's rights of co-occupancy are also protected.
- In Eritrea in 1994, the government passed amendments to the Civil Code and made a new Land Proclamation that gave women the legal right to own and inherit land, along with other pro-woman reforms. It disallows any discrimination based on sex, ethnicity, or religion.¹⁰ Initially, the Proclamation permitted customary laws not in contradiction with the basic principles to continue on a transitional basis. However, in spite of the extensive provisions in the Proclamation, women's activists have pointed out that in practice men are still refusing to give women land to which they are legally entitled.¹¹
- Over 2,000 Maendeleo Ya Wanawake Organisation (MYWO) members in Meru Central District appealed to the Kenyan government to include women in land tribunal boards. Women are also being circumvented by a judiciary process, which they said is so slow that many succession cases take up to 10 years to be determined.¹² The Widow Support Network of Kenya pressed the Constitutional Review Commission to better protect the rights of widows, their families, and property in the constitution. In particular, they objected to traditional rites such as widow cleansing; the coercion women face from their husband's families in burying their husbands; and the interference of chiefs and clans in their claims to inheritance. Women in Kenya cannot register property under their own names unless their husbands endorse it. The widows organization has demanded that family courts be mandated to deal with all matters concerning widows, widowers and their children, and that alternative dispute resolution mechanisms be established. They have also sought free legal assistance for rural women who need such help. The widows group has worked with other landless groups, including the Pokot people in the Trans Nzoia District, and the Kenya Land Alliance.
- Women's organizations in Zambia have procured the Zambian government's commitment to implement a 30 percent women land ownership policy as stipulated in the National Lands Policy. The government is negotiating with traditional rulers to get a portion of land for this purpose.

These are but a few examples of ongoing women's land struggles in various parts of Africa

LAND RIGHTS IN UGANDA

Uganda has a vibrant women's movement that emerged after 1986, when Yoweri Museveni and his National Resistance Movement took over the country through guerrilla war. There has been a proliferation of independent organizations that have taken up a wide variety of issues ranging from women's representation in office, to domestic violence, rape, reproductive rights, sex education in the school curriculum, and many other concerns. One of the key issues that has galvanized the women's movement has to do with reform of customary land tenure arrangements

Four basic land tenure systems emerged in Uganda after colonialism and they have constantly been in flux: 1) Freehold tenure involves holding of registered land in which the holder has full ownership rights; 2) Leasehold tenure involves land leased for a specific period under certain conditions; 3) *Mailo* land tenure involves holding registered land in perpetuity. This system has its roots in the 1900 Buganda Agreement between Buganda and the British. In the central Ugandan region of Buganda, the clan system was undermined with introduction of the *mailo* system, but *mailo* land is still subject to clan and lineage head approval. The Land Law of 1908 gave freehold titles for large tracts of land to the king, his family, and clan chiefs. About 4,000 individuals received land in this way. As a result very few women came to own *mailo* land. Others could gain access to this land by purchasing it from the original recipients and their descendants. 4) Customary tenure means a system of land tenure regulated by customary rules often administered by clan leaders. The customary system predominates in Uganda. Within this system there can be both individual and communal land ownership, but the land is not generally titled or registered

It is within this context that women have sought to ensure women's rights to land. The women's movement was active at all stages in the process of drafting the 1995 Ugandan constitution, which had major implications for female land ownership. Women's organizations from throughout the country submitted memoranda to the Constitutional Commission pertaining to women's rights; women activist lawyers served on the constitutional commission; and 18 percent of the elected representatives to the constitutional assembly were women, many of whom were active in a non-partisan Women's Caucus that pressed for women's rights. They were able to get significant concessions in the constitution, including legal equality and protection in political, economic, social, and cultural spheres along with the prohibition of laws, cultures, customs, or traditions that violate the dignity, welfare, or interest of women.

Women activists also targeted the 1998 Land Act. The Land Act was passed to create a system of tenure, ownership, and administration of land. It was also to improve land service delivery by decentralizing land administration. Women activists made sure that key clauses were included in the Land Act to protect women. One provision in the Act requires the prior written consent of both spouses in transactions involving family holdings. The Act prohibits decisions pertaining to customary land that deny women access to, ownership of, or occupation of land. The Act requires that the Uganda Land Commission should have at least one female out of its five members, one third of the membership of the District Land Boards should be female, and land committees at the parish level should have at least one woman out of the four members. In addition, at least one-third of the Communal Land Management Association members must be women. These associations are legal entities under the Land Act that may be formed by anyone for the purpose of communal land ownership and management.

