

GENDER AND GROWTH ASSESSMENT FOR UGANDA

**A GENDER PERSPECTIVE ON LEGAL AND
ADMINISTRATIVE BARRIERS TO INVESTMENT**

2005

**IFC GENDER –ENTREPRENEURSHIP –MARKETS
and**

FOREIGN INVESTMENT ADVISORY SERVICE
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and
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This Gender and Growth Assessment (GGA) for Uganda has been undertaken at the invitation of the Minister of Finance, Planning and Economic Development (MFPED). The GGA builds on an existing commitment by the Government of Uganda (GoU) to further explore gender and growth linkages in the context of the Poverty Eradication Action Plan (PEAP). It responds directly to GoU concern that the gender dimensions of the investment climate have not been adequately addressed to date, and the recognized need to ensure the full economic contribution of women as well as men is leveraged in sustained private sector-led growth within the context of Uganda's Public Private Partnership (UP3), previously the Medium Term Competitiveness Strategy (MTCS).

The GGA focuses primarily on an assessment of the gender dimensions of the investment climate, notably legal and administrative barriers, undertaken by the World Bank Group (WBG) Foreign Investment Advisory Service (FIAS) and the International Finance Corporation (IFC) Gender-Entrepreneurship-Markets (GEM) unit. The structure of this report mirrors that of the FIAS 2003 Administrative Barriers to Investment Report (FIAS 2003 Report) and is designed to highlight the gender dimensions of this research.

The WBG Doing Business 2005 report, the WBG Strategic Country Gender Assessment (2004) and the AfDB Multi-Sector Country Gender Profile were primary analytical sources. The Private Sector Foundation Uganda (PSFU) coordinated consultations with relevant private sector groups including the Uganda Women Entrepreneurs Association Limited (UWEAL), the Uganda Investment Authority (UIA) Women Entrepreneurs Network (WEN), and Council for the Economic Empowerment of Women in Africa (CEEWA). CEEWA lawyers contributed significantly to the GGA. We are also grateful for the contributions of Uganda's Ministry of Finance, Planning and Economic Development, Ministry of Gender, Labor and Social Development, the Uganda Investment Authority, and the Justice, Law and Order Sector.

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ACRONYMS & ABBREVIATIONS

ACGD	Africa Country Gender Database
AfDB	African Development Bank
AMFIU	Association of Micro Finance Institutions of Uganda
ASYCUDA	Automated System for Customs Data
CADER	Center for Arbitration and Dispute Resolution
CEEWA	Council for the Economic Empowerment of Women in Africa
CSR	Corporate Social Responsibility
DFID	Department for International Development
EBRD	European Bank for Reconstruction and Development
FIAS	Foreign Investment Advisory Service
GDP	Gross Domestic Product
GEM	Gender-Entrepreneurship-Markets
GGA	Gender and Growth Assessment
GoU	Government of Uganda
HRW	Human Rights Watch
IFC	International Finance Corporation
ILO	International Labor Organization
JLOS	Justice Law & Order Sector
LC	Local Council
MFPEd	Ministry of Finance, Planning and Economic Development
MGLSD	Ministry of Gender, Labor and Social Development
MSME	Micro, Small and Medium Enterprise
MTCS	Medium Term Competitiveness Strategy
MWLE	Ministry of Water, Land and Environment
NAADS	National Agricultural Advisory Services
NWBC	National Women's Business Council
NTAE	Non-Traditional Agricultural Exports
PAYE	Pay As You Earn
PEAP	Poverty Eradication Action Plan
PMA	Program for Modernization of Agriculture
PRSC	Poverty Reduction Support Credit
PSFU	Private Sector Foundation Uganda
PSIA	Poverty and Social Impact Assessment
RIA	Regulatory Impact Assessment
SCGA	Strategic Country Gender Assessment
SEI	Strategic Exports Initiative
SME	Small and Medium Enterprise
SSA	Sub-Saharan Africa
TEA	Total Entrepreneurial Activity
TFR	Total fertility rate
UBOS	Uganda Bureau of Statistics
UDHS	Uganda Demographic and Health Survey

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UIA	Uganda Investment Authority
ULRC	Uganda Law Reform Commission
UMU	Uganda Micro-finance Union
UP3	Uganda Public Private Partnership
UPE	Universal Primary Education
UPPAP / PPA2	Uganda Participatory Poverty Assessment Process / Participatory Poverty Assessment 2
URA	Uganda Revenue Authority
USh	Uganda Shillings
UWEAL	Uganda Women Entrepreneurs Association Limited
VAT	Value Added Tax
WB	World Bank
WBG	World Bank Group
WEN	Women Entrepreneurs Network

EXECUTIVE SUMMARY

Beyond rhetoric to reform: why engendering donor approaches to business environment reform is essential for economic growth and poverty reduction.

Gender matters for growth and private sector development in developing nations: women are the majority of those in poverty, in the informal economy and unpaid work, with significant unrealized potential. Their economic contribution at both micro and macro levels is often constrained by the legal and regulatory environment in ways that are not well understood or taken into account.

Too often well meaning donors ignore the gender dimensions of their work in the business enabling environment, unwittingly exacerbating gender inequalities and hindering poverty reduction. The Gender and Growth Assessment tool outlined in this case study for the Uganda Minister of Finance provides a simple framework and checklist approach to ensure the gender dimensions of business environment reform are understood and taken into account by donors working in this area.

This case study documents a pioneering new approach. It is based on “engendering” a preliminary donor report that addressed the key areas for reform in the business enabling environment without incorporating a gender analysis. The Government of Uganda identified the need for this work to be further enhanced by a gender analysis as part of its commitment to better understanding the linkages between gender and economic growth. The approach developed and the findings provide donors with essential new insights into how MDG 3 (gender equality and the empowerment of women) needs to be translated into practical terms in the context of the business environment. It highlights the importance of making connections across Ministries responsible for legal reform, finance and economic development with those dealing with gender and women’s economic empowerment issues and similarly, between donor groups responsible for private sector development and gender issues.

The Gender and Growth Assessment approach outlines why gender matters for growth and private sector development, how to engage with members of the women’s business community to allow their perspectives and voices to be heard in public private dialogue and how donors can work with local government counterparts to ensure full buy in and coordinate on-going engendered reform processes. The tool encourages addressing both the tough long term reform issues, such as the gender dimensions of land reform and inheritance laws, and finding short term solutions, such as developing leasing and chattel legislation. A checklist and flow chart are provided for replication, along with an account of Ugandan businesswomen’s perspectives on the key issues.

Why gender matters for economic growth in Uganda

Uganda is a leader in Sub-Saharan Africa in recognizing linkages between economic growth and gender issues. These linkages are critical for -

Achieving the Millennium Development Goals (MDGs)

While the third MDG relates specifically to promoting gender equality and empowering women, research indicates that gender equality is critical for achieving all the MDGs.¹

Attaining the Poverty Eradication Action Plan (PEAP) growth targets of 7%

The impact of gender inequality in reduced education and employment opportunities for women in sub-Saharan Africa is estimated to have retarded annual *per capita* growth by 0.8 percentage points from 1960-92. This is significant, as a boost of 0.8 percentage points per year would have in effect doubled economic growth over the period. If these aggregate model results were to apply in Uganda, it suggests that the country could gain as much as 2 percentage points of GDP growth per year.²

Reducing poverty

Poverty in Uganda has a predominantly female face. Households headed by widows are particularly vulnerable to asset depletion and impoverishment. As the 2004 PEAP notes, “it is now clear that removing constraints caused by HIV/AIDS and above all gender inequalities is key to achieving Uganda’s poverty eradication goals.”

Reversing the recent marked increase in inequality

Income poverty increased from 34% of people below the poverty line in 2000 to 38% in 2003. Removing the legal barriers to women participating more directly in monetized economic activity has significant implications for improving family welfare.³

Increasing agricultural productivity and strategic exports

Almost 70% of the labor force was employed in agriculture-related activities in 2003. Women provide the bulk of this labor, yet lack control of resources, especially land and have little incentive to provide additional labor for cash crops, given the gender division of resources.

Reducing Uganda’s very high fertility rate

Gender inequality in employment, earnings, and bargaining power within families plays a significant role in keeping Uganda’s fertility rates among the highest in the world. At the current fertility rates, Uganda’s population could be as high as 100 million by 2050.

Attaining Uganda’s long-term vision of becoming a middle-income country

Developed countries are increasingly recognizing and benefiting from the economic potential of providing a level playing field for women. For example, in the United States with its Equal Credit Opportunity and Women’s Business Ownership Acts, women-owned businesses now generate \$2.46 trillion in annual sales and employ 19.1 million people, one in eleven

¹ UN Millennium Project, 2005.

² World Bank, 2005a.

³ Dollar and Gatti, 1999.

CHAPTER I

INTRODUCTION

"Women's entrepreneurship, the obstacles women face and the potential they offer to create both wealth and well-being are a worldwide phenomenon".

Margaret Snyder, Founder of UNIFEM

1. The Gender and Growth Assessment (GGA) considers specific legal and administrative barriers to domestic and foreign investment that have a gender dimension. Building on the findings of the recent Uganda Administrative Barriers to Investment Report (FIAS 2003 Report),⁴ the GGA captures additional, gender-related barriers to growth and investment. Addressing these gender-related issues would be a significant move towards creating an enabling environment for all businesses in Uganda, and unlocking the economic potential of Uganda's women. Therefore the GGA concludes by making recommendations for gender-related legal and administrative reforms in the light of current on-going Government of Uganda (GoU) initiatives.

2. As well as providing analysis and recommendations for Uganda, it is hoped that this GGA will have the wider purpose of developing an approach for growth and gender assessments that can be usefully adopted in other countries.

The legal framework and political context for gender equality

Constitutional framework provides for gender equality

3. Uganda's basic law, its Constitution, provides for equality between men and women, and moreover, for affirmative action where such equality does not exist (see Box 1.1 below). Uganda's Constitution is clearly in line with its commitments under the Convention on the Elimination of all Forms of Discrimination against Women (which Uganda ratified in 1985 without any reservations) as well as with other international obligations relating to gender equality.⁵

Box 1.1: The Constitution and Gender

The State shall recognize the significant role that women play in society

National Objectives and Directive Principles of State Policy – no. XV

.....a person shall not be discriminated against on the ground of sex....

Article 21(2)

⁴ FIAS, 2003.

⁵ Article 15 provides for equality between men and women before the law and in civil matters. Uganda is also a signatory to the Universal Declaration of Human Rights; The International Covenant on Civil and Political Rights; the International Convention on Economic, Social and Cultural Rights; the African Charter on Human and People's Rights; and the Beijing Declaration and Platform for Action

.....the State shall take affirmative action in favor of groups marginalized on the basis of gender....for the purpose of redressing imbalances which exist against them.

Article 32(1)

(1) Women shall be accorded full and equal dignity of the person with men.

(2) The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement.

(3) The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society.

(4) Women shall have the right to equal treatment with men and that rights shall include equal opportunities in political, economic and social activities.

(5)women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition and custom.

(6) Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution

Article 33

Yet key legislation still runs counter to Constitutional rights for gender equality

4. The GoU has begun to create mechanisms to operationalize its international and Constitutional obligations, including through the National Gender Policy (1997) (which is currently being revised), and its National Action Plan on Women 1999.⁶ However, much remains to be done to take forward activities to implement gender equality in Uganda's legal framework. A key issue is the need to reform legislation which is un-Constitutional because it discriminates on the basis of gender – for example the Divorce Act. The proposed Domestic Relations Bill, currently before Parliament would go a long way to addressing these issues – including the divorce law. In addition, Uganda has yet to enact legislation which would address key social issues that impact on gender relations and on women's position in society and the home (see Box 1.2 below for key examples).

5. Enacting laws to implement Uganda's Constitutional commitment to gender equality is important for growth. Some of the laws currently under consideration directly address women's ability to access economic assets (especially land) on death or divorce. But legislation directed more at domestic relations between men and women can also impact on women's ability to participate in the public and economic sphere. It can lead the way in changing social attitudes.⁷ And legislation directed at social and family issues can have a direct impact on the economic empowerment of women. Uganda's Children Statute, 1996 for example provides that it is the duty of both parents to contribute financially to the upkeep of their children, and enables women to obtain this financial support in this respect. It is the practice of at least one legal aid clinic to use this legislation to encourage a woman seeking child maintenance for to draw up a business

⁶ The Plan was the result of a consultative process that sought to implement GoU commitments at the 4th World Conference on Women in Beijing. The Plan identifies four critical areas of concern for Uganda - poverty; reproductive health and rights; legal framework and decision making; and the girl child and education. For each priority area strategic objectives, actions, indicators, and actors and identified.

⁷ Legislation passed in the 1970's has been seen as key in changing attitudes towards race relations and equal opportunities in the UK for example.

plan – and then to encourage the father of her child to make a one off lump sum payment to fulfill his obligations under the Statute, thus enabling the woman to start a business.⁸

**Box 1.2: Legislation which requires amendment or enactment
to address gender inequality in Uganda**

Divorce Act

The Divorce Act lays down unequal standards for men and women. Where a woman is seeking divorce, she must prove that her husband committed adultery as well as some other ground – desertion, cruelty or lack of maintenance. In contrast, a man needs only to prove adultery to obtain a divorce.

In a case recently brought by the Strategic Litigation Coalition (Uganda Association of Women Lawyers & ors v The Attorney General Constitutional Petition No 2 of 2003), Uganda's Constitutional Court declared these aspects of the Act to be un-Constitutional under Article 2(2) of the Constitution which provides - *If any other law or custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.*

Inequalities also exist in the division of assets on divorce. Frequently, where the wife seeks a claim in the marital property that was not directly acquired during the marriage, she is deemed to lack legal and equitable rights. The wife's contributions to the home during the marriage are non-monetized and are usually not taken into account.⁹

Domestic Relations Bill

The Bill reforms and consolidates all laws relating to marriage, separation and divorce (including addressing the un-Constitutional issues in the current Divorce Act). Key aspects of the Bill are –

- recognition of the principles of equality
- recognition of monogamous and polygamous marriage
- setting out of the rights and obligations in a marriage – including providing for equal rights and making it an offence for one spouse to force the other to have sex without his or her consent
- widow inheritance (the custom where a relative of the deceased husband inherits the widow as his wife) is made illegal
- recognition of matrimonial property, recognizing the contributions of a wife to matrimonial property and providing that such property is owned in common in undivided shares
- reform of the divorce law, providing for the same grounds for divorce for a man and woman – this addresses the fact that the current provisions of the Divorce Act have been declared un-Constitutional

The issues in the Bill, especially the provisions relating to co-ownership of matrimonial property, including customary land, are highly controversial. The Bill is currently being considered by the Parliamentary & Legal Affairs Committee.

⁸ Legal Aid Clinic, The Law Society of Uganda.

⁹ Banenya, 2002.

Succession (Amendment) Bill

The Bill, prepared by the Uganda Law Reform Commission would entitle a widow to a half of the matrimonial home and other assets on the death of the husband. Under the current Succession Act – a wife is only entitled to 15% of these assets, and if there is more than one widow (due to polygamy), they share the entitlement.

Domestic Violence Bill

The Uganda Law Reform Commission is currently undertaking research in relation to a proposed Domestic Violence law. The study that they are currently undertaking in this respect considers: the nature and extent of domestic violence; the victims and perpetrators; the causes and possible interventions.

Law reform is not enough – also important are land allocation practices

6. The legal framework has a key role to play in determining women's level of access to key economic resources including credit, land and property. However legislative reform will not be sufficient. This GGA will discuss in some detail (in Chapter 4) Uganda's land law, which although not discriminatory, does not address the highly unequal allocation of land as between men and women in Uganda, nor on-going inheritance and ownership practices that continue this inequality. The issues here are not primarily to do with law reform, but more with customary practice and attitudes.

