



Women's Land Rights And Development In Africa:

Contesting Normative and Cultural Exclusion

Legal Enforcement and Promotion of Participation
in Land Administration

REPORT

Introduction

This was the second part of the Women's Land Rights and Development in Africa online seminar series. This session focused on Legal Enforcement and Promotion of Participation in Land Administration.

Many countries however, remain with laws that are patriarchal and discriminatory against women in spite of having national, regional and even ratified international laws for the protection of women's rights. Given that agriculture is still the backbone of the economy in many African countries, denying women land access, ownership and use rights is to affect the potential of about half the population on the continent, stifling national socio-economic development across the continent.

The series seeks to interrogate the social and cultural practices discriminating against women to pursue reform in an inclusive manner for inclusive outcomes.

Context

In 2017, Konrad started the process of deconstructing concepts on exclusion and dispossession across the continent. This particular series seeks to explore the exclusion and discrimination of women through legal frameworks across the continent and the effect that has on women's participation in the economic sphere. For women, among the population largely living in rural areas land access and use rights are a cornerstone to other social and economic rights, a phenomenon observable across the African Continent.

Panel



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Kenya

Analyzing the Synergy between Sub-Regional and Regional Courts for the Enforcement of Women's Land Rights

Assumptions

Africa already has a robust normative framework with many laws and frameworks protecting and guaranteeing equality and non-discrimination of women. These are accepted and remain in need of enforcement.

Kenyan Legal Framework

In Kenya, though the legal framework and norms are robust, women still face discrimination on many fronts through a variety of practices in marriage, divorce and inheritance. Kenya is lauded for one of the most progressive constitutions with a robust Bill of Rights that seeks to offer protection for women on different fronts with Article 27 outlawing discrimination on the basis of sex and secures the right to equality, Article 43 protecting the right to property for individuals no matter their gender and Article 45.3 where persons in marriage are considered equal in law in marriage and at the dissolution of marriage.

In Chapter 5 on Land and Environment, Article 60 includes in its list of land principles of holding, access and use equitable access to land. and elimination of gender discrimination in law, practices and customs related to land.

Kenya, by virtue of Article 2(5) and (6), accepts general principles of International Law and any treaty ratified by Kenya to be part of the law. This places Kenya under obligation to CEDAW, the Africana Charter and the Maputo Protocol on the rights of Women. The Kenyan courts have also pronounced themselves on issues of women's land and property rights. These pronouncements reveal certain issues.

a. A challenge as to the manner of proving contribution with a lack of unified methodology across the courts.

b. A lack of clarity on the sharing of property based on this issue of contribution.

c. An ambiguity in the relationship between the Law of Succession and the Matrimonial Property Regime and a lack of a consistent methodology due to this.

With this need to hold national courts and governments accountable to the obligations resulting from their laws comes the questions for alternative fora for this accountability.

Sub-Regional and Regional Judicial Bodies

African states have responded with resistance to the African Courts and the African Commission on Human and Peoples Rights. In fact, there is a standing proposal to collapse the two and effectively dissolve the Commission in their mandate for the enforcement of regional obligations.

The East African Community

With its founding documents stating an integration core, there has been an emerging human rights mandate in its legislative assembly towards rights issues, most notably with adopting and advocating for sexual and reproductive health rights.

Article 5 (3e) of the East African Treaty sets out gender mainstreaming as among its objectives, reflecting a cognizance of gender nuance and bias that is to be met by this principle. Article 6 includes in the fundamental principles of the community gender equality as well as the recognition and promotion of human rights in accordance with the African Charter.

The East African Court is the judicial arm of the community. It has shown itself more with a human rights mandate, though this is not explicitly and extensively stated in the founding documents.

Although matters can be brought by the state, the secretariat or an individual, making themselves more accessible unlike the African Commission, there have been no specific cases on the rights of women before the courts.

Though the rate of implementation of judicial decisions by countries is low, this court makes state-to-state accountability more attainable. This is based on the truism that states have shown themselves to be more responsive to certain criticisms when coming from other states, albeit generally.

This presentation posits that:

- a. Sub-regional bodies have the potential to hold states accountable by leveraging its integrative force and use of soft accountability such as shame and public criticism by peer states.
- b. These bodies can provide a significant boost for advocacy and protection with regional traction, a public interest litigation opportunity and regional awareness.



Uganda

Legal Enforcement and Promotion of Participation in Land Administration

Land administration in Uganda is governed by statutory and informal laws. The statutory regime includes marriage, divorce and succession laws while the informal regime is made up of a variety of laws, customs and traditions from the many different communities present in Uganda. This makes land administration complex due to the rooting of communities in customs, practices and religion.

Uganda only recently declared 7 cities, adding to Kampala which has been the only city in Uganda for decades. Uganda's population is largely rural, with agriculture being the key economic activity and women being the majority of the workers and producers in this sector.