THE STRUGGLE OVER THE CO-OWNERSHIP CLAUSE

In the period leading up to the passage of the 2000 amendments to the Land Act, women's rights activist and organizations also lobbied without success for the inclusion of a co-ownership clause into the Land Act. They networked under the rubric of the Uganda Women's Network (UWONET) and the Uganda Land Alliance (ULA) and coordinated lobbying efforts. It is the struggle over this co-ownership clause that has brought to a head the conflict women activists have confronted with

customary land practices.¹³ Co-ownership of land between spouses and/or family members is controversial in most African countries, especially those undergoing land reforms. It is only South Africa and Tanzania that have enacted legislation requiring land co-ownership by married couples

The insistence on the co-ownership clause stems from the fact that current legislation, given customary practices, provides limited possibilities for women to own land. In patrilineal societies, which are most prevalent in Uganda, women generally do not inherit land from either their fathers or their husbands. Their fathers often do not bequeath land to their daughters because daughters marry outside the clan, and will therefore take the land with them to another clan. Husbands often do not bequeath land to their wives for the same reason: They need to ensure that the land remains in the clan because they worry that the widow might sell the land to non-clan members. In some societies in Uganda, if the husband dies, the wife and children are inherited by the husband's brother or another family member so that he may provide for them. This practice is dying out, raising fears that if a widow remarries outside the clan, the clan land she has acquired is lost

Thus under customary law, which prevails in Uganda, a woman may have jointly acquired land with her husband and may have spent her entire adult life cultivating the land, but she cannot claim ownership of the property. If he dies, the land generally goes to the sons, but may also be left to daughters. Nevertheless, he may still leave the wife with no land and therefore no source of subsistence

Land is the most important resource in Uganda because people depend on it for cultivation and therefore their livelihoods. In Uganda, as elsewhere in the world, unequal access to land is one of the most important forms of economic inequality between men and women and has consequences for women as social and political actors.¹⁴ Women provide 70-80 percent of all agricultural labor and 90 percent of all labor involving food production in Uganda, yet they own only a fraction of the land. Similar patterns are found elsewhere in Africa. Women are generally responsible for providing for the household, therefore their access to land for food production is critical to the welfare of the entire household. Even women who want to get into business need land as collateral to obtain bank loans. Since women are almost completely dependent on men to access land, women who are childless, single, widowed, disabled, separated/divorced, or with only female children often have little or no recourse because they may have no access to land through a male relative.

A 2000 study of popular opinion in eight districts around the country regarding the co-ownership clause found that 80 percent of women endorsed it, as did 60 percent of men. At least 72 percent support it because it maintained harmony or mutual understanding and 42 percent felt it promoted equal rights. At least 33 percent of those opposing the clause felt that land belonged to men, 28 percent said it would lead to divorce, 16 percent thought that since women made no monetary contribution to land they should not co-own it, and 15 percent were of the opinion that they could co-own it if they contributed to the purchase of the land.¹⁵

In the course of the campaign for co-ownership, women's organizations produced educational and informational materials, including a film to educate the politicians, the press, and the public regarding the clause. The Uganda Association of Women Lawyers (FIDA), Action For Development (ACFODE), and Uganda Land Alliance conducted legal education. They lobbied members of parliament and worked with the Committee on Lands and Natural Resources in the parliament, the Women Parliamentarians Association, and the Young Parliamentarians Association. They took out advertisements, and female journalists used the media to present their case. The Ugandan Forum for Women in Democracy (FOWODE) contacted inter-national NGOs and alerted them to the struggle. The ULA carried out a survey and conducted focus groups throughout the country to gather views on women's land rights. Activists held numerous public events and demonstrations to publicize the issues. They also held public hearings and brought in rural women to describe their plight to politicians and the public. These hearings were effective in convincing many male MPs of the issues at stake for women. The organization, UWONET, issued a people's manifesto to let parliamentary candidates in the 2002 March elections know the demands that women wanted addressed. The campaign fostered more networking between women's organizations, more coalition building with non-gender specific movements, and more aggressive lobbying of legislators.

Interestingly, even the *Nabagereka* (Queen) of Buganda, Sylvia Nagginda, weighed in on the debate, in spite of the fact that the monarchy is a thoroughly clan-oriented institution.¹⁶ In her International Women's Day statement for 2000, the Nabagereka criticized the gender gap in decision making at the national and community levels, and pointed out that the power balance was worse at the household level where decision making is by the man who owns and controls wealth. As she put it, "There is still much need for more advocacy work and new strategies to be designed to balance the powers." In particular, "Customary rights deprive women of ownership of property, especially land and other fixed assets; even in statutory law, in case of death of the husband, the woman is entitled to only 15% of the property," she added.

The struggle over the co-ownership clause was a turning point in many ways for the women's movement. Up until this conflict, the women's movement had been enthusiastic about President Museveni and his pro-women policies (reserved seats for women in the legislature and in local councils, political appointments of women to key government posts, affirmative action policies for women in university admissions, etc.). They had seen his National Resistance Movement, more commonly known as "the Movement," as a force for change for Ugandan women. As a result of Museveni's failure to back the clause, many in the women's movement became seriously disillusioned with the government's positions regarding women's rights. In May 2003, the leading women's rights organizations held a demonstration around land rights that was led by an opposition parliamentarian from northern Uganda, Nobert Mao. The new realization forced women to rethink their strategies and allegiances. It put loyalties of key women politicians to the test and forced them to make difficult choices between support for the women's movement and a political career endorsed by the President and his Movement.