- access to justice is key

7. It is not only Uganda's legislative framework and inheritance / ownership practices that limit women's access to economic resources. A perhaps more fundamental issue is that Uganda's population is in general largely unaware of its legal rights, or how to enforce them (and especially women, who are have even less access than men to legal advice and representation).¹⁰ This issue is explored in Chapter 7.

- the political context

8. Women are represented at every political level in Uganda, from local government where one if every three councilors is female, to national Parliament. Many express concern that the significant political progress made by women has not been similarly matched in the economic domain.¹¹

- and the cultural and social background

9. Reforming the law, working to change land allocation practices, and enhancing access to justice is clearly part of the solution to releasing the economic power of women in Uganda.

¹⁰ Government of Uganda, 2002a.

¹¹ Consultations with PSFU and women entrepreneurs, Kampala, November 2004.

However, culture also has a part to play. Ugandan lawyer Sarah Lubega suggests¹² that the traditional concept of women in Uganda places them in an inferior position in relation to men. The assumption that a woman can not do what a man can do is entrenched by traditional customs and norms in Uganda.

Box 1.3: Traditional proverbs from different tribes in Uganda

When a woman assumes power in the house, the house is as good as destroyed because all sorts of people will seize the opportunity to confuse it (Kiswahili)

The woman grinds the flour but doesn't decide which ox shall be slaughtered (Runyankole / Rukiga)

10. Evidence from the Uganda Participatory Poverty Assessment Process / Participatory Poverty Assessment 2 (UPPAP/PPA2) illustrates how these attitudes can result in women being marginalized –as economic actors:

- Women can lack a voice in decision-making in the household as well as the public sphere.
- Women can lack control over income, even when they have provided the labor for it. Women lack incentives for cash crops, as men tend to control the resulting income (despite the fact that women's labor has contributed to such income).¹³
- Despite the introduction of universal primary education in Uganda, girls may not receive the same educational opportunities as boys.

11. Culture is integral to understanding both gender and poverty issues in Uganda, and how they are intertwined.¹⁴ Some practices, which are justified as cultural and customary practices, pose a threat to women's safety and security, and limit access to justice. Examples include female genital mutilation, domestic violence, particularly wife battery, early marriage, widow inheritance, and the practice of property grabbing from widows and orphans. Female genital mutilation is an important issue for women in Uganda – who are both victims and perpetrators of the practice. One aspect of addressing the issue is to enable the women who undertake the practice as a profession to find alternative sources of employment. Culture has a pervasive impact on social and economic life. It is a cross-sectoral issue which influences the roles and status of men and women in different sectors. The allocation of resources, of decision making power, status, opportunities, and rewards to men and women are defined by gender, itself largely defined by cultural norms, expectations, attitudes, and beliefs. Table 1.1 below illustrates the influence of culture on gender disparities and their links with key determinants of poverty.

¹² Lubega, 2000.

¹³ World Bank, 2005a.

¹⁴ This section is largely drawn from Mukasa et al. 2004, in particular Chapter 10.

Table 1.1: Gender and Culture: Links with Poverty Issues

Culturally defined Gendered Practices	Prevalence/significance of Issue (where data exist)	Influence on gender dimensions of poverty
Payment of bride wealth		<ul style="list-style-type: none"> ◆ Women's time and labor are considered part of the value received by the men and their extended families. ◆ Predisposes girls to early marriage, which negatively affects their education opportunities and compromises their health and ultimately their employment.
Domestic violence	40-45% of women have experienced domestic violence	<ul style="list-style-type: none"> ◆ Affects women's health and productivity, at times results in death ◆ Disempowers women
Widow inheritance		<ul style="list-style-type: none"> ◆ Disempowers women and may entail dispossession of property (and children, especially girls). Predisposes to HIV/AIDS either way, thereby dwindling the scope for protection of children
Polygamy	% of HH in polygamous unions	<ul style="list-style-type: none"> ◆ Inability to provide for the needs of the family. Women in the relationship end up as family heads with limited resources, sharing of scarce resources across many 'households', fragmentation of land and impetus for higher fertility rates amongst women in polygamous families (competing for male heirs)
Female Genital Mutilation		<ul style="list-style-type: none"> ◆ Health hazards/maternal mortality. Non preservation of women's dignity, trauma, school drop out once they complete the 'passage into womanhood'.
Inheritance practices		<ul style="list-style-type: none"> ◆ Perpetuate landlessness of women and low value attached to women (rootless and visitors in their 'homes'). Compromise potential productivity of women.

Source: Based on Mukasa et al., 2004.

12. Many of the issues of power and control over assets highlighted in this Strategic Country Gender Assessment (SCGA) have cultural roots. Some of these linkages are outlined in Table 1.2 below.

Table 1.2: Culture and Gender disparities within poverty determinants

Key Poverty Determinants	Gender disparities		Influence of culture
	Women	Men	
Ownership of registered land	7%	93%	Women are economically dependent on men. Land inheritance is mainly patrilineal.
Formal labor force participation	12%	88%	Women are domesticated and have limited opportunities. No emphasis is placed on preparing them for the public space. Training is often skewed toward culturally appropriate fields regardless of their income-earning potential.
Wages of <40,000 USh/month	51%	44%	Less value placed on women's work (globally).
Literacy rates for population aged 10 yrs and above	63%	77%	Still reflects the low value placed on women's role outside the home. Grooming of women for marriage is a factor in limiting schooling and therefore literacy. Gender allocation of roles also affects girls progression in formal education, the main channel for literacy.
Shares of total enrolment at tertiary level	38%	62%	As above. Poverty interacts with negative attitudes about girls' education. For many, investment in girls' education is investing to benefit a different family or clan (the man's). Early marriages are also a factor.
Maternal mortality ratio (per 100,000 live births)	506		No control over sexuality and resources, limited access to information, harmful practices and taboos against women and children, early marriage.
Distribution of credit	9%	91%	Implications of women's economic independence for men and for gender relations.
People living with HIV/AIDS	51%	49%	Women have no control over their sexuality and their bodies.
Likelihood of adults being sick within households	31.8%	24.3%	Workload, exposure to hazardous conditions.
Members of Parliament and limited participation in governance and development structures	24.4%	75.6%	Leadership is a preserve of men; also negative socialization for the role, limited skills, and low value of women.
Men and women chairpersons of district land boards.	3.6%	96.4%	Limited participation in governance structures; land as male preserve; public life as a preserve of men.
Applications for processing land certificate titles	6%	94%	Lack of exposure to land issues; limited opportunity to inherit; land grabbing from widows; limited knowledge of land rights and information on procedures; high costs.

Source: Mukasa et al., 2004.

13. Many sources confirm the importance of bride price in defining women's place and value in society, and the extent to which women do (or even may) control assets and resources (Box 1.3). The proposed Domestic Relations Bill (currently with Parliament) would ban bride price. As reported in the UPPAP/PPA2, in a discussion of land rights for women, one respondent asked bluntly whether "property could own property."

Box 1.4: Bride Price

Bridewealth payments lead to the perception among both men and women that men 'own' women, and therefore that it is women's job both to provide for men and serve them. In a discussion of men's assets in Kigusa in Bugiri, one woman expressed a common sentiment when she said 'I was bought by the man, so my body is his asset to use as he wishes.' Bride price was also used to legitimize domestic violence. In a discussion of domestic violence in Katebe in Rakai, a male participant commented 'If you buy a cloth, do you not wash it any time you want?' and the women agreed that as men have paid cows for them, they are a property in the home to be used as the man wishes.

According to Human Rights Watch, bride price was once a "gesture of appreciation" to the bride's family – now men "literally purchase" their wives. As in a commercial transaction, the husband's payment entitles him to full ownership rights over his acquisition.

Source: Uganda Participatory Poverty Assessment Process, 2002, Human Rights Watch 2003a.

14. Cultural factors are directly at work inhibiting Ugandan women from realizing their potential in the sphere of business. Sarah Lubega notes that in Uganda a woman involved in business is frequently referred to as an immoral person. A married woman must usually seek permission from her husband to conduct business, and particularly in rural areas women frequently have to give up income from their businesses to their husbands.¹⁵

15. Despite the clear de facto imbalance between men's and women's rights in Uganda, it is clear that the issue goes beyond the legal emancipation of women. Complex social, cultural and political issues are at work, which do not make these issues straightforward. Box 1.5 below gives some perspectives on current attitudes towards gender relations in Uganda.

Box 1.5: Perspectives on gender relations and legal rights in Uganda

The view was expressed by both women and men that "*women have grown wings*" and that "*women's rights have become excessive, there is need to scale them down*"

Source: Baseline Study on LC Court 1998

Women were in support of the gender movement, while men saw it as a threat to their natural position in society and added that this gender movement posed a big threat to the institution of marriage

¹⁵ Lubega, 2000.

Source: Report on Workshop on Commercial Justice for Investment Promotion in Uganda July 2002 p.17

In urban centers, a recent practice has developed of giving very generous wedding gifts to the bride, including furniture and appliances. This is said to be changing the balance of power in the home, with men being uncomfortable with the matrimonial home being furnished through the woman.

Source: discussions with female lawyer in Kampala, November 2004

The law on defilement (contained in the Penal Code), which makes having sexual relations with a girl under the age of 18 a capital offence, has been seen as discriminatory against men and boys. It does not address the issue of boys who are victims of sexual abuse, nor can women be prosecuted under it (although there are plans to amend the law to address these issues). Moreover, it is perceived that the law has been used to victimize men by accusing them of defilement and then demanding bribes to drop charges.

Source: The New Vision, Friday November 19 2004, p.4 and discussions with lawyer in Kampala, November 2004.

The economic dependence of women lies at the heart of the problem

16. The economic dependence of women — their lack of control over productive resources and assets — is at the root of the problem. It is a systemic issue, where inequity in marital status and in property ownership intersects with cultural attitudes and beliefs to create formidable obstacles to change. The imperative to control women — embodied in the question “how can property own property?” — is underpinned by some curious logic. In the UPPAP/PPA2, it is widely reported that men fear that women will become promiscuous and indulge in extra-marital affairs if they are allowed to work. Men express the view that women will become “uncontrollable,” “unmanageable,” “unruly,” or disrespect men if they gain economic independence. They reason that women working might lead to family break-up as women might abandon men if they are no longer economically dependent on them. Conversely, it is also reported that when the husband learns that the woman can get some income, he will swiftly shift the burden of looking after the family to the wife. Women who are allowed to work are left to shoulder the responsibility of caring for the home, e.g., pay school fees, buy food, meet the medical bills, buy clothes for the entire family, ensure provision of all household necessities, and pay taxes for their husbands. Just as unfortunate is that women are themselves often driven by these same cultural imperatives to support and uphold these views. One woman argued that “at times, we women are a problem because after our husbands have supported us to do business, when we become successful we end up despising them” (Uganda Participatory Poverty Assessment Process, 2002).

17. Interviews with women entrepreneurs in November 2004 reinforced the centrality of these culturally-based obstacles to women’s economic empowerment. While access to finance, and the need for management training and other business development services, are highlighted as particular issues facing women entrepreneurs, the question of the reluctance of husbands to “allow” their wives to engage in business activity was never far from the surface. As a consequence, women’s enterprises often remain precarious, and are usually tied to small-scale

and informal activities that can be reconciled with their domestic responsibilities. This essentially means that a substantial segment of Uganda's entrepreneurial spirit remains under-utilized and is unable to realize its full potential in contributing to the country's growth and economic dynamism.

18. Access to business development services and training, particularly in relation to financial management and exporting, were cited as constraints to female entrepreneurial development. These issues are addressed in depth in the AfDB/ILO Integrated Framework addressing the enabling environment for growth oriented women entrepreneurs.

Initiatives to address growth and gender issues

Efforts are underway to address some of the problems

19. There are some encouraging initiatives underway in Uganda to address the gender imbalances in economic empowerment discussed above. In addition to the advocacy, networking and training initiatives undertaken by women's business associations, the recent Government initiative to integrate entrepreneurship courses into the educational curriculum is laudable, and should help to mitigate the negative attitudes women entrepreneurs felt currently affected their business operations.¹⁶ The Uganda Investment Authority (UIA) encourages positive role models through the Distinguished Woman Investor of the Year Award at their annual awards ceremony.

Re-visiting the Administrative Barriers to Investment Report

GGA focuses on gender dimensions of FIAS Report

20. The FIAS 2003 Administrative Barriers to Investment Report (FIAS 2003 Report) reviewed the legal framework for business and foreign investment in Uganda. It identified existing administrative barriers to (1) establishing; (2) locating; and (3) operating a business in Uganda, and made recommendations for streamlining and simplifying the administrative procedures. It also considered administrative barriers in three of the sectors targeted for increased investment in Uganda – textiles and apparel; fisheries; and coffee. Key barriers to investment identified in the Report included – corruption; lack of consistency between existing laws / procedures and actual procedures; cumbersome and costly mechanisms for payments of fees for administrative transactions; decentralization; multiple licensing; and poor co-ordination between authorities.

21. This Assessment re-visits some of these issues in the light of the gender issues outlined above. It highlights legal and administrative barriers that have a disproportionately negative effect on female headed businesses, as well as barriers that impact specifically on women. It suggests that when legal and administrative barriers to investment are viewed with a gender lens, new issues come into focus, and priorities may need to be re-considered. Key findings and recommendations are –

¹⁶ Consultations with women entrepreneurs, Kampala, November 2004.

Gender and Growth Assessment: Uganda

- Barriers to formalization of a business may have a disproportionate effect on female entrepreneurs, and in some cases create an absolute barrier to their ability to formalize their businesses. A more radical approach to deregulation in line with global best practice is recommended to encourage female entrepreneurs entering the formal economy (including legislative reforms discussed in this Assessment and administrative reforms described in *Doing Business 2005*).
- Land allocation practices operate as a fundamental constraint to female entrepreneurs, especially in relation to access to credit. While there is scope for amending the Land Act, the Succession Act and the Divorce Act to give women enhanced rights over land, the inability of many women to enforce even the rights they currently have is a critical issue.
- It is difficult for women to access formal sources of credit by using the non-land assets that they may have (e.g. stock or machinery) as collateral because of the undeveloped system of personal / moveable property securities law.
- Poor people in general, and women in particular, lack information about their legal rights and access to mechanisms satisfactorily to enforce them. Reliance on the Local Council (LC) Court system for commercial dispute resolution puts women at a particular disadvantage because of traditional attitudes and customary law applied.

22. The rest of this Assessment focuses on legal and administrative barriers that impede women's ability to establish a business, locate it and operate it (Chapters 3, 4 and 5). It then considers specific issues that constrain women's ability fully to participate in key sectors in the Ugandan economy (Chapter 6). The vital issue of access to commercial justice is then discussed (Chapters 7), and finally the Assessment considers entry points for reform (Chapter 8). The starting point is a fuller understanding of the linkages between gender, growth, and poverty and this is provided in Chapter 2.

CHAPTER II

GROWTH AND GENDER

“It is now clear that removing constraints caused by HIV/AIDS, environment and above all gender inequalities is key to achieving Uganda’s poverty eradication goals.”

Poverty Eradication Action Plan 2004/5 – 2007/8

Introduction

23. The purpose of this chapter is to address the linkages between gender and growth in Uganda, in the specific context of efforts to promote entrepreneurship and to develop women’s businesses.¹⁷ The starting points of this chapter are: (i) that both men and women play substantial (though different) roles in the Ugandan economy and household; and (ii) that there is a growing body of micro-economic empirical evidence, and emerging macroeconomic analysis, indicating that gender inequality directly and indirectly limits economic growth, principally through gender differences in economic options, incentives, and productivity. Some evidence is available in the specific context of Uganda, as well as for Sub-Saharan Africa more broadly. Awareness of the importance of gender in the development agenda has grown considerably, and has been bolstered by mounting empirical evidence of the costs of gender inequality for development, and by greater recognition of the need to address gender to ensure development effectiveness.

