



Women's Land Rights And Development In Africa:

Contesting Normative and Cultural Exclusion

Reflections on Addressing and Remediating Normative
and Cultural Exclusion

REPORT

Context

This series of workshops began as a look into law's contribution to inclusive development, given that development itself can be exclusive. This led to the exploration of the widespread exclusion of women, in law and policy, that had led to the disadvantage reflected in the economic realities of women in Africa. These realities are couched around access to land as a key economic resource, perpetual poverty and economic disadvantage faced by women in African communities.

This year's discussion was centered around charting a way toward inclusive development for women, this discussion was to be framed by goal 5 in the UN SDGs and goal 1 in the AU Agenda 2063. These development policies use secure rights to land as an indicator of economic development. This is because land is a mark of livelihood, business and profit making and cultural pride, necessary for economic development.

This seminar has sought to explore the key measures of legal frameworks that support these development policies, guaranteeing women's right to land. The discussions were conceptualized and geared towards an inquiry into laws and legal frameworks, to measure their effectiveness for achieving these goals. This led to discussions in:

- * Equality and non-discrimination in land, succession and inheritance
- * Recognition of customary land tenure and the protection of women
- * Political support for women's participation in land administration

Issues that did not emerge from the policy but from the discussions included:

- * Spousal consent for land transactions
- * Mandatory joint registrations and economic incentives
- * Budgetary allocations and political will for equal rights for women's access to land

Panel



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INTRODUCTION



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Public Policy Analyst and Gender Activist,
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MODERATOR



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Chief of Party,

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Dr. Olivia Lwabukuna

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Thematic areas: Issues and Opportunities

The shortcomings of national judicial bodies and the potential of regional judicial bodies: With the difficulties in implementation of judicial decisions at national level, the seminar explored regional courts and strategic litigation, which have the advantage of pressure from a bigger body such as the AU and landmark decisions that can push forward women's rights. This supports the need for state accountability for their development obligations. This approach remains a part of a multi-pronged strategy towards women's land rights.

Women's participation in land administration - A look at Uganda brought to the fore the issues of participation where local administrative bodies remain inactive due to budgetary issues, leaving women excluded as the societies resort to default cultural land administrative practices which often have proven exclusionary. An alternative picture was presented with Tanzania's village council approach to land administration, which was born of the land reforms of the 1990s, but was still plagued by the challenge of women being present but not being meaningfully engaged or effectively participating. This led to the development of gender sensitive by laws, in an effort to empower and secure the meaningful and effective participation of women.

The role and importance of civil society - Their access and capacity to bring empowerment, follow up on enforcement and drive a change in social, cultural perspectives with the bottom up effect towards change has been and remains a powerful part of the drive towards women's land rights realizations across Africa.

The issue of agency - Though not well explored remains crucial, there is a need to adopt a perspective of women as persons with long histories and deep understanding of cultural norms as participants in their own communities. This is especially key in determining what kind of empowerment is necessary. This view of women impacts the approach as it seeks to align itself with the vision of a culturally aware woman, aiming to support their negotiations and engagement with their cultural norms.

Private property rights - Private property rights are the outcome of formal law entering and affecting societies that framed their property rights around customary law. Prior to the introduction of formal laws, African societies operated in communal settings where user rights could suffice for women given the cultural context at the time. But with formal law came the concept of private property rights as we know it today. There is a need for communities to explore an approach that reconciles the cultural societies of today, its members, what protections are needed and the present day norms and practices.

Disregard for customary norms and beliefs - Customary norms are assumed to be immutable, unchangeable, backward and discriminatory. It is also assumed that formal law is better, more superior and non-discriminatory. It is important to engage with the reality that the cultural gatekeepers may have personal interests in maintaining the status quo in their communities, posing significant challenges to the process of change in communities.

It is important to recognize the role of men as land administrators and dispute resolution in African communities, roles that continue to be handed down in families and communities to the current generations. A strategic engagement with this next generation of land administrators is necessary to support the progress of women in accessing and securing rights. There is an opportunity to affect the future of rural communities herein.

A Historical and Legal Perspective: Issues and Opportunities

African economies rely heavily on their agriculture. Women make up over 50% of the agricultural workforce and are positioned as the backbone of these agrarian communities and economies. These women work and produce on land that they do not own and when the produce is sold and profits brought in, this is enjoyed by male members of their households, who likely are the owners of the land rights.