The co-ownership amendments were, in fact, passed by the parliament, but political maneuvering on the grounds of technicalities left women without the clause. Member of parliament and ethics minister Miria Matembe was about to read the amendments into the microphone for the Hansard (legislative record) when she was interrupted in mid sentence by someone who said they were finished and that she did not need to read them. Later she was told that because she had not read the clauses into the microphone, they could not be included in the Hansard and hence, into the amendments to the Land Act. As she explained in her book:

I want to make one thing clear. If this had not been an amendment to give women their due rights, if this had had to do with things that the male MPs consider important, Parliament would have found a way to bring the matter back for more review. They would have said, this is just a technicality, and the provisions would have found their way into that law.¹⁷

In February 2000 when the Minister of State for Lands brought the amendments to the Land Act before Cabinet, it was the president, by his own omission, who decided to pull out the co-ownership clause. As he explained, he foresaw a disaster and advised them to go slow or pass the clause along for consideration with the pending Domestic Relations Bill (DRB). "When I learnt that the Bill was empowering the newly-married women to share the properties of the husbands, I smelt a disaster and advised for slow and careful analysis of the property sharing issue," Museveni said.¹⁸ Women activists argued that moving the clause to another bill was unconstitutional because the decision should not have been taken unilaterally by the executive, but rather it should have been put to the House. It was believed that the president's decision to shift the clause to the DRB was intended to save face so that the government would not appear anti-woman. But the effect would be to remove the issue from the agenda altogether. As the then-ULA leader Jacqueline Asiimwe explained:

The DRB is already riddled with controversy over marital rape, regulation of polygamy, declaring the payment of bride price as no longer necessary in contracting a customary marriage, even the age of marriage. . And so we saw it as dangerous to add another clause that in essence would lock debate on the whole bill.¹⁹

Women activists were furious about the removal of the co-ownership clause from the amendments to the Land Act. They held protests and public days of mourning. In 2003, they launched one more unsuccessful initiative to pass an amendment to the Land Act giving all family members rights to family land. A coalition of land rights activists and women organizations had convinced the Parliamentary Committee on Natural Resources to include a clause requiring joint registration of family land in the names of spouses and dependent children. The clause met stiff resistance in parliament and there were strong allegations that the president had sent a directive to cabinet members and key Movement members of parliament warning them not to pass the Land Act amendments with the family land rights clause.²⁰

BACKGROUND TO DEBATES ON CUSTOMARY LAND TENURE

What has given rise to the new rights based discourse in Uganda and other parts of Africa that has placed customary practices at the center of contestation? Before exploring these new movements, it is worth briefly examining the trajectory of conventional thinking about land reform among policy makers and how the policies have affected women.

The contemporary land tenure regimes, which generally include a mix of customary, statutory, and religious legal arrangements, have their origins in the early colonial period of consolidation in which colonialists left family and community concerns such as land under the jurisdiction of "customary law" and customary courts. Colonial civil courts adjudicated criminal law. After the 1930s the customary tenure arrangements had become an obstacle to changing colonial objectives that now incorporated the promotion of economic growth through agricultural production. The new goals were predicated upon the state's fostering of the emergence of a freehold system and individual property of land ownership.²¹

It is often argued that with the introduction of private property systems, women lost out in these new arrangements because their rights to land through husbands, fathers, or sons diminished in importance. By titling and registering land, colonial governments eliminated the importance of secondary rights of women to access land and men increased their control over land.²² Legal measures were seen as a way to diminish the importance of clan and communal control over land and instead placed individual men in ownership of land parcels. Women were in this way sidelined, without the necessary legal claims to land. Their ability to inherit land was diminished by male elders who gained in importance as legal land owners. It should be pointed out that the notion of individual rights was not a new one. Informal land sales have a long history in Africa dating at least back to the early colonial period, but the individual rights of indigenous tenure systems were not the equivalent of contemporary notions of private property, according to Bruce and Migot-Adholla.²³ Anthropologists like Joanne Bosworth argue that land rights have very different meanings in local contexts. For example, for the Bakiga in Uganda, land rights are embedded in concrete local practices, social relations, obligations and responsibilities and they don't have much meaning in the abstract. Land ownership as a concept similarly does not have the same meaning as we might think of when we think of individual property ownership.²⁴

With the privatization of land, women not only lost their legal claims to land, but they also did not have control over the cash that men did in order to purchase the land. Moreover, they did not own land that would have permitted them to accumulate capital with which to purchase land. They generally did not control the additional labor to work the fields, nor the animals and farm tools, nor did they control the income from the sale of crops—all of which made it difficult for them to access capital with which to purchase land of their own. In other instances women's purchase of land was predicated upon the approval and signature of a male relative. There was also outright discrimination on the part of land administrators against the sale of land to women.²⁵

There is literature that shows how women's rights to land were curtailed by the onset of colonialism, not just through the titling and registration of land but also through dramatically changed patterns of land use and occupancy. The emphasis on cash crop production diminished the importance of women's subsistence production, and sharpened gender segregation in the division of labor in a

way that disadvantaged women. Land scarcity and increase in land value made it even more difficult for women to access land.²⁶

Beginning in the early 1970s, the World Bank, which has been a major influence on African macroeconomic policies as well as land policy, initially pushed for land reform with a strong emphasis on individual ownership through registered freehold titled land. The Bank funded a series of land registration and titling projects in the 1980s. Their aim was to promote development by eliminating communal tenure systems through more efficient land use and more secure land ownership. As the World Bank policies were implemented, a key study in 1994 found that security of title was not sufficient to invest in land and increase production due to other exogenous factors like land abundance, farm size, and access to credit and water. Moreover pastoralists and other seasonal users of land were losing out as land became titled and registered.²⁷ These findings led to policies that involved the more selective and gradual introduction of titling and registration. The Land Policy Division of the World Bank, for example, has sought to encourage a combination of customary and privatized land arrangements and to encourage the natural evolution of privatized land as a result of commercialization and the intensification of land pressures