Gender Roles in the Ugandan Economy

24. A distinguishing characteristic of Uganda’s economy, shared with other Sub-Saharan African economies, is that both men and women play substantial economic roles. Although the economy has diminished its dependence on agriculture, now it still contributes almost 40% of GDP, 85% of export earnings, and 80% of total employment.¹⁸

25. One way to capture the dynamics of the different contributions of men and women to the productive economy is in the “gender intensity of production” in different sectors, an approach developed by Elson and Evers and applied to Uganda (Elson and Evers 1997). Table 2.1 above presents the “gender intensity of production” in Uganda, and the shares of men’s and women’s contributions to national product by principal sector. These estimates, while highly aggregated, provide a useful indication of the magnitude of the respective contributions of men and women to the economy. They suggest, in the Ugandan case, that men and women are not distributed evenly across the sectors of the economy, as women comprise the majority of the labor force in agriculture, while men are a substantially higher majority of the labor force in the industry and service sectors. They suggest, further, that men and women each contribute around one-half of the country’s national product. It is probable that these estimates understate women’s

¹⁷ This chapter draws in large part on the World Bank’s Strategic Country Gender Assessment, and on practical consultations with women entrepreneurs in Uganda.

¹⁸ Moncrieffe, 2003.

contribution to the economy, though they also do not take account of gender differences in productivity.

Table 2.1: Uganda - Structure of the Productive Economy 1997 (Preliminary Estimates)

Sector	Share of GDP*	Gender Intensity of Production*		Contributions to GDP by Sector and by Sex**	
		Female	Male	Female	Male
		(%)			
Agriculture	49.0	75	25	72.6	24.8
o/w Smallholder Sector	33.0	80	20		
Traditional	3.5	60	40		
Exports					
Non-Traditional Agricultural	1.0	80	20		
Exports					
Industry	14.4	15	85	4.3	24.8
o/w: Manufacturing	6.8	n/a	n/a		
Services	36.6	32	68	23.1	50.4
Informal Sector (estimates)					
Total/Share:***	100.0	50.6	49.4	100.0	100.0

Note: Gender Intensity of Production: female and male shares of employment.

Source: Based on Elson and Evers 1997.

Principal data sources: * = Elson and Evers 1997; ** = Africa Country Gender Database (ACGD), staff estimates. *** own calculations.

26. Micro-level country data confirm the general validity of these aggregate estimates. About 86% of the population lives in rural areas and 77% of the active labor force in rural areas is employed in agriculture.¹⁹ An analysis of the type of employment undertaken by women and men shows that the vast majority of female employment is in agricultural subsistence work, and more specifically crop production (with 60% of women having “cropping” as their occupation, as opposed to only 49% of men).²⁰ The structural roles of men and women in the agricultural cycle reveal that **women** are more active in agriculture than men, specifically in food crop production, marketing, and processing of agricultural products (Table 2.2). This is confirmed in the National Agricultural Advisory Services (NAADS) strategy, which notes that women in Uganda play a pivotal role in agriculture, providing most of the labor force. Men and women have distinct roles within the farming systems, as they are engaged in the

Table 2.2: Contributions to Production in Relation to Shares of Population and Land Ownership

Indicator	F	M
	%	
Population	51	49
Food production	80	20
Planting	60	40
Weeding	70	30
Harvesting	60	40
Processing/preparation	90	10
Access to/ownership of land and related means of production	8	92

Source: Akello, 2001.

¹⁹ Government of Uganda, 2004b, p.51.

²⁰ Lawson, 2003.

production of different crops and livestock. Men tend to concentrate on the production of cash crops (coffee, cotton, tobacco and lately cereal production for the market), while women concentrate on the production of food crops mainly for family consumption (and simultaneously providing for much of the labor in cash crop production). In livestock production women concentrate on poultry and small ruminants (mainly rabbits, pigs, goats and sheep), while men concentrate on large stock (mainly cattle).²¹

27. In non-farm production, men predominate in the formal economy (men comprise 61% of employees²²), while most female workers in Uganda are either unpaid family workers, or self-employed. Women comprise nearly 40% of business owners with registered premises in the Uganda Business Register,²³ but are more likely to be micro, informal, and employ fewer workers. When rural women have the opportunity, they take the chance to increase their incomes through non-farm activity (Box 2.1).²⁴

Box 2.1: Non-Farm Employment

Household data show that non-farm employment is an important area of growth in SSA, where a large share of women find employment and incomes to grow out of poverty. Data from Uganda show that between 1992 and 1996 in the rural non-farm sector women's labor force participation increased, and therefore incomes of women and of FHH increased, leading to a reduction in poverty. When provided with opportunity, women are able to participate, and to contribute to economic growth and poverty reduction. Removing constraints to female participation in the labor market can therefore promote this kind of outcome and accelerate the pace of poverty reduction in Uganda.

Source: Canagarajah et al. 2001.

There is need for more work on gender dimensions of entrepreneurship and growth

28. A global study of entrepreneurship, which includes Uganda, suggests that the country has an exceptionally high level of entrepreneurial activity.²⁵ The study indicated that Uganda for 2003 had the highest total entrepreneurial activity (TEA) index (29.2) among all countries surveyed. This means that 29 out of 100 Ugandans are engaged in some kind of entrepreneurial activity. The definition of entrepreneurship includes self-employment in any kind of remunerated activity and includes the informal sector. This compares with a TEA index of 12 in the U.S., and 1.6 in France. The study points out that the relationship between entrepreneurship and growth is complex, as in Uganda especially the question of how entrepreneurship translates into economic development and poverty reduction remains open.²⁶ In developing countries, women are more

²¹ NAADS Secretariat, 2003.

²² Report on the Uganda Business Register, 2002/2002. Kampala, Uganda: Uganda Bureau of Statistics (UBOS). According to UBOS, 63,000 women are government employees and 184,000 women are private employees.

²³ Report on the Uganda Business Register, 2002/2002. Kampala, Uganda: UBOS.

²⁴ Canagarajah & Bhattamishra, 2004, p 405-420.

²⁵ Global Entrepreneurship Monitor, 2003.

²⁶ The GEM study distinguishes, for example, between "necessity" and "opportunity" entrepreneurship—the former is seen as involuntary and motivated by "necessity," while the latter is voluntary and motivated by the pursuit of perceived opportunities. Both types of entrepreneurship exist at high levels in Uganda.

likely to prefer wage employment over entrepreneurship if available, but necessity often dictates. In Uganda, it is not uncommon for people to engage in some kind of business activities in addition to wage employment or to run several small business ventures at once. The GEM study points to the existence of marked regional differences in entrepreneurship, with the Eastern districts showing “spectacularly high” rates of entrepreneurial activity – while at the same time poverty in the Eastern regions is also shown to have risen sharply in recent years. Unfortunately, data has not been sex disaggregated and subject to gender analysis. This could yield interesting insights given the national coverage and large sample size.

Linkages with Non-Market Work

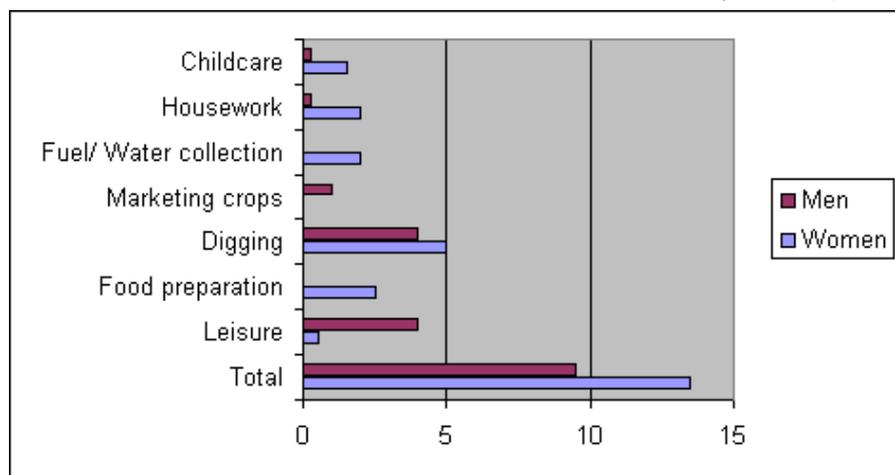
Women’s role in the household economy means they are “time poor”

29. The different structural roles of men and women in the economy (notably in agriculture and the informal sector) are coupled with their equally different—and unbalanced—roles in the household economy. A further distinguishing characteristic of the Ugandan economy, shared with others in Sub-Saharan Africa, is that the boundary between economic and household activity is less well drawn than in other Regions. In addition to their prominence in agriculture, women bear the brunt of domestic tasks: processing food crops, providing water and firewood, and caring for the elderly and the sick. This “double workday” contributes markedly to women’s “overburden,” as shown in the UPPAP/PPA2 analysis. The UPPAP/PPA2 brought to light forcefully the problem of women’s “overburden,” and identified the strong imbalance in the gender division of labor as one of the major contributors to poverty. Women must work, substantially more than do men, in both the “market” and the “household” economies. On average, their workdays may be 50% longer, and their work is closely integrated with household production systems.

Box 2.2: The Importance of Time

Analysis of men’s and women’s time allocation is a critical development tool for three key reasons. First, time allocation data in Uganda, as elsewhere in Sub-Saharan Africa, reveal not only the substantial market economy contributions of men and women to Uganda’s development, but also, and just as importantly, the existence of a whole realm of human activity—the household economy—that is largely invisible and un-counted, and which is predominantly where women work. Second, once the co-existence and interdependence of these economies become apparent, cross-sectoral and cross-task synergies and trade-offs assume particular importance in identifying constraints to raising growth and productivity, and in setting policy and program priorities. Third, time constraints were a critical (if insufficiently appreciated) issue before the HIV/AIDS pandemic—the advent of HIV/AIDS exacerbates the time constraints across the two economies, and gives added urgency to addressing them as a matter of priority in poverty reduction strategies.

Figure 2.1: Time allocation for men and women in Katebe, Rakai (Hours/Day)



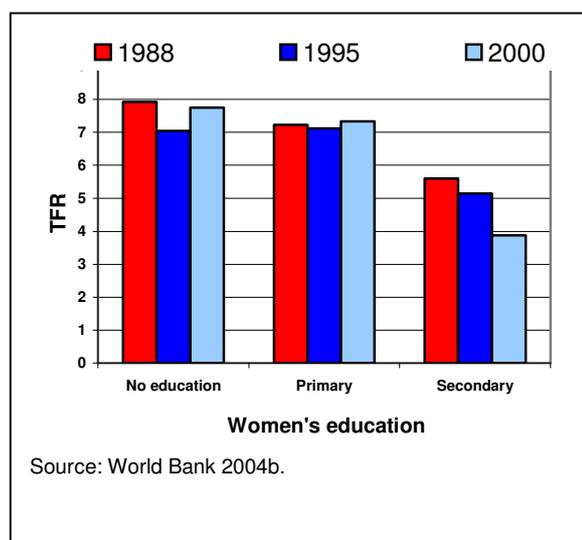
Source: Uganda Participatory Poverty Assessment Process, 2002.

30. Time constraints affect women disproportionately and mean that women have to trade off among necessary or important tasks, including developing or expanding their own businesses – women have to undertake business activities essentially in ways that are compatible with meeting their domestic responsibilities. Consequently, when business registration, or gaining access to banks and other financial institutions involve travel, waiting, and delays, these constitute an especially difficult burden for women.

Education and Fertility

Addressing underlying and linked issues of education and fertility is key

31. Uganda has made impressive progress in education. Universal Primary Education (UPE) has increased enrolment dramatically since 1997. UPE has increased primary enrolments from 3 million in 1997 to 7.6 million in 2003, with the percentage of girls rising steadily to 49.3% in 2003. Despite the significant achievements, the lowest income quintiles are still less likely to attend primary school and to do so consistently. At the secondary level, there is limited access for the majority of the population and continued gender inequalities, with 20-35% more boys in S1-S4 and over 60% more boys in S5-S6. The well-established link between education and fertility is confirmed in Uganda. As shown by the 2000 Uganda Demographic and Health Survey (UDHS), women with no education have a total fertility rate (TFR) of 7.8, those with some primary education 7.3. Women with more than primary education have shown TFR dropping dramatically from above five in 1988 to 3.9 in 2000—a difference of nearly four children between women without



Source: World Bank 2004b.

education and those with secondary education (*Figure 2.2*). Gender inequality in education, employment, earnings and bargaining power within families plays a significant role in keeping Uganda's fertility rates among the highest in the world.

32. Inequality of access to education and training retards economic growth. A study of more than 100 countries over three decades found that an increase of one percent point in the share of adult women with secondary education implies an increase in per capita income growth of up to 0.3 percentage points.²⁷

Does Gender Inequality Limit Growth in Uganda?

There is macroeconomic evidence that gender inequality impacts adversely on growth

33. There is a growing body of microeconomic evidence and case study material to suggest ways in which gender inequality affects growth, output, and productivity, especially in agriculture (for Sub-Saharan African examples, see *Box 2.3*). As reported in Keller (2003), the main finding from a study of non-traditional agricultural exports (NTAEs) is that poor women and men farmers are unwilling to diversify into NTAEs because of lack of sufficient labor (household and hired).²⁸ Women in particular are labor-constrained, and they are more concerned to use labor for food crop production to ensure household food security. When asked about their problems in expanding agricultural production, men identified transport and marketing difficulties and lack of access to credit, which are already targeted by Government initiatives. Women, in contrast, identified problems related to agricultural production *per se*, in particular their labor constraints. When asked about the causes of labor constraints, men said simply that they had no money to hire labor. Women, on the other hand, gave the time they spent looking after their families, working on their husbands' gardens and producing food for their households as reasons for inability to expand their production for the market.

Box 2.3: Gender and Growth: Missed Potential

Burkina Faso: Shifting existing resources between men's and women's plots within the same household could increase output by 10-20 percent.

Kenya: Giving women farmers the same level of agricultural inputs and education as men could increase yields obtained by women by more than 20 percent.

Tanzania: Reducing time burdens of women could increase household cash incomes for smallholder coffee and banana growers by 10 percent, labor productivity by 15 percent, and capital productivity by 44 percent.

Zambia: If women enjoyed the same overall degree of capital investment in agricultural inputs, including land, as their male counterparts, output could increase by up to 15 percent.

Source: Blackden and Bhanu 1999.

Men and women have different incentive structures

34. Men and women face entirely different incentives as economic producers, depending on who controls the resulting income. When asked about their crop preferences in the UPPAP/PPA2 exercise, women and men gave different lists: women preferred cassava, beans, sweet potatoes and plantains because they all contributed to household food security, though sweet potatoes

²⁷ Dollar & Gatti, 1999.

²⁸ Kasente et al., 2002. For a wider review of these issues, see Keller, 2003.

could, in addition, be sold. The two top crop preferences of men were coffee and vanilla, no doubt explained by the fact that 90% of income from these two crops was controlled by men (Keller 2003). UPPAP/PPA2 also draws attention to a widely known phenomenon from Uganda and elsewhere in the sub-region: that when there is a market for a food crop that was previously grown for household consumption, control over disposal of that crop passes from women's to men's hands. UPPAP draws the important policy conclusion from this, namely that the decrease in poverty that is expected to follow from a shift to market-oriented production may "impact preferentially on men."²⁹ Gender inequality affects the implementation of Uganda's Strategic Exports Initiative (Box 2.4).