Land administration involves the acquisition, valuation, taxation and transfers of land. With the majority of the population in rural areas and women being the primary workers in agriculture, little has been done to include women in administration of land.

Legal Framework

Uganda has a legal framework promoting and protecting women's rights, with institutions mandated with the protection of these rights. The Ugandan constitution under Article 21 prohibits all forms of discrimination. Article 26 provides for property ownership and the equality of women to men before, during and at dissolution of marriage. The Constitution also recognizes the role of women in socio-economic development. Women in Uganda are great contributions in the agricultural and food production sector and are also about half of the Ugandan population.

Regulation provides for the participation of women in Uganda's land tribunal system, from the land area committees and local courts at sub-county and district level. The tribunal system has not taken off. This is attributed to a lack of funding.

Uganda's National Land Policy provides for the promotion of women's and children's rights to inheritance and their whole and meaningful integration in all decision making structures and mechanisms. The overall mandate is with the Ministry of Lands with a directorate with the specific mandate over land administration. Uganda also has District Land Boards, where at least one third of members should be women. However, the majority of the women in the rural areas are disqualified by membership qualifications such as education levels.

The judiciary, through without a specialized land court, has pronounced itself protecting women's rights against discriminatory practices such as patrilineal inheritance of land that has historically excluded and disadvantaged women in Uganda. The courts have also responded to the question of matrimonial property and definition of contribution in favour of the plight of women.

An unclear family law regime where the Domestic Relations Bill has remained opposed for over 10 years holding back the reform of family laws in Uganda.

Uganda's land administration is faced with legal pluralism, challenging cultural contexts and weak enforcement. This has stunted the benefit of Uganda from the contribution of women and continues to hold back the realization of Sustainable Development Goals.

This presentation proposed the following measures to enhance the participation of women in land administration:

- a. Developing clear and efficient technical guidelines to support local land administration and protection of tenure, that will encourage and promote the protection of rights of women e.g. in the registration of land under customary arrangement.
- b. Support local dispute resolution bodies such as the local land tribunals which are more accessible to the rural populations.
- c. Introduction of a specialised and streamlined land dispute resolution regime e.g. an environment and land court.
- d. A multi-sectoral capacity building to drive representation and promotion of women in sectors associating with land rights.



Tanzania

Gender Mainstreaming and Women's Participation in Land Administration

This presentation focused on SDG 5 on gender equality and women empowerment indicator 5.a.2 on the indicator of legal frameworks guaranteeing ownership and access to land with the proxy on the provisions of percentages and quotas of women's participation in land administration.

Existing Provisions

The Tanzanian land reform of the 1990s provided for equality of women in ownership and access to land rights.

The laws emerging from this reform provided for a minimum number of women required in the composition of land adjudication panels. Where bodies convene and make decisions without the stipulated number of women, those decisions are considered unlawful for lack of representation and the decision void.

This is required at the lowest level with the village land council for example, requiring at least 3 out of 7 women. With a minimum of 4 panelists sitting to adjudicate, at least 1 must be a woman, failure to which the decision may be appealed. This is the same requirement for ward and district tribunals. Tanzanian laws have provided similar quotas across national land adjudication bodies.

By law, the National Land Advisory Council must have at least 3 women. The Land Adjudication Board must have at least 3 out of 9 women on the board.

Land in Tanzania is categorized into for the purposes of administration into:

General Land

Land in urban areas, towns or earmarked for investment. Under the General Commissioner for lands administered by the Ministry of lands.

Village Land

70% of the land in Tanzania. Administered and managed by a village council, an elected body comprises 25 members from 25 villages, who hold office for 5 years with an election required. The village council cannot make any grants or allocations without the approval of the village assembly, which is the final decision making body. It is made up of all adult villagers, i.e. above the age of 18.

Gaps

Minimum quota for women in village assembly decision making: although expected to attend, it emerged that women were largely absent in the assembly sessions. Eventually, though unintended, the consequence would be a village decision taken by men.

External factors leveraging gaps

Land grabbing and land pressure proved to cause the alienation and exclusion of women from village decision making.

Emerging innovations in the law:

a. Village Model by-laws for the councils - following research and findings on the absence of women in land governance at the village level, a model by law has emerged providing for pre-session special consultations for women and in-session time allocations for women's issues concerning land governance at the village level.

b. Legal support mechanisms at the village level - development of land right monitors and paralegals who are trained in land laws who mobilize and support villagers, especially improving attendance and vocalizing issues in the village assembly.

The effect of this bottom up approach of empowering women at the village level has been increased participation of women in land governance, affecting both formal and normative laws while supporting and being integrated in the national legal framework of Tanzania.

Impact

Registered

764



Attended

283



Attendance %

37%



Unique Viewers

283



Duration

183



Countries

13