This view is reflected by many other development practitioners. Alden Wiley advocates for the incorporation of customary land holding principles into statutory law allowing local communities to manage their own decision-making regarding land tenure matters.²⁸ Similarly, British NGOs like Oxfam UK and International Institute for Environment and Development (IIED) — vocal critics of the World Bank emphasis on individual titling and ownership of land — have pushed for collective local administration of land affairs through their funding initiatives in Africa.

CONFLICT OVER CUSTOMARY ARRANGEMENTS AND WOMEN'S LAND RIGHTS

Nevertheless, there is a general difference in orientation between contemporary African women's movements and those who are seeking to secure women's rights through customary arrangements. Some of these differences can be found in two strands of gender analysis within the World Bank African Region Division.²⁹ One strand in the Bank works on issues of gender, growth, and poverty and looks at how women's lack of access to inputs and resources like land, as well as their disadvantaged bargaining position within the household, results in negative developmental outcomes. In the contemporary context, some policymakers see legal reforms regarding land as serving little purpose in the absence of women's education and economic independence. Law, according to Gita Gopal of the World Bank, can only be a catalyst to expedite a process of change, but its actual ability to bring about change, especially in the household arena, is limited; "developing countries are strewn with epitaphs of irrelevant laws that proposed norms that were unacceptable to those affected by the law."³⁰ Rather than introducing "complex foreign institutional and regulatory models," Gopal advocates a more gradual institution building approach. Legal reforms, she argues, have undermined local systems of adjudication and create a rigidity in customary laws that prevents them from being modified and used flexibly. This has the net effect of leaving women unprotected in both the formal legal system and the informal customary system. For Gopal, unwritten customary systems offer women more options than legal reforms.³¹ Customary adjudication is not based on rules and laws in the same way that formal legal systems are structured. Customary practices are fluid because they are socially embedded and are based on evolving local social and political relations. But this can potentially help or hurt women, and at a time when the clan leaders feel under siege and land scarcity is great, women have no guarantees that their just claims will be given their full consideration.

The other approach found in the Bank, endorsed by the Gender and Law in Africa group, supports networks of feminist lawyers that have developed a rights based discourse that comes out of the "women's rights as human rights" approach of the 1990s. These views, which fit the orientation of the African women's movements, became especially evident during the preparations for the 1995 Beijing conference. They focused on legal reforms that were increasingly seen as key to women's

emancipation, and in particular, on constraints imposed by customary laws and practices and problems of implementing anti-discrimination laws.³²

The divergent approaches in the Bank have parallels within some of the land alliances. In Tanzania, for example, the Land Coalition represented a merger between the Gender Land Task Force (GLTF) and the National Land Forum that formed to promote gender and progressive issues within proposed land legislation. The GLTF, however, diverged from the National Land Forum around a number of key issues. The GLTF saw the preservation of customary law as unconstitutional and at odds with women's rights because customary law had excluded women from inheriting clan lands and violated the joint property provision of the 1971 Marriage Act. Their primary concern was with joint occupancy rights, ownership, and registration of spouses. Along the same lines, a study commissioned by the Ministry of Community Development, Women's Affairs and Children, and carried out by the Tanzania Women Lawyer's Association (TWLA), found that female-headed households were largely excluded from access to land by customary arrangements. Women were poorly represented in village and district decision-making structures pertaining to land administration and were disadvantaged in dispute resolution institutions because of corruption, prejudice, and poor representation. Women surveyed were enthusiastic about titling because it allowed them the possibility for co-ownership of family land. The survey found that women preferred statutory courts over traditional courts because their decisions were binding. Women favored full land rights, including the right to bequeath land, and demanded greater education in land rights.

The GLTF was successful in getting key provisions for women into the land legislation, including the right of women to purchase and register land in their own names, the joint ownership of land by spouses, the abolition of discriminatory customary laws, and equal representation of women on decision-making and adjudication bodies pertaining to land.

However, these positions taken by the GLTF and TWLA were at odds with many of the goals of the National Land Forum, which felt some of the women's groups had been used by the state to promote a free market approach and the interests of foreign investors over local communities. The Land Forum was concerned that the issue of women's land rights would become irrelevant if whole communities were being threatened by land loss. They felt that women's rights to land would be a non-issue if the majority of men and women were threatened with landlessness through the abolition of customary land law and the introduction of market forces. While the Land Forum advocated for the evolution of customary law to incorporate women's rights, the women's rights organizations could not see any mechanism through which customary law would change, and saw instead the changes in statutory laws as a basis for advocacy and reform.³³