Box 2.4: Export Incentives?

The Poverty and Social Impact Assessment (PSIA) of the Strategic Exports Initiative (SEI) noted that supply response sought under the strategy was limited by gender inequality, as the strategy failed to recognize that one of the principal determinants of response is the way incentives are mediated, at household and community levels, by negotiated relationships of cooperation and conflict between men and women. Differing incentives in turn affect household income and how it is distributed. The PSIA points out that both incentive issues and intra-household distributional issues center on the monopolization of major income streams by men.

Source: Booth et al 2003, in SCGA 2004.

35. The focus of female activity on non-cash crops and micro enterprises means that women's current formal contribution to economic growth in Uganda is limited. But women clearly have the potential to contribute more - as entrepreneurs, employers, and employees - enhancing domestic investment rates, and participating in the supply chain to foreign investors. In the micro finance context, women in Uganda are highly creditworthy, with excellent repayment rates.³⁰

36. More generally, the constraints on women's labor will be a critical factor in Uganda's attempts to modernize agricultural production. Several studies have documented that women withhold their labor from household production of cash crops because they know they will not benefit from the income earned.³¹ If such a scenario is common, as is suspected, this will obviously limit the opportunities to shift subsistence-oriented households toward market-oriented production and hinder initiatives to improve their well-being. These differences have wider implications for Uganda's growth prospects, and specifically for the implementation of the Program for the Modernization of Agriculture (PMA), and for Uganda's efforts to promote private sector growth as the MTCS/UP3 is revised and updated.

Gender and Growth – A Macro Perspective

Macroeconomic evidence suggests substantial loss of potential growth due to gender inequalities

²⁹ Uganda Participatory Poverty Assessment Process, 2002.

³⁰ Interview with Pride Uganda, November 2004.

³¹ For an example, see Muhereza, 2001. Besides withholding their labor from their husbands' plantain plantations, women also refused to take up growing Irish potatoes because their husbands would reap the benefits. See also Kasente et al., 2002, and World Bank, 2001.

37. There is extensive microeconomic analysis of the ways in which gender inequality limits productivity, output, and growth, especially in agriculture.³² Case study analysis suggests that gender differences in access to assets limit the options of women; that gender differences in labor remuneration lead to conflict and affect labor allocation at the household level; and that gender differences in labor (and other factor) productivity limit economic efficiency and output. More recently, macroeconomic analysis on the determinants of growth, which use gender-focused variables, presents convergent results (Box 2.5).

Box 2.5: Gender and Growth - Results of Growth Regressions for SSA

Cross-country growth regressions in SSA addressed the impact of gender differences in education and employment on growth over the 1960-92 period. The reduced education and employment opportunities for women in SSA served to reduce annual *per capita* growth by 0.8 percentage points. This is significant, as a boost of 0.8 percentage points per year would have in effect doubled economic growth over the last 30 years. The analysis suggests that gender inequality appears to account for about 15-20 percent of the difference in growth performance between SSA and East Asia. The size of these effects is considerable and gives credence to the argument that one important element in Africa's low growth may be its high gender inequality in education and employment. While this is far from the overriding factor, it is an important constituent element in accounting for SSA's poor economic performance.

Source: Klasen, in Blackden and Bhanu, 1999.

38. Though growth regressions need to be interpreted with caution, these results are quite striking, and suggest that there is important "missed potential" for economic growth in SSA, if gender-based obstacles to growth were to be tackled.³³ If these aggregate model results were to apply in Uganda, it would suggest that Uganda could stand to gain up to 2 percentage points of GDP growth per year through addressing these structural gender-based inequalities in education (total years of schooling) and in formal sector employment.

39. The 2004 PEAP makes a similar argument, and includes a higher estimate of diminished national output resulting from gender differences in economic incentives. It points out that women do not always share in the benefits of production, even though they may have done most of the work. It notes that women in the early 1990s were much less enthusiastic than men about tobacco because of the men's control of the resulting income. It refers to a study in West Africa³⁴ which calculates that the gender-based disincentive effect was found to reduce output by 10-15%. The PEAP further argues that if the size of the effects in Uganda were to be similar, the benefit of changing these incentives could amount to a one-off increase of about 5% of GDP. Consequently, it concludes, justifiably, that gender-based capacity and incentive differences are therefore likely to have a significant impact on the implementation of the PMA.

³² The wider issue of gender-differentiated economic incentives and their implications for growth and welfare has been the subject of much debate. See Razavi 2002; Blackden and Bhanu, 1999.

³³ This point is made forcefully in World Bank's "Can Africa Claim the 21st Century?" 2000.

³⁴ See Udry et al., 1996.

40. Clearly, many factors will contribute to higher and more sustained growth in Uganda – what this analysis indicates, though, is that the potential contribution to Uganda’s growth of unleashing the productive potential of its women is, in any scenario, likely to be considerable.

Conclusions

41. Men and women both play substantial—though different—roles in the Ugandan economy; gender is therefore an economic issue for Uganda, not just a social or social sector issue. There is a large body of micro-economic empirical evidence, and emerging macroeconomic analysis, which show that gender inequality directly and indirectly limits economic growth in Uganda. Because gender inequality acts as a powerful constraint to growth in Uganda, removing gender-based barriers to growth will make a substantial contribution to realizing the country’s growth potential and achieving the growth targets articulated in the Poverty Eradication Action Plan (PEAP).

42. The combination of macro analysis, micro-level case studies, and related analysis of demographic linkages, asset inequality, and labor constraints all point in a convergent direction: that there is a strong connection between gender inequality and growth performance. Consequently, it is critically important that growth-enhancing and poverty-reducing policies take account of these gender-based influences on, and obstacles to, growth, and seek to tackle these gender inequalities not only to promote equity and justice, but also to promote economic growth and efficiency. In this respect, the leadership exercised by GoU, and notably MPFED, in beginning to address gender/growth linkages in economic policymaking, which is being supported through the ongoing PRSC process, is very encouraging. It will be important to address these linkages explicitly both in the wider articulation of the country’s pro-poor growth strategy and as the Government moves forward in its efforts to strengthen the MTCS through the development of UP3.

43. The principal policy implications of this analysis are that acting on gender-based barriers to growth and reducing gender-inequality in access to and control of key productive resources necessary for growth will make an important contribution to accelerating growth, making growth more sustainable, and ensuring that the poor both contribute to, and benefit from, that growth, i.e., that the growth is “pro-poor.” This is especially important in the context of promoting the private sector and developing women’s entrepreneurship.

CHAPTER III

ESTABLISHING A BUSINESS: REGISTRATION/APPROVALS AND ACCESS TO FINANCE/CAPITALS

“Ensuring a good environment for the start-up and expansion of women-owned businesses, helping women to overcome barriers to business creation and development are important for national economic growth.”

OECD (2001)

Introduction

44. The FIAS 2003 Report identifies a number of issues which currently present barriers to business entry in Uganda (for foreign investors or for local investors wishing to enter the formal sector). These relate to: formation and registration of companies; registration of business names; registration with the Uganda Investment Authority to obtain an investment license; obtaining trade licenses (under the Trade License Act) from the relevant local council / authority; and immigration procedures.

45. Key recommendations included computerization; simplification of forms; combination of business registration and taxpayer identification numbers; elimination of the investment license; streamlining the trade license reform efforts; and streamlining the procedure for obtaining a work permit.

46. This Assessment endorses those recommendations, which are designed to impact on all businesses in Uganda. In addition it considers that there are particular issues which need to be addressed which relate to business start ups by women. These are (1) aspects of the registration and licensing formalities and (2) issues relating to access to finance for business purposes.

Registration and licensing formalities

There are gender differences in business registration and licensing experiences

47. There are various stages along the road to being considered a “formal” business in Uganda - having fixed premises; obtaining a trade license; paying local taxes; registering a business name; incorporating as a company and paying taxes to the Uganda Revenue Authority. Taking steps to formalize a business is important because formalization is frequently seen as a critical step to business growth. Company formation particularly is seen as important both because the limited liability status of companies encourages risk-taking, and because the share structure facilitates the pooling of resources.³⁵

³⁵ See Gower, LCB, et al. 1979, p. 49. Also, *The Economist*, Special Edition—1811 Limited Liability is Born. p. 111.

Gender and Growth Assessment: Uganda

48. Sole proprietorships comprise 90% of businesses in Uganda, with women comprising nearly 40% of business owners in the Uganda Business Register³⁶. The Register however captures only businesses with fixed premises. Many women operate their micro / small-scale businesses without this degree of formalization. The challenge is to legitimize and strengthen the base of their activity, so that they can grow their enterprises.

49. Businesses in Uganda are required either to incorporate as companies with their own separate legal identity under the Companies Act,³⁷ or to register their business name under the Business Names Registration Act³⁸ (with limited exceptions – broadly when the name(s) of the proprietor(s) is used as the trading name).

50. In addition, when they begin trading, all businesses are required to obtain a trade license from the Local Council, under the Trade Licensing Act³⁹. The case study below illustrates that problems caused by the use of trade licenses to enforce a separate taxation system (graduated tax), and by the lack of transparency in the system.

Box 3.1: Trade licensing issues: case study

Female bar owner -

I am a bar owner. When I was starting up my business four years ago, I went to the licensing authorities to inquire on the procedure. I was given the application forms at a cost of Ush 2,500, which I filled in. On returning them the following day, I was given two inspectors to verify the information presented. These inspectors were the health inspector and a council officer. We went to my business premises and looked around for about 25 minutes. After the inspections we went back to the council offices and I was issued with an invoice for a trade licenses fee that I paid for, but they refused to give me the trade license, insisting that I should present my graduated tax ticket. I had not money, I so I had to take time off my business to go to a friend and borrow money so that I can pay for my graduated tax to receive my trading license.

Last year I was issued with a trading license without the presentation of the graduated tax ticket. Two weeks later when the council officials were making enforcement visits they came to my premises and asked for both the graduated tax and trading license, Unfortunately, I had only the trading license. They closed my business and would only re-open if I had paid my graduated tax. I had to bribe them the following day with Ush 5,000 to re-open. After a few days I was able to pay my graduated tax.

The authorities should be consistent in their requirements, rules and procedures, and separate other taxes from business licenses, levies and taxes. Graduated taxes should not have a bearing on the operations of the business.

Source: Female bar owner: case study, Kirkpatrick et al, 2004

³⁶ A Report on the Uganda Business Register, 2000/2002, Kampala, Uganda: UBOS.

³⁷ Registration is also possible under the Co-operative Society Statute, but is unusual.

³⁸ Cap 109.

³⁹ Cap 101.

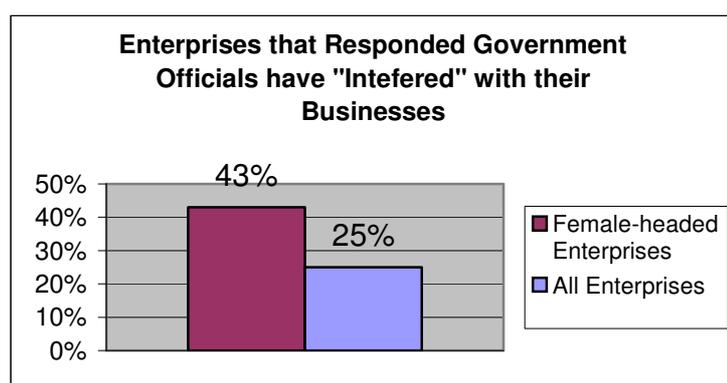
51. While the delays and costs of registration and licensing processes impose a burden on all businesses, there is emerging evidence from the GoU's Regulatory Best Practice Program⁴⁰ that such requirements impose a disproportionate burden on female headed enterprises (see Box 3.2) below. The evidence suggests that –

- Women perceive the regulatory burden to be greater than men;
- Women headed enterprises are much more likely to be subject to harassment, including requests to pay bribes and threats of closure, than male headed ones; Women are seen as “soft targets”⁴¹;
- Women are “time poor” with greater family and domestic responsibilities, therefore less inclined to register and thus formalize their businesses when procedures are complex and time consuming; and
- Female entrepreneurs respond well to a simplification in the system and will come into compliance if this becomes feasible for them.

Box 3.2: The effect of regulatory reform on female headed enterprises in Uganda: emerging evidence

The Uganda Regulatory Cost Survey Report 2004⁴² (covering 241 enterprises in 4 regions) measured the compliance cost of registration and licensing requirements. Key findings were –

- Over a quarter of all enterprises reported that government officials had “interfered” with their business, by for example, threatening to close it or asking for bribes. For female headed enterprises, the figure rose to 43%.

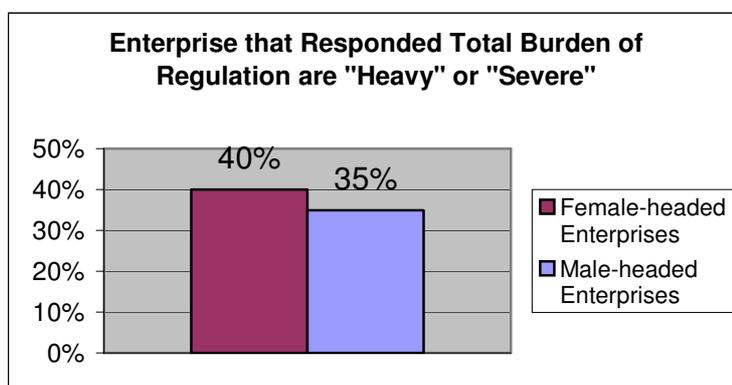


Source: Kirkpatrick and Lawson, 2004.

⁴⁰ In the MFPED. Supported by DFID.

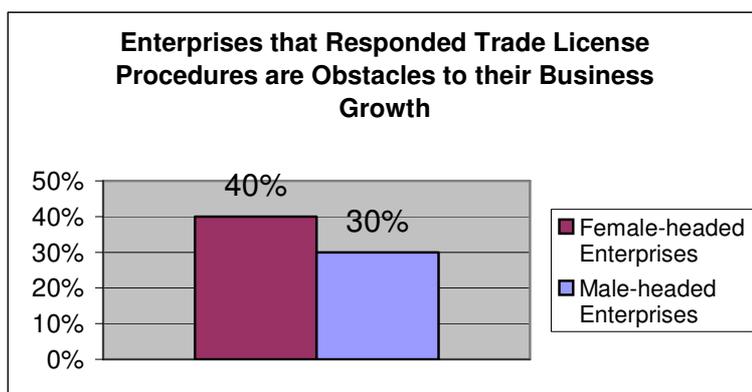
⁴¹ Consultations with private sector, women's advocacy groups and business associations hosted by PSFU, 17 November 2004.

- 40% of micro enterprises headed by a female felt that the total burden of regulation was “heavy” or “severe” (as compared to 35% for male headed enterprises).



Source: Kirkpatrick and Lawson, 2004.

- Trade licenses were identified as the most burdensome regulation. Over 40% of females as opposed to just over 30% of men reported trade license procedures as an obstacle to the growth of their business.



Source: Kirkpatrick and Lawson, 2004.

The Regulatory Best Practice Program has started pilot projects to reduce the time and monetary cost of obtaining trade licenses, by streamlining licensing procedures and reducing the number of approvals. A pilot project in Entebbe Municipality reduced the time spent by Ugandan businesses in obtaining licenses by 90%, reduced compliance costs by 75%, and increased revenue collection by 40%. The Impact Assessment of the first pilot at Entebbe (which has recently won an International Investors award) suggests that the reforms were encouraging female owned enterprises to obtain licenses for the first time – most of the license applications from women were first time registrations.