In exploring this phenomenon, the following points emerged:

Colonialism's impact on the practice of customary law - Colonialism brought laws entirely foreign to African customary law. These espoused values such as individualism and private property that were opposed to the communal nature of customary law. As the preferred law, the interaction between these two regimes, reflected in post-independence societies, that had been modernized based on foreign concepts and practices, while practicing their customary laws in societies where customary law was inferior and its environment distorted.

Independence constitutions - these were inherited with room for discrimination in issues of personal law, a background that continued until the wave of constitutional reform in Africa. These new constitutions addressed deep seated discrimination and mandated the equality and non-discrimination of women in all spheres, include land rights.

Alignment and harmonization of laws to new constitutions - with the new constitutions, legislative alignment plays a crucial role in enforcing and implementing constitutional vision. The speed of this alignment has impacted the realization of the constitutional vision of equality. Some countries have lagged behind in this and this continues to cost women in different communities, e.g. Zimbabwe with 7 years since constitutional reform awaiting legislative alignment.

Harmonized Implementation mechanisms - in spite of laws reflecting equality and non-discrimination, there is a need to codify the implementation in order to eliminate opportunities for bias and discriminatory application of discretion by public officials.

Harmonization of marriage regimes - African countries generally provide for customary, statutory and religious marriages. With marriage as a key institution in matters of property acquisition, ownership, allocation and sharing, women in customary marriages have often remained at a disadvantage due to laws recognition and permission of discriminatory cultural practices. There is a need to ensure that all the marriage regimes are treated equally by law, particularly with ownership of property in and at the dissolution of marriages.

Harmonized protections for different land tenure systems - large scale land deals have had the greatest impact on customary land, with less protections on such land as compared to land protected by statutory law. In Zambia for example, customary land has been affected greatly with little bargaining power, this has led to mass losses of land with inadequate compensation. As women are the majority occupants and workers in these lands the impact of these acquisitions has been felt greatly by women with evictions, loss of livelihood and a lack of resettlement schemes.

Gender sensitive laws - The assumption in many countries is that a gender neutral phrasing in law provides protection for women as well. However, a historical consideration of existing legislation has shown that discrimination and bias has persisted. In the case of Tanzania for example, gender sensitive laws have promoted greater and clearer protection of women in land issues, where a gender neutral approach had failed.

Questions and Response

1. Women with disabilities

There has not been much discussion exploring the layer of disability in exclusion and discrimination. There is a need to explore the unique and nuanced requirements and needs of disabled rural women in Africa to land rights.

2. Over legislation v. reorientation of customary practices

Non-formalization of customary law has made it so fluid in interpretation and practice. This fluidity does prove challenging and thus legislation offers an opportunity to bring certainty to some issues. These two approaches can co-exist as they use different approaches to promoting the protection of women. Reorientation has greater reach into communities where legislation has not been welcome, the two can be used together in a multi-pronged approach.

3. Reorientation of legal professionals

There is a need to engage with the mainstreaming of gender equality in legal education and training and material that is used across the legal profession. As the primary handlers of law, without a change in attitude in this fraternity, old attitudes that transfer and perpetuate bias continue to exist and replicate themselves throughout the training into legislation and practice.

Recommendations

The discussion has clarified the point that customary practices will continue to govern communities and persist. The error in approach for a long time has formal law's approach as a superior and better approach that has shunned and belittled customary practices and the people outworking customary law's vision of society. This has resulted in communities rejecting and resisting change that is coming from national law. With this in mind, the recommendations must account for this continuity and treat customary law as an ally by advancing law and legal approaches to respond as such.

1. Alternative dispute resolution: these approaches mimic customary dispute resolution in being restorative and non-retributive. Mediation, for instance, has seen productive and positive outcomes and remains a recommended approach to dispute resolution involving customary norms and practices.

2. Innovative and simplified civic education: legal and rights awareness approaches stand a greater chance of success if they take into account methods that respect the community and integrate them such as the use of local paralegal support and radio messaging in native languages.

3. A community-needs bottom up approach: often in such discussions women are presented as having to choose between their customs and their rights. This approach assumes that the women would not like to secure their rights within their communities and in harmony with tier customs. Bottom up approaches, though effective, need to account for community needs to maintain harmony and levels of knowledge and exposure in devising a strategy that does not seek to extract the women or alienate them and disrupt their communities negatively.

4. Depoliticizing the issue of land: the politicization of land has resorted to limited access to land with women taking the brunt of this lack of access.

5. Harmonizing legislation: legislation needs to be brought up to date with the reformed constitutional vision of equal and non-discriminatory societies.

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