Similar debates have been replicated throughout Africa between advocates of these divergent approaches. Thus, it has been in the context of a renewed emphasis on customary systems that a strong rights based discourse has emerged and women activists have been advocating for legal reform. Conferences were held by the Africa Division's Gender and Legal Reform Group in the late nineties, one in Addis Ababa in 1997 for East African representatives, and a second a year later in Benin for 10 Francophone countries hosted by the Association of Women Jurists of Benin.³⁴ Since then other regional conferences have been held, including one sponsored by Eastern African sub-Regional Support Initiative for the Advancement of Women (EASSI) in 2001 with participants from East Africa and southern Africa. The thrust of these conferences and other workshops has been to target customary practices that prevent women from advancing, including practices affecting land tenure. They have identified national legislation and international legal instruments like the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) to pursue women's land ownership rights through the registration of land and of usufruct rights, as well as through the recognition of collective ownership rights

The majority of African women activists and scholars have adopted a rights based approach, but they have not limited their focus simply to legal solutions. Generally, they have also highlighted other conditions that need to accompany legal reforms. Himonga and Munachonga have found that women's legal access to land was not as important as women's actual access to land, and that even when women have been able to purchase land, their plot sizes were smaller than those of men. Instead

they have advocated for the education of officials, the provision of legal education of women, credit facilities for women, the introduction of more appropriate technologies, and the recruitment and placement of more female extension workers.³⁵ Others have cautioned against extreme reliance on legal solutions, given the persistence and prevalence of customary practices and the difficulties of taking advantage of legal solutions.

LAND RIGHTS DISCOURSES IN UGANDA

There are generally three related grounds on which feminists and women's rights activists have argued for women's land rights in Uganda and, in particular, the co-ownership clause. The first and most common type of discourse draws on rights based arguments, citing the fact that Uganda is a signatory to CEDAW, with obligations to modify social and cultural patterns of conduct to eliminate practices based on stereotyped roles for the sexes. Arguments within this approach also cite the Constitution, which contains a non-discrimination clause that stipulates that women, in effect, have the same rights to land as men.³⁶ By drawing on these and other legal instruments, the activists are arguing that women's autonomy and individuality needs to be recognized. This cuts against the grain of communally oriented ideals. As Asimwe explains:

In traditional African society, the individual is not autonomous, nor does she possess rights above and beyond those of the rest of society. An individual's place in society is fixed by a defined role or status in a greater whole, be it the family, clan, tribe, or community. The emphasis is on duties rather than rights, mutual obligations rather than individual advancement. Accordingly, when the women's movement advocates for women's rights, which are already considered Western and individualistic, it is accused of elevating women over and above family or society.³⁷

A second type of discussion draws on development and efficiency concerns. As the coordinator of the Uganda Women's Network explained:

Achieving sustainable development requires addressing inequality between men and women in the distribution of resources such as land... Lack of ownership of land by women retards development and contributes to poverty. Because land in most families belongs to the man, many women do not have security of tenure, her tenure depend[s] on the (male) access giver.

Thus, providing women with greater land security gives them more incentive to invest and improve the land.³⁸

Finally, there is the equity concern that has been most clearly articulated by Dora Kanabahita, one of the leading women's rights activists in Uganda. It is also a principle that Lynn Khadiagala has argued underlies many of the land claims of local women in Kigezi in western Uganda. Referred to as the "sweat argument," women believe they have the right to co-own land with their husbands as compensation for their labor in the fields, home, and caring for household members.³⁹ Similar ideas of labor "buying" tenure claims can be found in the literature on land rights in Ghana.⁴⁰

Movement leaders do not see customary law and practices as nearly as neutral and malleable as have been suggested at times by scholars and policymakers. As an UWONET coordinator explained in an article in the press:

Customary rules have the effect of excluding females from the clan or communal entity, which rules then serve to exclude females from ownership. Attempts by women to control property, especially land, are considered by the community as misbehavior. A woman who buys land is seen as having "sinister" intentions either to run away

from her marital home, or use it as a place to "entertain" other men. The threat of women gaining power through property ownership makes society frown upon women who go ahead to acquire property of their own. "Proper" women are satisfied with males being the providers in their lives, and they take whatever is given to them with gratitude, and teach their daughters to do the same.⁴¹

Opponents of the common property clause argue that it will undermine clan cohesion. A focus group organized by the Uganda Land Alliance in Kapchorwa and Palissa elicited the following kinds of comments:

- "Women should not own land. Women do not own their children so how can they own land?"
- "The reason why women do not own land is because God created man first and later created woman out of the man's rib. How can women own land? The woman sinned first, so she has to bear more problems."
- "Women are weak in the head and may make wrong decisions in relation to land. Men are superior to women and women have an inferiority complex."
- "Land is for the clan."
- "Why should I give land to someone who is in transit?"
- "If female children are given land by fathers, they will not respect their husbands and will leave them at the slightest excuse."
- "Women will become prostitutes [if they own land]."
- "When a girl is given land she may become stubborn."
- "If women own land they will grow horns."
- "Women who buy land do not marry."⁴²