Source: Regulatory Best Practice Program, MFPED

⁴² Kirkpatrick and Lawson, 2004.

52. The emerging evidence suggests that while for male owned enterprises, registration and licensing procedures may add to the cost of formalizing a business, for micro / small scale female entrepreneurs, they may represent an absolute barrier which can prevent women from taking their business up a step into the formal business environment. This may be because with women's domestic duties, the time required to effect registration may be too great; and because women do not tend to control the cash in the household, the fees (legitimate or illegitimate) may impose an insurmountable burden.

Current reform efforts go some way to reducing the registration and licensing burden

53. The GoU is taking steps to streamline the registration and licensing burden on businesses. In particular –

- *Companies Act:* The Uganda Administrative Barriers Report suggests a number of ways that the process of incorporation could be simplified. Most of these, including collapsing registration forms, will require primary legislation. The Uganda Law Reform Commission has recently produced a draft Companies Bill which would go some way toward improving the situation including –
 - Permitting sole shareholder companies (rather than requiring two shareholders as under the current law), so that a woman no longer has to find a co-shareholder (frequently her husband, who is thus given a formal stake in her company);
 - Potentially simplifying the forms to be completed in order to effect registration (although this will become clearer when Regulations under the Act are produced).
- *Trade Licensing:* The Trade Licensing Act provides for local governments to issue trade licenses by reference to a schedule of fees (based on location and type of business⁴³). It is regarded by many businesses as the most onerous of the regulatory requirements (see Box 3.2 above). Initiatives are being taken under the Regulatory Best Practice Program; the Local Government Reform Program; and by the Uganda Law Reform Commission to simplify the current trade licensing procedure. Pilot projects which have focused on simplifying administrative procedures, particularly those described in Box 3.2 above have scored successes in reducing the administrative burden on businesses, and have had a particularly positive impact of female headed businesses. But with the planned abolition of graduated tax, concern has been expressed that local governments will look to trade licenses as a source for alternative funding.

Recommendations: scope for deeper reform

International best practice for business entry reform in Commonwealth countries is well established

⁴³ The Trade Licensing Act only applies to trading businesses - and not to service deliverers, e.g. clearing agents, internet cafés, professionals, clinics, schools, and banks.

54. International benchmarking⁴⁴ with other countries that originally had a similar legal framework to Uganda’s current one shows that it is those countries that have undertaken fundamental reform of their business start up requirements that have reduced the cost and time of compliance (New Zealand, Canada, and Australia).

Box 3.3: Entry procedures in Commonwealth countries benchmarked

Country
http://rru.worldbank.org/DoingBusiness/ExploreTopics/StartingBusiness/CompareAll.aspx?direction=asc
New Zealand
Canada
Australia
Hong Kong, China
Botswana
Kenya
Uganda
Tanzania

Source: <http://rru.worldbank.org/DoingBusiness/ExploreTopics/StartingBusiness/CompareAll.aspx?direction=asc>

55. The table above benchmarks entry procedures to register formally as a company. The Regulatory Cost Survey Report 2004 suggests that it is trade licenses that are the burdensome regulation for female entrepreneurs (see Box 3.2 above): small scale micro enterprises will not have attempted company registration. But it is important that a streamlined and appropriate legislative and administrative framework is put in place for company formation in Uganda, if the vision in the PEAP of transformation into a middle income industrialized country is to be realized. As outlined above, company registration is seen as key to business growth – encouraging risk taking and the pooling of resources. The onerous and extremely costly regime, combined with the complex legal requirements for company formation in the current Companies Act (and even in the Uganda Law Reform Commission’s proposals for reform) make registration as a company an impossibility for many women entrepreneurs.

⁴⁴ The World Bank’s “Doing Business” data base <http://rru.worldbank.org>. The database is derived from surveys of 130 economies. The methodology and data for entry procedures are derived from *The Regulation of Entry* by Simeon Djankov, Rafael La Porta, Florencio Lopes-de-Silanes and Andrei Shleifer. The survey for the database examined commercial or industrial firms with up to 50 employees and start-up capital of 10 times the economy’s per capita GNI. Information is gathered from the country’s major city only. It counted all procedures (defined as a legal requirement that involves a separate interaction between the firm and an outside entity) required to register a firm. Data also includes screening procedures by a set of overseeing government entities, tax and labor related registration procedures, health and safety procedures, and environment related procedures.

International experience suggests the need for “root and branch” reform in Uganda

56. In view of the barrier that current regulation and licensing requirements are imposing on business as a whole and on women entrepreneurs in particular, urgent consideration should be given to a much more fundamental approach to de-regulation of registration and licensing requirements than has hitherto been undertaken. Key reforms in the “best practice” Commonwealth countries that previously had a Companies Act (based on the 1948 Companies Act of England and Wales) and Business Name Registration regime similar to Uganda’s current one include -

- Abolition of the requirement for companies to have memoranda and articles (e.g. New Zealand; Canada; and Australia), with registration instead taking place by way of a simple form.
- Abolition of need for involvement of a lawyers for company formation⁴⁵ (e.g. England and Wales, New Zealand, Canada and Australia) – such legal expertise is not necessary largely because of simplified registration procedures. (In Uganda advocates have a virtual monopoly on company formation and under the Advocates (Remuneration and Taxation of Costs) (Amendment) Rules 1996 charge according to a fee scale - for example a fee of 10% of the nominal capital between Us 75,000 and Ush 1 million.)
- Abolition of the system of registration of business names for unincorporated businesses (e.g. England and Wales, Hong Kong⁴⁶). In Uganda’s case this would mean repealing the Business Names Registration Act.

57. International experience suggests that these type of reforms result in gains, which the evidence in Uganda suggests may have a particularly significant impact on the ability of female headed businesses to register and legitimize their businesses. It is therefore recommended that –

- Uganda adopt Companies Act and Business Name Registration reforms, which have been highly successful in high performing Commonwealth countries. This includes –
 - Incorporation of a company by way of a simple form, rather than by filing memorandum and articles;
 - Abolition of the requirement to use an advocate to form a company (section 67 of the Advocates Act); and

⁴⁵ In Uganda, the Advocates Act, section 65, with some very limited exceptions makes it an offence for any person other than an advocate for a fee to prepare any document “for or in relation to the formation of any limited company whether private or public.”

⁴⁶ In England and Wales the Business Names Act 1985 controls the use of misleading business name by requiring permission to be obtained for the use of certain, potentially misleading names. It does not impose a blanket registration requirement, as does the Ugandan law. In Hong Kong businesses are required to register with the tax authority.

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- Abolition of the system of business name registration for unincorporated businesses.
- In view of the negative impact that trade licensing continues to have on all enterprises, but especially female-headed ones, urgent measures should be taken to go beyond the current pilot projects which focus on administrative reform of the existing system. More fundamental reform of both the Trade Licensing Act and the Local Government Act (which gives local governments very wide powers to impose taxes, fees, permits, rents, and licenses) needs to be undertaken. Principles and examples of regulatory best practice in this respect are given in the Uganda Administrative Barriers Study⁴⁷.
- Finally, attention needs to continue to be given to administrative measures to simplify the registration and licensing process, particularly to address specific barriers that hinder women headed enterprises registering / obtaining licenses such as opening hours and staff attitudes.

Access to finance: collateral

58. Uganda has disproportionately low private credit (6% of GDP) compared to a median of 12% in Sub-Saharan Africa. Real lending rates are still very high despite macro stability, constraining private sector development. This is of course related to the high fiscal deficit, which crowds out private sector credit and increases domestic interest rates (1,000% in the last six years.)⁴⁸

Gender differences in access to capital

59. Female entrepreneurs in Uganda face a clear gender bias in access to credit.⁴⁹ Mukasa et al (2004) estimate women in Uganda have 9% of available credit (around 1% in rural areas)⁵⁰ and men 91%.⁵¹ In addition to informal saving mechanisms, microfinance is available to women, especially by way of group lending, through around 1,500 microfinance operations in Uganda.⁵² Some have specifically catered to women, including Uganda Women's Finance Trust.⁵³ However, this form of financing has its limitations, particularly for women who wish to grow their enterprises. The high interest rates, small amounts, and short term nature of the loans mean that women can become trapped in the informal sector and unable to grow their businesses. Box 3.4 below describes a product that is designed to address the demand for longer term financing for purchase of capital items – the Capital Assets Loan – which is based on the group lending model.

⁴⁷ See page 42 – 50, paragraphs 117 – 147.

⁴⁸ Government of Uganda, 2004b.

⁴⁹ Many examples were given in consultations e.g. during UIA workshop 2 February 2004 for women entrepreneurs on Doing Business 2004; and consultations with private sector, women's advocacy groups and business associations hosted by PSFU, 17 November 2004

⁵⁰ Manyire, 1999, and Tripp & Kwesiga, 2002.

⁵¹ Mukasa et al. 2004. Estimate was based on Baden, 1996.

⁵² Consultations with the Directorate for Economic Affairs, MFPED, November 2004.

⁵³ This is currently in the process of restructuring.

60. There are some signs that the situation is slowly improving. It is hoped that the Microfinance Deposits Institutions Act, 2003 will enable the sector to operate a more viable business service, especially through the new ability to take savings. At the other end of the scale, some mainstream financial institutions are expressing an interest in SME financing.⁵⁴ But for the time being, the “missing middle” in business financing, and the consequent limited access to capital, remains a real issue for many female entrepreneurs.

Box 3.4 Access to finance: Capital Assets Loan (“Kikalu”)

In 1999, Council for the Economic Empowerment of Women in Africa - Uganda (CEEWA-U) undertook a survey involving 325 clients from 27 MFIs in Uganda as well as a Participatory Rural Appraisal with clients from 3 MFIs using different methodologies. The study revealed that MFI clients needed and wanted bigger loans for purchase of fixed or current assets and longer repayment periods. It was also noted that clients seek larger loans by borrowing from several institutions at the same time. Since they cannot admit to having multiple loans they simply do not tell thus increasing the risk to the MFIs. With these developments CEEWA-U and Uganda Micro-finance Union (UMU) designed a new loan product: the Capital Asset Loan, popularly known as ‘KIKALU’ to address this specific need.

The Capital Asset Loan is a combination of a Capital asset loan and working capital loan. The Capital Asset Loan has a much longer repayment period (6-12) months, while the working capital loan takes the usual 16 weeks cycle. The requirements for taking out the loan (which is unsecured) are –

- The KIKALU Client must be an established client of a Microfinance Institution (MFI)
- Must have an on-going business
- Must have borrowed at least three times and repaid without missing a scheduled payment
- The client may opt to have a regular capital working loan from the MFI and may only take out the Capital Asset Loan.
- KIKALU only applies to business sectors (commerce, the service sector, agriculture, manufacturing, housing etc)
- Loan size- Ush 300,000 and above.
- Repayment terms – monthly basis for a period between 6-12 months.
- The Guarantees are the referees on the membership form. All members of the core group guarantee the loan.
- Pricing – the interest rate is based on the MFI cost.

Why is it difficult for women to access business finance?

61. There are a number of factors that explain the difficulties women face when seeking finance for their businesses –

⁵⁴ Interview with Uganda Bankers Association, November 2004.

- Gender bias on the part of traditional financial institutions. For example, one professional woman was told she was unable to open a personal bank account without her husband's co-signature, despite the fact that there is no legal requirement for this.⁵⁵
- The very common requirement for land as collateral operates as an absolute block to many female headed enterprises, because land is not readily accessible to women, due to land allocation practices that favor men. (The issue of access to land is discussed in Chapter 4.)
- Limited use of non-land forms of property as collateral. Financial institutions in Uganda take assets such as book debts, merchandise, stock and machinery as collateral. But Uganda's unclear and outdated moveable / personal property security laws mean that such forms of financing are only readily available in the form of fixed and floating charges over the assets of businesses that have formalized to the extent of incorporation under the Companies Act. Less formal businesses, that are not registered as companies are constrained from using these types of assets as collateral.
- Lack of formal credit information. When women borrow money in a micro finance situation, they are perceived as sound investments, with high repayment rates. But lack of credit information means that it is difficult for women to benefit from their good record. There is no credit reference bureau in Uganda, and more fundamentally, information on judgment debtors is not readily available from the courts. A dysfunctional Companies Registry means that even basic and legally required financial information about formal businesses registered as companies is not available from annual returns.
- Women's limited knowledge about information required when seeking to access finance from formal institutions; generally weak formal business skills; and lack of audited accounts.
- The initiative by the Association of Micro Finance Institutions of Uganda (AMFIU) to build a Management Information System to allow all members to store data, including sex disaggregated, will provide a basis for women entrepreneurs to "graduate" from microfinance.

Recommendations

62. There are a number of approaches to addressing the issues of limited access to business finance for women. These include working with commercial banks to design products and services more appropriate for female customers; and capacity building amongst women entrepreneurs to enhance their ability to apply for finance. In addition, there a number of legal and administrative reforms that could be taken by the GoU that would contribute to improving the situation.

⁵⁵ Consultations with private sector, women's advocacy groups and business associations hosted by PSFU, November 2004.

63. First, there is clearly a need to enhance the ability of women to access land, a prerequisite for collateral for much lending in Uganda. This complex issue is discussed in Chapter 4 that follows.

64. Secondly, there is a need to enhance the ability of women to use non-land assets (such as stock or machinery) as collateral. A first step would be to put in place a coherent legal framework for moveable / personal property security interests. The useful mechanism of a floating charge over non-land assets is currently not available to unincorporated businesses in Uganda, and other forms of financing that similarly use moveable / personal property as security⁵⁶ are virtually unknown. The Chattels Transfer Act⁵⁷ which provides the legal framework for some types of non-land security is rarely used, and the register of chattels mortgages it provides for is non-existent.

65. The Uganda Law Reform Commission (ULRC) has recognized the importance of reform in this area, and produced a Chattels Securities Bill, 2004 which lays the foundation for a comprehensive and coherent system for recognizing and ranking security interests in moveable / personal property, including the establishment of a register in which such security interests may be entered to secure their priority. The Bill is based on established international best practice for moveable / personal property security regimes – Article 9 of the US Uniform Commercial Code⁵⁸ - which has been recommended or adopted in various common law jurisdictions.⁵⁹

66. However, the excellent regime that would be established by the Bill is to a large degree undermined by the proposal to retain the provisions on creation and registration of debentures in the draft Companies Bill. It is strongly recommended that the ULRC revisits this proposal, which would result in two concurrent regimes, and a dual registration system. This would largely defeat the object of the proposed Chattels Securities Act, which is to provide a comprehensive and transparent system for the recognition and ranking of non-land security interests.

67. The final recommendation for the GoU to take forward to enhance the access of female headed businesses to finance is to promote systems that enable women to benefit from good credit records that they have established. It is hoped that the initiative by the Association of Micro Finance Institutions of Uganda (AMFIU) to build a Management Information System to allow all members to store data, including sex-disaggregated will provide a basis for women entrepreneurs, to “graduate” from microfinance, if this data can be shared with commercial banks. In addition, it is recommended that the GoU should make publicly available data it already has on bad debtors through the court system. A credit registry is needed, and it is recommended that the Judiciary should establish a publicly accessible register of judgment debts,

⁵⁶ Such as debt factoring and retention of title clauses.

⁵⁷ Cap 70.

⁵⁸ Article 9 of the U.S. Uniform Commercial Code has been in force for more than 20 years in nearly all the U.S. states. It is the foundation of several acts passed in a number of provinces in Canada, including Alberta, Manitoba, Ontario, Saskatchewan, and Yukon Territory.

⁵⁹ In the United Kingdom, Professor Diamond reported for the U.K. Department of Trade and Industry in a 1989 report, “A Review of Security Interests in Property.” The European Bank for Reconstruction and Development has produced a Model Law on Secured Transactions (EBRD 1984), which is based on similar principles, as is New Zealand’s new Personal Property Securities Act.

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ideally encompassing LC and Magistrates Courts. This would enable basic information about defaulters to be accessed by potential lenders.

Need for NGOs to take further action

68. There is scope for NGO's in Uganda to build on the success of the Kikalu initiative and take further action to address women's limited access to finance including –

- Increasing awareness of women-friendly sources of capital (e.g. kikalu loan)
- Working with commercial banks to raise awareness of market opportunity (as UWEAL has done with Barclays).
- Enhancing provision of business development services and relevant technical training for women entrepreneurs.

CHAPTER IV

LOCATING A BUSINESS: ACCESS TO LAND AND SITE DEVELOPMENT

“Women of Africa toil all their lives on land that they do not own, to produce what they do not control, and at the end of their marriage, through divorce or death, they can be sent away empty handed.”⁶⁰

President Julius Nyerere

Introduction

69. The Uganda Administrative Barriers Report makes a number of far reaching findings and recommendations in relation to access to land; planning policies; site development; and utilities and environmental issues. This Chapter picks up on some of these issues, and considers in particular the centrality of issues relating to land to private sector development in Uganda.

70. Land is of central importance to Uganda’s growth agenda not least because of the importance of agriculture to the economy, and because of the dominant role of women in agriculture, as discussed in Chapter 2. Agriculture remains central to Uganda’s economy and land is the major productive asset. Over 40% of GDP and 85% of export earnings come from the agricultural sector, comprised mainly of smallholder farms that depend on family labor. Women provide 70% of agricultural labor and 60% of labor cash crops like coffee, cotton, and tea.⁶¹ Despite this, female-headed households are significantly less likely to report cultivable land among their assets, and to have access to and control of land generally. Women have only 6-7% of registered land titles in Uganda.⁶²

Why do so few women in Uganda have control over land?

Succession limits women’s control over land

71. Women are denied opportunities to inherit land due to cultural norms - the systems of patrilineal inheritance and patrilocal residence. When a man dies, his heir is determined by the cultural leaders of his clan. Because heritage is patrilineal, it is customary for land to pass to the man’s relatives, his wife only becoming heir in a few instances.⁶³ Customary law provides that widows are to be taken care of by their husband’s relatives (including through the practice of widow inheritance⁶⁴) but in practice it is common for a widow to be thrown off the land, with no provision made for her welfare. There is anecdotal evidence that HIV/AIDS has made this

⁶⁰ Julius Nyerere, African Preparatory Conference, Third World Conference on Women, 1984.

⁶¹ Uganda Land Alliance 2000, p. 22 cited in Asiimwe, 2002).

⁶² The Action Plan on Women – Ministry of Gender, Labor and Social Development, 1999.

⁶³ GoU Land Sector Strategic Plan, 2001.

⁶⁴ The inheritance of the widow and her children by the brother of the deceased husband.

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occurrence more frequent, with relatives telling AIDS widows and their children that as they are unlikely to have long to live, there is no point in them staying on the land.

72. The formal legal position is rather different. The Constitution⁶⁵ provides for the protection of the rights of widows and widowers to inherit property of their deceased spouses. The Succession Act⁶⁶ specifies that when a husband dies without leaving a will, the wife or wives receive 15% of the matrimonial property. The Succession (Amendment) Bill prepared by the Uganda Law Reform Commission has the stated aim of amending the Succession Act to being in line with the provisions on equality of sexes in matters of succession as enshrined in the Constitution. It would provide for the spouse be entitled to one half of the matrimonial home and household chattels (with all wives sharing equally if more than one), with the other half being distributed equally between the children of the deceased.

Divorce rules limit women's control over land

73. On divorce, it is similarly difficult for a woman to assert rights over the matrimonial land, as under customary law she has no rights to it. Even under formal law, where a wife seeks to claim a stake in marital property not directly acquired during the marriage, she is deemed to lack legal and equitable rights in it, and her contribution to the home during the marriage is usually not taken into account when the assets are divided between the divorcing couple.⁶⁷

Limited access to justice inhibits the ability of women to assert their rights

74. Even where the law protects a woman's right to land, it is frequently the case that she is unaware that such protection exists, or if she is aware, is unable to assert her legal rights. The diagram below shows possible paths to justice for a woman to assert her rights to assets on the death of her husband under the Succession Act. Despite the Uganda Law Reform Commission's proposal⁶⁸ to make justice more accessible by establishing a District Administrator General in every district, the reality is that the time, cost and knowledge required, will continue to render the system inaccessible for many women.

75. As far as more general disputes over land are concerned, research⁶⁹ suggests that there are four times more cases brought to land tribunals by men than by women. Constraints that inhibit the ability of women to access these tribunals include inability to afford the fees; time poverty; and the perception that the tribunals are biased against women. As the diagram below illustrates, land matters are dealt with by Local Council (LC) 2 Courts in the first instance. There is a requirement for women to be represented on LC Courts, but this is not always complied with (see Chapter 7). A training manual has recently been drawn up for LC Courts which sets out guidelines on the principles of equality of treatment, including the importance of not applying customs and cultural values against women, and of not discriminating on the basis of marital

⁶⁵ Article 31 (2).

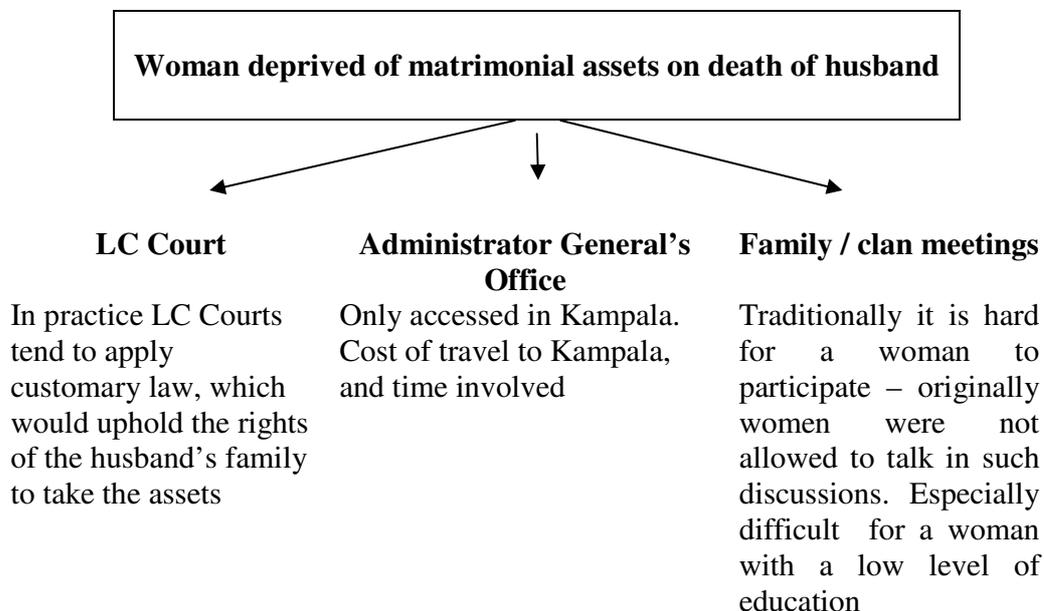
⁶⁶ Cap 139.

⁶⁷ Report on Workshop on Commercial Justice for Investment Promotion in Uganda 29-31 July 2002 – Paper by Sarah Banenya: Gender and the Administration of Justice.

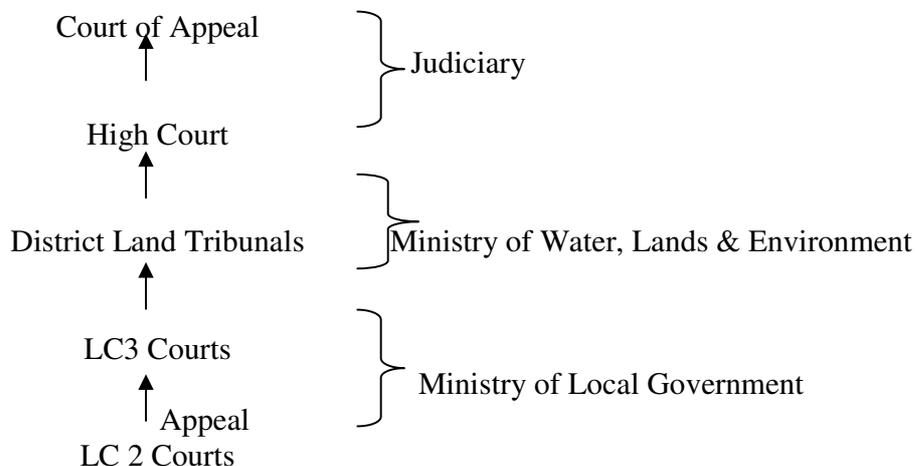
⁶⁸ See the Administrator General's Office (Amendment) (No.2) Bill.

⁶⁹ Mukasa et al., 2004. Danida, 2004.

status. It is intended that training on the guidelines for LC Courts will be carried out in early 2005.



Land disputes system



Limited registration of land title, and of women's interest in land

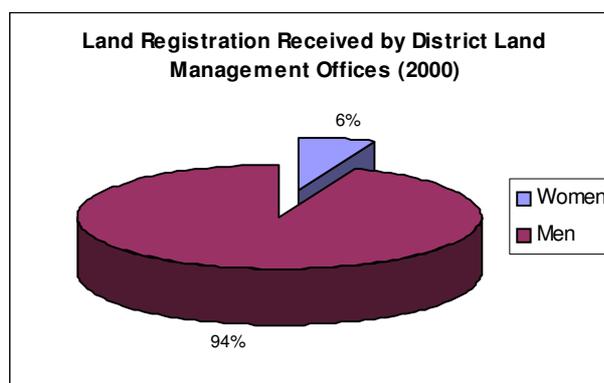
76. The Land Act 1998 provides for all land in Uganda (which is classified as either freehold, leasehold, customary or mailo⁷⁰) to be registered. The process of registration is an opportunity for women to assert by registration their interest in land. However, only 25-30% of land in Uganda is currently registered, with only 15% of registrations being described as “active”.⁷¹ The

⁷⁰ I.e. registered land in Buganda. Land may be held in perpetuity and the owners have the right to transfer title.
⁷¹ I.e. the rest are old registrations which no longer reflect the reality on the ground. Source: MWLE.

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system of registration is costly and inaccessible (see Box 4.1 for international benchmarking⁷²). As noted previously in this Assessment, these issues are particularly acute for women – who tend to have less time and less access to funds. The Ministry of Water, Lands & Environment (MWLE) under the Land Sector Strategic Plan (LSSP) is intending to decentralize the system with the establishment of District Land Registries and the registration of customary land with Sub county Chiefs / town clerks.

77. Where land registration has taken place, women are not commonly registered as owner, nor are their rights noted on the title. Of the applications for registration received by District Land Management Offices in 2000 only about 6% were for women.⁷³



Source: Government of Uganda, 2003b.

78. And under the Systematic Demarcation Project, a pilot for first time registration of customary land at the parish level (see Box 4.2 below), over 95% of registrations have been in the sole name of a man.

⁷² The World Bank's "Doing Business" data base <http://rru.worldbank.org> . The database is derived from surveys of 130 economies.

⁷³ Government of Uganda, 2003b.

Box 4.1: International benchmarking: registration of land title

Region or Economy	Time (days)	Cost (% of property per capita)
New Zealand	2	0.2
Canada	20	2.0
Kenya	39	4.0
Uganda	48	5.5
Tanzania	61	12.6
Botswana	69	5.0

Source: World Bank, *Doing Business*.

Box 4.2: Systematic Demarcation Project

MWLE is currently piloting a Systematic Demarcation Project under the LSSP with the aim of instituting a district level led registration initiative. Registration takes place at the Sub county level with the Sub county chief who is appointed registrar. The benefits of encouraging land registration are presented as – to provide title for collateral; to minimize land disputes; and to enable agricultural extension services to be more effective. So far, three parishes (out of a total of over 5,000) have been piloted – Ntungamo; Soroti; and Masaka.

Through a partnership between the GoU and NGOs sensitization and training is taking place. Training on gender issues is a key element in the process.

In practice in the pilot areas, the process has meant individualizing customary land and converting it to freehold. While men are content for their wives to be noted on data collection sheets as spouses, registration of title in over 95% of cases is in the sole name of the husband. In some cases, registration took place in the name of the wife – if she had bought the land herself or had inherited it. In the first pilot, out of several hundred registrations only one married couple were prepared to register in joint names – they were better educated and had a more substantial plot than the rest of the population.

Source: Ministry of Water Lands and Environment, Nov 2004.

Land issues affecting women have a significant impact on their ability to contribute to economic growth

79. Women’s lack of security of tenure, low levels of participation and control in relation to economic activities, mean choices about which crops to grow and how to use any income from

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sales remain the preserve of men. Along with low levels of agricultural extension training for women farmers, this issue is central to Uganda's Strategic Experts Initiative.

80. Women's limited ability to own land and insecure rights to occupy it, impact on their ability to invest and contribute to Uganda's economic growth because -

- Women have limited incentive to develop the land they occupy due to the lack of security of tenure and lack of control in relation to economic activities.⁷⁴
- Women have limited access to finance because of lack of land title required for collateral (see Chapter 3).
- Women have limited access to land to locate business premises, particularly in areas of customary land. (The situation may be better in urban areas.)

Reform efforts

81. As the GoU continues with the land reform process, the issue of gender is an on-going and frequently controversial theme.

The Land Act 1998 (as amended)

82. The key provision of the Land Act designed to enhance the security of occupancy of women is that disposition of family land (including by mortgage) may only take place with the prior consent of the spouse.⁷⁵ If such consent is not obtained, the transaction is void. However, there are fundamental questions over the effectiveness of this provision. It is unclear how willing consent is when it is given; and banks lending on the security of land report cases of forgery of signatures giving consent (and of certificates from Local Councils confirming the marital status of an applicant). From the point of view of Uganda's developing mortgage market, financial institutions are concerned at the increased costs of lending, and some are even stating that they will cease to take family land as security because of the uncertainties caused by the provision that the transaction is void if prior consent is not obtained.

Co-ownership: Domestic Relations Bill

83. The Land Act in its original form provided for co-ownership of matrimonial land. However, this clause "disappeared" during the Parliamentary process.⁷⁶ Despite the efforts of women's groups to get this omission corrected, the co-ownership provision is not included in the legislation. The Domestic Relations Bill, currently being considered by the Parliamentary Legal and Parliamentary Affairs Committee tackles the issues of land allocation and gender head on, by re-inserting in the Land Act a provision giving a spouse automatic co-ownership rights. It is

⁷⁴ GoU Land Sector Strategic Plan, 2001.

⁷⁵ Amendment to section 39 of the Land Act inserted by section 20 of the Land (Amendment) Act, 2004.

⁷⁶ See chapter by Jacqueline Asiimwe on "Women and the Struggle for Land In Uganda" in *The Women's Movement in Uganda: History, Challenges and Prospects*, edited by A.M. Tripp and J.C. Kwesiga, p.119-137.

likely to be highly contentious, and it is far from clear that this provision will make the statute books.

Box 4.4: International best practice example: Tanzania

Tanzania's Land (Amendment) Act 2004 deals with the requirement to obtain the consent of a spouse for a mortgage of the matrimonial home.