During the parliamentary debates over the Land Act, which was passed 2 July 1998, the male politicians who rejected the co-ownership clause explained that they wanted to preserve clan cohesion and power. They rallied against the co-ownership clause in defense of "tradition" and "custom." Some said that with such a clause, women will start marrying old men so they can inherit land quickly. Others suggested that women would marry men and then divorce them for the sole purpose of acquiring their land; people would stop marrying to avoid co-ownership; through bride price women become property and property cannot own property; and how men treat their wives is a private matter that has nothing to do with co-ownership of land. Chibita Wa Duallo, President Museveni's Legal Advisor, argued that the co-ownership clause was an attempt to commercialize marriage and would destabilize families if passed.⁴³ The Director of Mobilization at the Movement Secretariat wrote an article in *The Monitor* saying that the country's economy had yielded to global corporate interests. Therefore, he continued, "Our women must rise beyond instigating strife between men and women" and called on elite women to cease undermining the clan system, work for the betterment of the whole society, and stop trying to pit family members against one another through the "exotic engineering of gender issues."⁴⁴

The comments reflect deeply held fears that arise from the existing unease over the already transformed customary and clan based land systems. Clan owned land is diminishing and individually owned property is becoming more common.⁴⁵ This has undermined the power of the clan and the male control within the lineage. The next section explores these changes and their implications for women in greater depth.

CHANGES IN LAND TENURE AND WOMEN'S CHANGING INTERESTS

Why has the women's movement attacked customary systems of land tenure and pushed for the titling of land? The reasons are complex and vary from region to region. It is clear that women are strategizing amidst rapid changes in land ownership patterns to secure land through both personal and collective means.

Partially commercialized agricultural production, the privatization of land, land scarcity, urbanization, increased commercialization, and the expansion of non-agricultural incomes have lessened dependency on clan-controlled land. These changes have put pressures on the kinship-based systems of land ownership and production. As April Gordon has observed in Kenya, the patriarchal tendencies of the lineage system have become even more pronounced as competition over shrinking land and other resources has intensified.⁴⁶

It should be noted that not all parts of Uganda have been affected by these pressures in the same way. The clan system is relatively stronger in the northern parts of Uganda, in Nebbi, Arua, Moyo, Kitgum, Gulu, Lira, and Apac, where population pressures are not as great, and land is more plentiful than in the east or west. Clans allocate land to those who want it for occupation or cultivation⁴⁷. Among some groups, like the Iteso and Lugbara, land is communally owned and women are excluded from any formal decision making in the clan or community regarding property, which is inherited only by males.⁴⁸

But in other parts of Uganda, population pressures, the growth of the market economy, and migration are creating land scarcity and pushing up land prices. This has galvanized clan leaders and various groups to seek to hold on to land more actively and guard against threats to clan land. One sees this especially in districts where there are immigrants who have moved as a result of population pressures. Clan leaders have become more protective of their land and are more reluctant to allow women access to land. Land pressures have also created a vicious cycle. In Kigezi, Kigula argues, women often have more children in order to produce more sons which would improve their access to land. This results in even higher population pressures and intra-familial land disputes.⁴⁹ The family has also undergone changes in Kigezi. Bosworth claims that in this region production has become more concentrated at the level of nuclear family unit and perceptions of social responsibilities have become more heavily associated with the nuclear family rather than extended family. At the same time, control over resources has not been relocated to the nuclear family and still involves wider kin groups, creating additional societal pressures

One gauge of the increasing land pressures is the level of conflict over land. Kigezi in the west and Mbale in the east, where the land scarcity is felt most intensely, have among the highest rates of land disputes, and the highest numbers of disputes are intra-familial involving women. The land conflicts have been mainly over succession rights by customary tenants on public land.⁵⁰

A 2002 study on Land, Gender and Poverty commissioned by the Ministry of Lands, Water and Environment found that women's land rights disputes had become the primary concern of district gender offices, and that the co-ownership issue was paramount for women. The study found that customary protections for women were weakening, and that unequal land tenure relations between men and women were contributing to conflict within families. Over 90 percent of cases brought to one District Gender office between 1999-2002 were intra-familial conflicts over women's land rights. At least 70 percent of these cases involved women who were threatened with eviction from their homes.⁵¹ Similarly, in 1999, the Uganda Participatory Poverty Assessment Programme (UPPAP) assessment studies in 11 districts showed that women's lack of inheritance rights, their inability to prevent land sales by men, the disincentive to develop the land they occupy (but did not control or own), and disinheritance of widows were among the major concerns in poverty reduction and improving women's livelihoods.

WOMEN'S STRATEGIES TO CLAIM LAND

Women in Uganda have adopted both collective and individual strategies to assert their claims to land, ranging from participation in the struggles around the Land Act amendments to taking their claims to court and purchasing land of their own. Many scholars have found elsewhere in Africa that, in reality, women's claims to land in customary arrangements are much stronger than suggested by many studies because of their embedment in social relations. They use local level associations and manipulate customary arrangements to access land, sometimes allowing them new rights.⁵² There is often considerable overlap between the customary and formal legal systems, and women draw on arguments from both systems in making their claims, using those arguments which best suit their purposes.⁵³ In customary arrangements women have found ways to claim land through a wide variety of mechanisms: through inheritance, gift, purchase, pledge, loan, lease, and share cropping, as well as through their husbands and other male relatives.⁵⁴ In Uganda, one form of resistance and assertion of rights is women's use of the courts. Increasing numbers of women are taking their claims to magistrate's courts, especially in areas where land pressures are great. Lynn Khadiagala found that although Kigezi women could take their disputes to locally elected courts of the Local Councils (LC), they tend to prefer the magistrates courts that are stationed at county and subcounty levels. Women prefer these courts because they are often cheaper than LCs, where officials often extract excessive unofficial payments. Women also often perceive the LC courts to be biased against them. Because marriages are patrilocal, with the wife living with the family of her husband, if she takes a marital land dispute to an LC court, it is likely to be filled with male relatives and friends of her husband.⁵⁵