Regulations made under the Act (the draft Land (Mortgage) Regulations) currently being considered by the Ministry of Land are designed to provide a balance between the rights of spouses, and the rights of lenders. They set out the reasonable steps that a lender needs to take to ascertain the matrimonial status of applicant. They also deal with the issue of ensuring that consent given by a spouse to the mortgage is informed and genuine, providing a basic statutory minimum that if complied with, will provide a good defense to any allegation that a lender should have taken more care before granting the mortgage. The steps to be taken by a lender include advising a spouse to obtain independent advice, and obtaining written evidence either that such advice has been obtained or that the spouse having been advised to take independent advice, declined to do so.

Source: The Law & Development Partnership, Nov 2004.

Reform of the land registration system

84. The Land Sector Strategic Plan identifies harmonization of land legislation with the Constitution and the Land Act 1998 as a key priority area. An important initiative in this respect is the amendment of the Registration of Titles Act,⁷⁷ which introduced the Torrens system of title by registration in Uganda. The key principle of the Act is that the register is everything, and that except in cases of actual fraud on the part of the person dealing with the registered proprietor, such person upon registration of his title takes from the previously registered proprietor indefeasible title against the world.

85. Reform of the Act is being undertaken by way of MWLE's Harmonization of Land Tenure Legislation Project.⁷⁸ The project has identified the issue of reconciling the Torrens approach with the rights created by the Land Act in favor of spouses (and other lawful and bona fide occupants). The reform of the Act is clearly an opportunity to enhance the ability of women to ensure that their rights appear on the register. Hence educating women about their legal rights is critical.

Land Act implementation: Land Sector Strategic Plan

86. The LSSP addresses the difficult issue of implementation of the Land Act, and in particular disseminating information about land rights and methods of asserting them. It recognizes the vulnerability of women in relation to security of tenure... Activities to address these issues -

⁷⁷ Cap 230. Modeled on the Land Transfer Act 1915 of the State of Victoria, Australia.

⁷⁸ Harmonization of Land Tenure Legislation: Issues/ Concept Paper – MWLE, Nov 2004. The Survey Act Cap 232 and the Land Acquisition Act Cap 226 is also to be amended under the project.

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- Development of check lists and guidelines for land sector activities in relation to the needs of both men and women in various vulnerable groups;
- Development of specific monitoring indicators for gender balance of programs;
- Undertaking research including on barriers to women implementing the spousal consent provisions of the Land Act;
- Assessment of training needs to enable women to become more effective participants in land sector institutions; and
- Addressing gender issues in land information systems, including ensuring that information is sex disaggregated.

87. However, additional resources are necessary for these activities to be implemented effectively.

Recommendations

Need to further develop on-going reforms in relation to land registration; law reform; and enhancing access to justice

88. Encouraging efforts are underway to address the issues of women's access to land in Uganda. Building on these efforts it is recommended that –

- The Systematic Demarcation Project should put additional emphasis in its work on enabling women to assert their existing land rights. Registration as co-owners is proving not to be culturally acceptable in many cases, but women could as an alternative be encouraged to ensure that their right to consent to sale or mortgage of the matrimonial home is protected by way of a caveat on the register.
- In developing proposals for the reform of the Registration by Title Act, priority should be given to exploring new modes of registration appropriate to protect a spouse's interest in matrimonial land.
- The provisions of the Domestic Relations Bill providing for co-ownership of matrimonial property should be enacted. But as a fall back, the concept of giving a spouse a life interest in the matrimonial home might be explored. Such a life interest would protect the ability of the wife to stay in the matrimonial home during her life, but would enable the land to revert to her husband's clan on her death. It would relate well to customary law provisions for widows. Such a proposal would impact on both the Domestic Relations Bill and the Succession (Amendment) Bill.

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- Amend the Succession Act to provide for equality of sexes in succession and the provisions in the Domestic Relations Bill relating to the fair division of property on divorce.
- Regulations under the Land (Amendment) Act should be developed to specify the duty of lenders and purchasers in respect of obtaining the consent of the spouse to dispositions of matrimonial land (see example from Tanzania in Box 4.3 above). The Regulations should provide for situations where the spouse is illiterate, and should include measure to ensure that consent is freely given.
- There is an urgent need to enhance the ability of women to access justice through the Administrator General's Department, the LC Courts, and Land Tribunals. This issue of women's access to justice, and the need to enhance women's awareness of their legal rights, including in relation to land, is discussed further in Chapter 7.

CHAPTER V

OPERATING A BUSINESS: TAXATION ADMINISTRATION AND CUSTOMS

“My aunt ended up going out of business because every time a tax inspector visited she paid whatever they asked in cash. She had no idea how to comply with the system.”

Ugandan woman lawyer

Introduction

89. The Uganda Administrative Barriers to Investment Report (FIAS 2003 Report) highlights a number of issues relating to tax and customs administration by the Uganda Revenue Authority (URA). These include: operation of Value Added Tax (VAT) refunds; the absence of clear URA guidelines leading to contradictory interpretations of the Income Tax Statute; legalistic operations of the Tax Appeal Tribunal; the absence of a risk-based system for customs inspections; lack of transparency in customs valuations; cumbersome duty drawback system and corruption.

90. The FIAS 2003 Report makes a number of recommendations in relation to taxation administration and customs. These include: introduce a single taxpayer number; reform the VAT rebate system; simplify Tax Appeal Tribunal procedures; introduce risk-based customs inspection procedures; introduce Automated System for Customs Data (ASYCUDA) system for customs data collection; and reform the duty drawback system

91. A recent study in Poverty Eradication Action Plan (PEAP) (2004) noted local government’s concern with revenue generation leads to negative effects on the growth of micro, small and medium enterprises (MSMEs). Local taxes on small businesses were found to be highly regressive, cutting into profit margins by as much as 50% for the smallest businesses, and revenue collected was not used to provide business relevant services.

92. This Chapter focuses on the impact of the current regime on female headed businesses.

Key issues and recommendations

Need for more focus on gender in relation to tax and customs

93. It is significant that research does not appear to have been carried out specifically on women’s experiences in relation to tax and customs. For example, a report on firms’ experience of corruption in Uganda⁷⁹ highlighted the issue of bribery in relation to tax, but did not disaggregate the data to enable comparisons to be made between the experience of male and female-headed enterprises. But there is compelling evidence that female owned enterprises are very significantly more subject to bribery and harassment than are male owned enterprises. The

⁷⁹ Svensson, 2001.

Uganda Regulatory Cost Survey Report 2004⁸⁰ found that while overall, 25% of enterprises reported that government officials had “interfered” with their business, by for example, threatening to close it or asking for bribes, for female owned enterprises, the figure rose to 43%. If bribery at the firm level is indeed a predominantly female issue (i.e. if women are by far the most victims), this clearly has policy implications for how to tackle it.

94. URA has made only limited efforts to deal with the female taxpayers as a particular group. But it is the case, that because of their generally limited levels of education, lower literacy rates and formal business skills, women entrepreneurs face particular challenges in relation to URA. One business woman for example stated that she closed her shop every time the tax inspector visited because she didn’t understand how to keep her books properly.⁸¹ Evidence from the Uganda Regulatory Cost Survey Report and pilot initiatives to reform the trade licensing system (see Box 3.2 in Chapter 3) suggest that “time poor” women find it difficult to comply with lengthy and time consuming regulatory requirements. And yet, as the FIAS 2003 Report spells out, the current procedures for tax registration with the URA are complex, with need to obtain three separate numbers tax - a corporate income tax number, a Pay As You Earn (PAYE) number and a VAT number. Although these lengthy and costly procedures have an impact on all businesses, it is likely that this is more significant for female headed enterprises because - they tend to be small; women tend to have less time to spend on such procedures; and less access to resources to navigate their way through the system.

Recommendations

- URA should consider its relationship with female tax payers and business women in particular, as part of its on-going reform program. It would be helpful for example, if the issue could be specifically addressed in the URA Customers’ Charter; and if female entrepreneurs could be specifically included in the on-going program of tax clinics and open discussions with the business community in Kampala. Many women entrepreneurs and URA officials suggested creation of a women’s desk to specifically address current problems faced by women entrepreneurs.
- As discussed in Chapter 3 above, in relation to trade licensing, there is need for fundamental reform of the Local Government Act to ensure a transparent system for local authority taxation of businesses.

⁸⁰ Kirkpatrick, 2004.

⁸¹ Discussions during Doing Business 2004 Uganda – Why gender matters to policy makers: Uganda Investment Authority Workshop, Kampala, 2 Feb 2004.

CHAPTER VI

SECTORAL PERSPECTIVE ON ADMINISTRATIVE BARRIERS TO INVESTMENT AND LABOR LAWS

Introduction

95. The Uganda Administrative Barriers to Investment Report (FIAS 2003 Report) provides a specific review of the impediments to the establishment and operation of businesses in sectors identified as priorities for strategic exports by the GoU – coffee; fish processing; and textiles and apparel.

96. It is clear that **coffee** is of tremendous importance to households in Uganda. The FIAS 2003 Report notes that there are 500,000 households for whom coffee is an important source of income. However, it is less clear that women are the beneficiaries of such income. Evidence suggests that despite the fact that women contribute their labor to cash crops, men tend to control the resulting income. This means that women may lack the incentive to increase production⁸².

97. Women constitute only 20% of employees in the formal sector,⁸³ but are significantly represented in both **fish processing** and **garment** factories. The FIAS 2003 Report notes that there are currently ten active fish plants employing 2,650 people, 34% of whom are women. The vast majority of garment factory workers are women. The legal framework for factory employment – including health and safety, and labor standards in general – dates from colonial times. The regime is inappropriate for modern working, and in any event there is no effective enforcement.⁸⁴ It is helpful for both investors and employees for transparent and properly enforced labor standards to be in place. Research suggests that such standards can aid high levels of investment leading to higher productivity and wages.⁸⁵

Labor law reform

Need for modernization of Uganda's legal framework of labor standards

98. Key gender issues in relation to employment law in Uganda include – discrimination in recruitment and retrenchment practices; sexual harassment in the workplace; maternity leave and pay; and specific anomalies such as the general prohibition on women working at night.⁸⁶ A recent ILO Gender Assessment notes “*there is discrimination among men and women at work places in Uganda. Women are discriminated against with respect to recruitment, advancement, promotion, training opportunities and dismissal or lay off at work places. This has restricted*

⁸² World Bank, 2005b (p. 15 paragraphs 35-39).

⁸³ World Bank and the Ministry of Gender and Community Development, 1995.

⁸⁴ Paper by Stephen Jjingo, Federation of Uganda Employers.

⁸⁵ DFID, 2004.

⁸⁶ Interview with International Labor Organization, Kampala, Nov 2004.

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*their participation in decision making at all levels...*⁸⁷ One study in Uganda found 96% of the premium Ugandan men earn compared to women can not be explained by differences in productivity.⁸⁸ A number of recent international studies demonstrate the economic inefficiency of such discrimination. For example, a study of Fortune 500 companies (1990-1998) found a strong positive correlation between a company's profit and the number of senior female executives.⁸⁹ Another found those companies with the highest representation of women had a 35% higher total return on equity and a 34% higher total return to shareholders than companies with the lowest.⁹⁰

99. This has economy-wide effects: a recent study in India compared states where cultural norms restricted women's participation in the workforce to more modern states – a lower proportion of women in skilled and managerial positions correlated to lower economic growth.⁹¹ A 10% improvement in the female-male ratio for managers in India is estimated to increase total output per capita by 2%.

100. More broadly, Uganda's legal framework for employment is clearly in need of modernization –

*“Despite its post-independence date [the Employment Decree] is based upon colonial master and servant legislation. It does not reflect modern concepts in regard to contracts of employment, discipline and certain conditions of work... It also appears that many provisions of the Employment Decree are ignored in practice...”*⁹²

101. Initiatives have been taken to reform labor standards in Uganda. In a growing number of developing economies with export-oriented industries, market-focused CSR (Corporate Social Responsibility) systems are setting standards for enforcement. This responds to the increasing importance placed by international buyers on enforcement of appropriate labor standard and codes of conduct like the Calvert Women's Principles Global Code of Corporate Conduct. Cambodia is recognized as world best practice in leveraging good labor standards for commercial advantage in export.⁹³

The reform process has begun

102. The Ministry of Gender, Labor and Social Development with assistance from the ILO has prepared four bills comprehensively to reform Uganda's employment laws – the Employment Bill (see box 6.1 below); the Labor Unions Bill; the Occupational Health and Safety Bill; and the Labor Disputes Bill. The standards in this proposed legislation are based both on Uganda's Constitution and on international conventions and the ILO's fundamental principles of Rights at Work.

⁸⁷ ILO, 2003.

⁸⁸ Appleton et al, 1999.

⁸⁹ Adler, 2001.

⁹⁰ Catalyst, 2004.

⁹¹ Esteve-Volart, B, 2004.

⁹² Dr Napier, Cambridge University, UK in commentary to Employment Rights Bill prepared for Uganda.

⁹³ See FIAS CSR Practice– <http://www.ifc.org/ifcext/economics.nsf/Content/CSR-IntroPage>.

Box 6.1: Key issues addressed in Employment Bill 2001

- Discrimination in the workplace is banned
- Sexual harassment in the workplace is banned
- Up to date provisions concerning contracts of employment are provided
- The rights and duties of employers are clearly set out, including the right to provide maternity leave and maternity pay
- There are clear provisions regarding discipline and termination, and continuity of employment

103. A few of the provisions in these Bills have proved to be very controversial, largely because of concerns about their affordability and effect on investment. The proposal to increase paid maternity leave from 45 days to 12 weeks on full pay⁹⁴ has proved to be particularly difficult. There is currently no legal requirement for private sector employers to make any provision for maternity pay during the statutory maternity leave. The Constitution provides that the employer of every woman must accord her protection during pregnancy and after birth, in accordance with the law.⁹⁵ The ILO observes that in practice, the current legal provisions on maternity leave are frequently not adhered to.⁹⁶ ILO best practice⁹⁷ provides for a period of maternity leave of not less than 14 weeks, including 6 weeks' compulsory leave after childbirth. The standard states that cash benefits should be paid during maternity leave, but in order to protect the situation of women in the labor market such benefits shall be provided through compulsory social insurance or public funds (or in a manner determined by national law and practice). Given the current budgetary situation in Uganda, the low number of women in the formal private sector and the very high fertility rates that threaten Uganda's income growth per capita, women consulted agreed paid maternity leave was not a relevant priority for Uganda at this time and was acting as a hindrance to passage of more critical labor legislation.⁹⁸

Recommendations: labor standards

Need for realistic labor law reforms

104. The private sector has legitimate concerns about the effect of proposed compulsory private-sector funded maternity pay (which is not in line with ILO's Convention 183 on Maternity Leave) on the economy as a whole, and on the willingness of employers to subsequently take on women employees in particular. In the meantime, an impasse over this issue appears to have halted the taking forward of the modern labor standards, which would be of benefit to investors and workers (including women) alike. It is recommended that:

⁹⁴ Clause 57 of the Employment Bill.

⁹⁵ Art 40(4).

⁹⁶ ILO, 2003.

⁹⁷ The most recent international standards on maternity protection are the Convention on Maternity Protection (no 183) and the accompanying Recommendation on Maternity Protection (n 191) adopted at the International Labor Conference in June 2000.

⁹⁸ Women taking maternity leave should not be penalized with regards to pensions, however the issues needs to be re-visited once Uganda's fiscal situation has improved.

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- The Government should enact legislation to put in place realistic and affordable labor standards (including equal pay) that will not in practice make employing women unaffordable for businesses. Realistic enforcement measures will need to be put in place.
- Urgent reform of the Factories Act and related legislation should be undertaken, and realistic health and safety standards enforced.