Another strategy for obtaining land is through purchase. Recent studies have shown that women are increasingly seeking ownership of land, regardless of class.⁵⁶ Some who opposed the co-ownership clause argued that this was mainly a crusade by urban wealthy women. However, as Sebina-Zziwa et al. have pointed out: "While there is some truth in this argument, rural women have also used the market to purchase and regain their land rights." Women of all classes have been buyers and sellers in formal land markets, suggesting a need for more far reaching land ownership rights for women. Several studies by Makerere Institute for Social Research, carried out in 1995 and 2000 in Lira, Mpigi, Lira, Mbale, Kamuli, Mbarara, Nebbi, Mubende, and Kabarole districts show that between 15-20 percent of women own land in these districts that are located throughout Uganda. A study of Mukono in 2002 showed that 45 percent of women owned land. Women's main concern in all these studies was difficulty in accessing land, which means that relying on their husbands was not a reliable strategy.⁵⁷ In the 1995 study of four districts, 63 percent gave "security in case of divorce" as their reason for wanting to own individual land, 28 percent wanted financial independence, and 9 percent wanted to "bequeath it without restrictions."

Women in Buganda are more likely to purchase land than women in other regions of Uganda. There are historic precedents to this pattern. Some see the decline of the clan in Uganda as going back to the refusal by the protectorate government to recognize clans' practice of customary land rights.⁵⁸ Women's status changed with the introduction of the mailo system in Buganda. It was not traditionally customary for women to inherit land, but increasing numbers of women did. Between 1950 and 1964, West found that 42 percent of the heirs were women and their numbers were rising at the time.

By the 1990s, Troutt found in her study of Buganda that 60 percent of male heads of household inherited land, while 39 percent of female heads of household had inherited land. Troutt also found that 30 percent of female heads of households had bought land compared with 32 percent of male-headed households. However, women inherited smaller portions of land than men.⁵⁹ By the 1990s, female-headed households were more likely than male-headed households to purchase their land holdings. They also purchased a larger share of their holdings than male-headed households. Moreover, in those areas that had the most active land markets, women's holdings most closely resembled those of men, suggesting that stronger land markets improved land access for female

headed households. Thus, customary land markets, Troutt concluded, provide a way out for the landless to acquire land.⁶⁰

Today, women have greater access to capital as they have become increasingly involved in income generating projects, small businesses, and in some instances even large businesses. With new capital, they have sought to access one of the most valuable commodities in Uganda: land.⁶¹

Yet another strategy employed by women is obtaining legal title to their land. The legal burden of written evidence of ownership has led women to get their names on land documents. In Kigezi, as elsewhere in Uganda, the majority of land is held under customary tenure. Only a few people can afford to register their land with the government. The informal documents produced at a point of sale are, nevertheless, witnessed by community members or local officials and stand up in a court of law as legal proof of ownership. Women who successfully used this strategy tended to be in their twenties and thirties and living in communities in eastern Kabale District, where land availability sustains a higher incidence of polygamous households.⁶²

Beyond these more obvious challenges to customary practices are the daily individual acts of resistance that often elude notice. In one dramatic incident of this kind, a recently widowed woman, Noerina Mubiru, of Mubende, was confronted by her husband's relatives one Sunday morning before she left for church. They had come to grab her properties, a customary practice in some patrilineal Ugandan societies. The 10 relatives presented the widow with a list of things they intended to take back to their village. In desperation, the widow stripped naked and walked into the living room where the relatives had assembled. She stood in front of them, pointing to her private parts, saying: "You see, this was one of the properties my late husband loved most." She patted her behind and said, "This was the second item he loved. If anybody wants to remove his property, he will have to start with these and then I can show you the rest," she declared. The father-in-law fainted and the relatives fled as fast as they could.⁶³ These kinds of daily acts of resistance rarely receive recognition in the media or by scholars, yet they represent an important way in which women are attempting to resist the oppressions that affect them most directly as individuals

CONCLUSIONS

Women's purchase of land, obtaining titles to land, taking claims to courts, and organized collective protest around legislation, together with daily acts of resistance, demonstrate that the movement to resist customary practices is not only one of urban elite women. Feminist lawyers and women's rights activists espouse a rights-based discourse around land, which also resonates deeply with the most basic concerns of rural women. They, and a smaller majority of men, have overwhelmingly supported the controversial co-ownership clause. Women have won some significant battles around land rights in Uganda, but they still do not have the necessary political leverage to win certain key rights. What women have not been able to do through legislative change, they are tackling in concrete ways by exercising existing rights to purchase land and defending their rights in court.