CHAPTER VII

ACCESS TO JUSTICE

Introduction

105. The constraints women face in knowing and enforcing their legal rights has already been highlighted in this Review – in relation to land and succession law for example. Women are also constrained in their ability to access commercial dispute resolution facilities in general. By international standards, enforcing a contract in Uganda is slow and costly⁹⁹ (see Box 7.1 below).

Box 7.1: Contract enforcement: international benchmarking

Country	Time (days)	Cost (% of debt)
New Zealand	50	4.8
Botswana	154	24.8
Uganda	209	22.3
Tanzania	242	35.3
Kenya	360	41.3

Source: World Bank. *Doing Business*.

106. Women face particular barriers when trying to access justice including: lack of physical access because of limited access to transport; training and orientation of court staff; culture, religion and patriarchy; technical procedures; time poverty; and the poor representation of women throughout the justice system.¹⁰⁰ These issues are explored in more detail in Box 7.2 below.¹⁰¹

⁹⁹ World Bank's "Doing Business" Database <http://rru.worldbank.org>. The database is derived from surveys of 130 economies. The indicators are constructed on a hypothetical case of a payment dispute of more than 50% of income per capita in the countries' most populous city. The original methodology and data come from "Courts" by Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer.

¹⁰⁰ Government of Uganda, 2002a.

¹⁰¹ Government of Uganda, 2002a. Adapted from Table 2.

Box 7.2: Balance sheet on access to justice for men and women

Specific barriers to justice	Implications for men	Implications for women
Administration of law		
Male / female representation in justice delivery agencies	The agencies are male-dominated	Male judges and court staff may tend to have traditional attitudes and have a bias against women
Physical access to justice delivery agencies	Men control household incomes and can afford transport to the agencies. Men are also less burdened with domestic chores so they can make time to go to the justice delivery agencies	The majority of women have neither time nor money to make it to the justice delivery agencies
Training and orientation of persons in justice delivery agencies	The training and orientation of persons in the justice delivery agencies tends to be male dominated	Gender issues are not apparent to many staff in the justice delivery agencies
Gender sensitivity of technical and non-technical officers	Officers many carry gender biases and stereotypes that may obstruct justice	Officers many carry gender biases and stereotypes that may obstruct justice
Financial and social barriers	There are more educated men than there are women, and they have more contacts in the public sphere. Men are generally in a better financial position to engage the services of lawyers	There is a greater degree of illiteracy amongst women than men, and women tend to be less in the public sphere. They generally have less access to finance for engaging lawyers.
The community where disputes occur		
Culture and patriarchal system	Uphold values that privilege men in allocation of roles and resources	Disadvantage women
Plurality of community based dispute resolution fora	The fora tend to be male dominated, and apply customary laws that privilege men	Representation of women at this level is very limited
Poverty and the cost of justice	Men are inhibited	Women are more inhibited

Reform efforts

Reform is ongoing through the JLOS -

107. The GoU is taking forward a major program of reform in the Justice, Law and Order Sector (JLOS) (with budget support from a large number of donors). The JLOS has two priorities (1)

Criminal Justice Reform and (2) Commercial Justice Reform. The first phase of the Commercial Justice Reform Program has ended. It had four components – reform of the Commercial Court; reform of the Land and Companies Registry; commercial law reform; and reform of the legal profession. Of these – it is reform of the Commercial Court which has been the most successful.

- Commercial Court reforms have been successful

108. The reform of Uganda's Commercial Court (a division of the High Court) is at the heart of the Commercial Justice Reform Program. The vision was for the Commercial Court to become a flagship for reform of the court system generally in Uganda. The remarkable successes achieved by the Commercial Court include reforming court procedures; clearing the case backlog; enhanced use of mediation; institution of a customer service strategy; output orientated budgeting; and results orientated management.

109. There is no evidence that the Commercial Court is perceived as gender-biased, indeed the tight scope of the issues it deals with makes it unlikely that there is scope for such bias.¹⁰² The Commercial Court has an active User Committee, which includes women users.

110. In accordance with the original vision for the Commercial Court as a flagship for the rest of the Court system, the plan is now to roll out similar reforms to the other High Court Divisions, and to the Magistrates Courts. This is being spearheaded by the newly appointed Principal Judge, with the support of the Chief Justice.

- Magistrates Courts and LC Courts issues need to be addressed

111. Despite the successes of the Commercial Court, it is inaccessible to most businesses in Uganda. Overall, Magistrates Court are the most commonly used commercial dispute resolution fora.¹⁰³ However, the JLOS Gender Desk Review¹⁰⁴ suggested that for most women, Magistrates Courts are also largely inaccessible. Local Council (LC) Courts are however perceived as more accessible. There are about 4,000 LC Courts set up at the local level explicitly to provide an alternative form of justice to the Magistrates Courts which were perceived as corrupt and too expensive for many people to use. They formally apply statutory law, but often in practice their deliberations are guided by customary law, despite the provision in the Judicature Act¹⁰⁵ that when customary law contravenes basic principles of equity or an existing statute, it is not to prevail.¹⁰⁶

112. A baseline survey of LC Courts¹⁰⁷ established that not only are they perceived as accessible in physical and technical terms, they are also affordable, user friendly, participatory and effective. Their judgments are generally enforceable. However, despite these generally favorable perceptions, concerns remain about the quality of justice dispensed by LC Courts – especially as

¹⁰² Evidence from Commercial Court Management Adviser, Nov 2004.

¹⁰³ Uganda Commercial Justice Baseline Survey, Nov 2001; The Law & Development Partnership & Steadman Research Services.

¹⁰⁴ Government of Uganda, 2002a.

¹⁰⁵ Cap 13.

¹⁰⁶ Nordic Consulting Group, 1998 (Danida Judiciary Program).

¹⁰⁷ Nordic Consulting Group, 1998 (Danida Judiciary Program).

far as women are concerned. There is evidence that users of LC Courts for commercial disputes would, if they could afford it, move to the formal court system.¹⁰⁸ The JLOS Gender Review and the LC Court baseline survey suggest that the use of customary law may result in bias against women. Moreover, the baseline survey suggests that despite the requirement for women to sit on LC executive committees and thus on LC Courts, in practice this frequently does not happen. The absence of women from these bodies was attributed to the fact that the courts hold their sittings in the evenings, or at appointed times for about four to five hours in a single sitting. Both the time of day and amount of time required was thought to be a hindrance to women who very often have significant domestic preoccupations during the same periods.¹⁰⁹

113. Efforts are being made to address these concerns. Proposed amendments to the Resistance Councils and Committees (Judicial Powers Statute) 1988 provide for more gender balanced and responsive LC Courts, as well as increasing their jurisdiction. In addition, new operational guidelines for LC Court proceedings have been developed, tested, translated into local languages, and distributed. The guidelines include human rights, ethical conduct, natural justice and gender sensitivity. It will be important to keep the effectiveness of these guidelines under close review.

- Center for Arbitration and Dispute Resolution (CADER)

114. A key element of the Commercial Justice Reform Project has been to encourage alternative dispute resolution, and in particular mediation, as an alternative to court proceedings. The focus of this effort has been CADER, which is co-located with the Commercial Court, and has obtained most of its business through cases referred to it by the Court¹¹⁰. Most of CADER's mediators are women, which, CADER reports has led to resistance to mediation from many in the business community.

- legal access projects

115. There are a number of NGOs and other organizations in Uganda providing free legal advice and assistance, through legal aid clinics and outreach program, some of which are aimed specifically at women –including FIDA; the Legal Aid Clinic of the Law Development Center; and the Uganda Law Society Aid Clinic. In addition the Ministry of Gender, Labor and Social Development has undertaken legal awareness activities for women; piloted a community based paralegal program; and organized gender training materials for judicial officers.

Recommendations

Need for deeper focus on gender issues in JLOS

116. Although encouraging measures are being taken to enhance women's access to justice, there is scope for further initiatives. In particular –

¹⁰⁸ Focus group discussion - Uganda Commercial Justice Baseline Survey, Nov 2001; The Law & Development Partnership & Steadman Research Services.

¹⁰⁹ Twinomugisha, N & Kibuka, EP, 1997.

¹¹⁰ 370 cases have been referred since October 2003. Source: CADER.

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- Although the User Committee of the Commercial Court has female members, this is because they happen to be representatives of the organizations on the Committee. It is suggested that it would be useful to have a policy that say, 30% of the members of the Committee should be women.
- The JLOS Gender Working group, which has the role of facilitating gender mainstreaming in the Sector, should take an active role in the development of the GoU's Commercial Justice Reform agenda. Gender issues will be important with the new focus on Magistrates Courts.
- Building on the 1998 Baseline Survey of LC Courts, follow up monitoring and evaluation should be undertaken, in particular in relation to the effectiveness of the new gender guidelines.
- Legal aid / paralegal projects tend to focus on providing advice and representation in relation to criminal matters. Consideration should be given to enhancing these projects to provide accessible advice specifically for business women.
- Building on the civic education work undertaken through the Commercial Justice Reform Program, and by NGOs, further efforts should be taken to give women practical guidance about what their rights are and how to enforce them.
- The useful work done by CADER in promoting mediation as an alternative form of commercial dispute resolution could be expanded to link in with the LC Court's role in determining commercial disputes. Mediation, with its focus on reconciliation and a non adversarial approach, is in many ways akin to a customary justice approach. Currently CADER's work is confined to Kampala, but there may be scope for the organization to take on an outreach role, working with LC Courts, training members in mediation techniques for commercial dispute resolution.

CHAPTER VIII

THE WAY FORWARD

Institutional Framework

Uganda has a well-developed institutional framework for taking forward the reforms recommended in the GGA

117. In Uganda, the National Machinery for the Advancement of Women & Gender Mainstreaming is the Ministry of Gender, Labor and Social Development (MGLSD). The National Machinery plans, coordinates and monitors the delivery of gender mainstreaming programs in Uganda. The National Machinery has structures at District and Lower Local Governments (Community Development function) to execute this mandate at grassroots levels. MGLSD spearheaded the development of the National Gender Policy (NGP) in 1997, which is now in the process of being updated and revised to take account both of emerging insights into the gender dimensions of poverty and development in Uganda, and to build on opportunities afforded by new instruments and modalities for prioritizing and channeling interventions – notably the PEAP.

118. The 2004/5 draft of the NGP clearly articulates the centrality of the PEAP as the principal element of the national planning framework, within which gender mainstreaming efforts are to be implemented. The NGP also recognizes that there are other relevant national policies and strategies, notably the PMA, NAADS, the MTCS (UP3), and the Micro-Finance Outreach Plan, which have an important role to play in support of the NGP's overarching objective of eliminating gender inequalities as an integral part of Uganda's sustainable human development goals.

119. Collaboration among government ministries, and between government and NGOs, in addressing gender issues is well anchored in Uganda. The PEAP Gender Group, which was established in 2002 under the leadership of the MFPED, took the lead in coordinating and managing the integration of gender, as one of the key cross-cutting issues of PEAP. As it prepares to support the effective integration of gender issues into PEAP implementation, the PEAP gender group would be well placed to play a coordinating and oversight role to ensure effective gender mainstreaming in the implementation of the various government policies aimed at promoting private enterprise.

120. MFPED has played a lead role in addressing gender issues relevant to its specific mandate, in particular paying attention to gender dimensions of economic growth, and including, in October 2004, gender and equity budget guidelines in the Budget Circular for the 2005/06 financial year. Recently, the MTCS process, also coordinated by MFPED, has sought to become more active in addressing gender issues, and the World Bank-supported Private Sector Competitiveness Project, alongside the ongoing PRSC program, is expected to help MFPED to address this explicitly. Other ministries have also been pro-active in addressing gender issues, notably JLOS in its 2002 gender review, and MWLE in beginning to tackle women's land rights and access to land.

121. The MGLSD has a critical role to play in championing gender as a key issue for private sector development in Uganda. Its most important role in this respect will be to influence the design and implementation of the strategies and reform initiatives discussed above.

Entry points for reform

On-going reform processes are an opportunity to entrench gender issues

122. This Assessment has made a number of recommendations in relation to legal and administrative reforms for investment that have a gender perspective. The GoU is undertaking a number of reform initiatives, under the PEAP, which represent real opportunities for taking these recommendations forward:

- The **Medium Term Competitiveness Strategy** (MTCS) (now known as Uganda Public Private Partnership – UP3) is the GoU’s overarching program for private sector development in Uganda. The second phase of the Strategy is currently being developed. This is an opportunity to ensure that the role of women in contributing to private sector led growth in Uganda is fully acknowledged and acted upon. A key issue for the MTCS will be to link with the Land Sector Strategic Plan to ensure that land reform to enable the economic empowerment of women is seen as central to Uganda’s private sector development agenda.
- The **Commercial Justice Reform agenda** (part of the JLOS) sits within the framework of the MTCS. Specific recommendations have been made in relation to the Commercial Justice Reform (in Chapter 7), to ensure the women’s voices are heard in the ongoing development and implementation of this agenda. Recommendations to enhance women’s access to commercial justice include: institutional reform of the Magistrates, LC Courts and Companies Registry; access to justice initiatives such as training of paralegals to focus specifically on commercial dispute resolution for women; developing the role of CADER to enhance access to commercial justice for women; developing gender sensitive commercial justice performance indicators (including disaggregating statistics on a gender basis).
- The GoU is developing **Regulatory Impact Assessments** (RIAs) as a key tool in policy making. A draft Cabinet Paper currently with Cabinet would introduce compulsory RIAs into the policy / legislation making process. With the Cabinet Office as a filter, the policy is for RIAs to provide an economic, environmental and social assessment of the impact of proposed legislation or policy. This is clearly an opportunity to include gender as part of the assessment process, and the draft Cabinet paper on the introduction of Regulatory Impact Assessments should make explicit reference to gender issues, and that consideration of gender issues is part of the regulatory impact analysis process.

MGLSD has a key role in championing gender in the on-going pro-private sector reform process

123. The MGLSD, in its role of championing gender as a key issue for private sector development in Uganda must focus attention on influencing the design and implementation of these initiatives. In addition, it is vital that the GoU enables women's voices to be heard directly in these processes, through women's active participation in public / private dialogue on private sector development issues. This should be seen in the context of the Fourth World Conference on Women in Beijing in 1995, where members of the United Nations made a commitment to "establish mechanisms and other forums to enable women entrepreneurs and women workers to contribute to the formulation of policies and programs being developed by economic ministries and financial institutions." (Strategic Objective F1.165(n).)

124. Uganda is the only country in Africa to have a woman on the President's Investor Council, designed to facilitate private sector input into policy making at the highest level. This position should be institutionalized, and would thus provide a microcosm of the National Council for Women's Business Ownership model in the US.

Enhancing women's voice in policy making

Need to ensure that women's voices are heard on key policy making bodies

125. Government providing the structures and entry points for women's voices to be heard is only half the story: women need to be strong and effective advocates in order to influence policy development. The Private Sector Foundation of Uganda (PSFU) is the apex private sector representative body in Uganda, and advocates on behalf of its members. But gender and growth issues rarely feature on the list of key concerns to be raised with policy makers.¹¹¹ The following recommendations are designed to enhance the ability PSFU and other private sector organizations and NGOs to advocate effectively on gender issues and through this, as well as through their direct actions, to have a real impact on policy development and implementation -

- Introduce and institutionalize minimum 30% female representation on economic advisory, as well as political decision making bodies e.g. UP3 committees.
- Institutionalize position of female entrepreneur on President's Investor Council.
- Enable CEEWA to join Inter Institutional Committee on Trade.
- Gender should be explicitly referenced in the developing UP3 Strategic Plan, and monitoring and evaluation of the Plan should ensure sex disaggregated data.
- Establish PSFU working group on women's entrepreneurship to enable it to research and advocate more effectively on gender issues.

¹¹¹ Consultations with UWEAL, November 2004.

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