Although economic and political changes have diminished the power of the clans in Uganda since the nineteenth century, they are still a vital part of society. Ugandan society is undergoing fundamental changes with respect to land tenure, clan cohesion and gender relations, all of which are related. The women's movement is articulating a vision of land tenure and gender relations that challenge the fantasy that customary arrangements can adequately protect the welfare of women in the way that they are once said to have done. This is no longer the reality for many women, who are trying to find more secure and less arbitrary means of building their lives. The movement is responding to changes that have already occurred, both in undermining women's status and in women's efforts to find new economic strategies of survival. These patterns can be increasingly found in other parts of Africa.

The women's movements challenges to customary arrangements are implicitly a challenge to the World Bank's new emphasis on localizing land administration. They show how the issue of where

to locate land administration is intensely political. As Angelique Haugerud admonished the World Bank's 2003 report on land policy:

Although community institutions ideally could improve accountability and efficiency of land law systems, the report's rhetoric about empowering local institutions to administer 'customary' land law risks romanticizing or essentializing 'community' and 'customary' law, assuming the internal politics and hierarchies in communities to be benign, and overlooking potentially inflammatory identity politics and the sometimes deeply conservative or even reactionary tendencies local communities may contain.⁶⁴

Whether the women's movements will ultimately be successful pursuing a rights-based strategy in attaining their goals remains to be seen. Inasmuch as customary land arrangements are politicized and based on social and gender stratification, reliance on markets poses similar dilemmas because markets are also embedded in social relations that are fraught with inequalities and power dynamics. Women activists are seemingly going against the new direction adopted by mainstream development practitioners and agencies regarding customary land practices. The fact that the women's movements have bravely opted to challenge customary practices and rules that are discriminatory against women, shows how seriously they regard these systems as impediments to their advancement.

NOTES

1. Deininger 2003.
2. Wily 2000.
3. Gray and Kevane 1999.
4. Wily 2000.
5. Palmer 1998.
6. Ewelukwa 2002; Hodgson 2002.
7. "Zimbabwe Women Left Behind in Land Allocation," *The Financial Gazette*, 12 December 2002.
8. "Women and Gender; Women Sidelined in Land Reform Exercise," *The Daily News*, 8 November 2002; "Women and Gender; Consultant Slams Sidelining of Women in Land Allocation," *The Daily News*, 1 November 2002; "Zimbabwe Women Still Discriminated in Land Distribution," *The Daily News*, 29 May 2002.
9. Semu 2002.
10. Tekle 2002, 107, 109.
11. Tekle 2002, 112.
12. "Kenya: Include Women In Land Boards, Says Mywo," *The East African Standard*, 20 April 20 2002.
13. Actually there were four clauses that were being contested. These included: 1) an individual bringing land into the marriage can continue to own that land after marriage; 2) in monogamous marriages, home and land used for sustenance by the couple are to be co-owned.; 3) in polygamous marriage where each wife has a separate home, each woman would co-own with her husband her home and the piece of land that sustains her and her children; 4) wives living in the same house with their husband would co-own the single home and land together with the women.
14. Agarwal 1995.
15. Sebina-Zziwa 2002a, 108-109.
16. Olupot 2000.
17. Matembe 2002.
18. "Share Parent's Property, Museveni Tells Women," *New Vision*, 10 May 2000.

19. Personal communication, Jacqueline Asiimwe 27 September 2000.
20. "Activists Toughen On Family Land Rights," *New Vision*, 22 April 2003.
21. Bassett 1993.
22. Gray and Kevane 2002.
23. 1994, 6.
24. Bosworth 1995.
25. Lastarria-Cornhiel 1997.
26. Davison 1988, 15.
27. Bruce and Mighot-Adholla 1994.
28. Quoted in Palmer.
29. Whitehead and Tsikata 2003.
30. Gopal 1999, 39.
31. Gopal 1999.
32. Whitehead and Tsikata 2003, 83-85.
33. Tsikata 2003.
34. Whitehead and Tsikata 2003.
35. Himonga and Munachonga 1991, 70-71 cited in Whitehead and Tsikata 2003, 92.
36. Asiimwe 2001a, 179.
37. Asiimwe 2002.
38. Asiimwe and Nyakoojo 2001b.
39. Asiimwe 2001a; Khadiagala 2002.
40. Okali 1983; Mikell 1989.
41. "Our Laws Do Not Help Women On Land," *The Monitor*, 6 May 2003.
42. Asiimwe and Nyakoojo 2001, 24-25, 36.
43. "Women and Gender; Women Looking for 'Lost' Clause in Land Act," *New Vision*, 12 October 2002.
44. "Should Women Be Registered Co-Owners of Land?" *The Monitor*, 23 April 2003.
45. Troutt 1994.
46. Gordon 1995.
47. Kigula 1992.
48. Okumu Wengi 1996.
49. Kigula 1992, 46, 50.
50. Kigula 1992, 71.
51. "Women Looking for 'Lost' Clause in Land Act," *New Vision*, 12 October 2002; Nakazibwe 2003.
52. Gray and Kevane 2002, Rose 2002, Whitehead and Tsikata 2003, 88.
53. Stewart 1996.
54. Feder and Noronha 1987.
55. Khadiagala 2001.
56. Troutt 1994.
57. Sebina-Zziwa, Kibombo et al. 2002b.
58. West 1972.
59. Troutt 1994, 20.
60. Troutt 1994, 68, 70.
61. Snyder 2000.
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