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The Case Tanzanian country

Abstract

The purpose of this study is to explore the challenges of women on land rights, in Tanzania customary practices often required woman to access land through their fathers, brothers, husbands or other men who control the land, so this makes women vulnerable and decreases agricultural productivity. When women loses their connection to this male relative, either through death, divorce or migration, they can lose their land, home and means of supporting themselves and their families. The methodology adopted in this study involved a review of secondary sources such as land act, Village Land Act (both passed in 1999) ,National Land policy 1995 of Tanzania, interview and analysis that explain on the rights human have on land in both rural and urban areas ,and finally the paper concludes on the way forward to eradicate women's challenges on land rights. Strengthening women's land rights there is need to promote efficiency and effectively policies and framework which will favour women rights on land because the majority of the people in Tanzania today rely on land for their livelihood. Secure land rights confer direct economic benefits because land is a key input into agriculture production and enterprise development: can be used as a source of income from rental or sale; and can provide collateral for credit where strong, well-regulated land markets and credit infrastructure exist. Tanzania has an ambitious agenda for land and natural resource policy and legal reform. Since 1999 it has been transitioning to a legal framework that integrates aspects of customary tenure, supports the rights of women, recognizes private property rights, and permits individualized control of resources in farming areas. Despite positive developments, the agenda of policy and legal reform is not yet complete. Some claim that the current legal framework fails to effectively provide the foundation for an effective land governance system. While the legal framework generally upholds women's rights to land, in rural areas practices predominate whereby men are heads of households and have greater rights to land than women. The law is still weak in regard to women's inheritance rights to land, and inheritance practices discriminate severely against women.

Keywords: Gender, land right, land policies and governance of tenure

1.0 Introduction

Land rights in Tanzania have been the subject of energetic debate and remain a contested and troublesome issue. Normally, marginalized people and populations, including women and young people, have had difficulty claiming and retaining land rights. A revision of the country's land laws in the 1990s presented opportunity for society groups to advocate for progressive change. This brief examines the ways in which women's rights groups collaborated and engaged in the land law reform process in Tanzania.

1.2 Background

Tanzania is one of the counties praised for its appropriate legal framework for protection of women's land rights, the most land in Tanzania is held under customary tenure arrangements with rules and institutions specific to various ethnic groups and geographies. Statutory law, and in some places Islamic law also govern land. A consistent narrative throughout the Tanzanian countryside and across ethnic groups, however, has been women's lack of land rights, or their inability to realize rights where they do exist. According to the data women lacks secure land rights for a number of reasons. For example, about 80% of all communities in Tanzania are patrilineal. In patrilineal kinship systems, individuals belong to their father's lineage. They also generally involve the inheritance of property through the male line. Members of patrilineal systems are often concerned with keeping land within the lineage. Bahaya, Maasai, Chagga, Pare, and Sambia people take care to keep land within the clan or family. This has typically led to discrimination against women's rights to control land since they are expected to marry and move away from their parental base. Among the Chagga, Nyakyusa, and Haya, a family's daughters have historically been allowed to cultivate land, but not exercise permanent rights over it.

While many customary tenure systems are biased against women, most provide women with some rights. For example, among the Pare in the Kilimanjaro Region, land is typically controlled by men but women are given parcels by their fathers upon marriage which they can use, allocate to others, and pass on to their own daughters as inheritance. The area, however, is a coffee-growing region, with men providing much of the labor and controlling cultivation. As coffee production expands, and as the population grows, fewer women are given land. When they are given land it is usually small parcels. Moreover, many have lost control of land that was once theirs.

2. Methodology and Scope

In this study, various methods were used to assess the challenges of women land rights in Tanzania; the source of information employed in this paper is based on pure literature papers. The following materials were secondary sources: Tanzania's legislation, policies, jurisprudence, relevant case law, reports, African practices, customs, and traditions. Qualitative analysis is utilized as an analytical tool for this paper. The paper is divided into four sections. In the first section, the study is introduced and in the second, Tanzania's legal regime, which is designed to protect women's land rights, is explained. In the third

section, various challenges, which compromise the ability of women to enjoy their land rights in Tanzania, are analyzed. The final section contains a general conclusion.

3. Statutory Frameworks for Protecting Women's Land Rights in Tanzania

3.1 Property Laws

The National Land Policy of 1995 contains various provisions which protect women's land rights. It covers a range of issues including equitable distribution and access of land by all citizens. The policy, further recognizes the problems associated with women's land rights and explains a policy framework for strengthening women's land rights. The Village Land Act provides that every adult woman has a right to acquire or own land, and/or use land. According to the preceding provision, every woman who is an adult has a right to own and use land independently. Women citizens are entitled to an allocation of land and can have access to land just like any other Tanzanian citizen. This law promotes equal rights in terms of land ownership between women and men.

The Village Land Act protects women against discriminatory customs and traditions, which restrict women's lawful access, occupation, and ownership of land. The drafters of this provision were aware of the fact that some African culture and customs are discriminatory in nature especially on matters relating to land rights in which women are not permitted to own or use or occupy land or their land rights are subsumed into their spouses or male sons. Therefore, the drafters of section 20 intended to address the problems associated with African customs and traditions, which could be used to undermine women land rights in Tanzania (Magawa & Hansungule, 2018)

3.2 Inheritance Laws

In Tanzania there are three main bodies of rules which regulate matters pertaining to inheritance of property: statutory law, Islamic law and customary law. There are not many concerns related to statutory rules, which regulate inheritance matters. Statutory rules strive to promote equality in inheritance issues whereas Islamic and customary rules are blamed for embracing discriminatory and inequalities in the name of religion or African customs. Tanzanian law provides that customary law to which the person belongs regulates inheritance land rights. The problem with this law is that it has the potential to affect women's land rights negatively because in African societies, their entitlement to inheritance is based on gender and ethnicity.

Although international bodies condemned the discriminatory laws contained in inheritance customary laws, the practice of disinheriting widows by applying customary law of inheritance continues in Tanzania. For instance, in *Scholastica Benedict v. Martin Benedict*, the Court affirmed customary rules, which denied the widow her inheritance rights. The Court noted, "The widow has no share of the inheritance if the deceased left relatives of his own clan; her share is to be cared for by her children just as she cared for them. One may deduce that laws in Tanzania are still a work in progress.

3.3 Matrimonial Property

In Tanzania, the Law of Marriage Act is the principal legislation, which regulates the division of matrimonial property. The law provides for equality between a husband and a wife in matters pertaining to property rights. Specifically, the law declares that *“A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise...”*.

According to this provision, the law overrides any potential land claims, which may arise from customary or religious rules. The law creates four rebuttable presumptions, which protect women’s land rights. The first presumption provides that if during the subsistence of the marriage relationship, one spouse acquires property in the name of that spouse; the assumption is that such property belongs absolutely to that spouse. The second presumption provides that where spouses registered land in joint names, it be presumed that the spouses have equal beneficial interests towards the land registered under both names. The third presumption provides that if during the subsistence of a marriage relationship, either spouse gives a gift of property to the other spouse the assumption is that such a gift of property belongs to the donee. The fourth presumption provides that when a woman and a man cohabit for a period at least two years or more which leads to a marriage-like relationship, such relationship shall be presumed to be a valid marriage for the sole purpose of granting such reliefs as the court deems fit.

Furthermore, the law protects women’s land rights by preventing eviction of the deserted spouse from their matrimonial home. In addition, the law does not allow third parties to evict a deserted spouse. This prohibition bears some similarities of dower rights, which preclude a spouse from being evicted from their matrimonial home. This prohibition adds another level of protection for women’s land rights in Tanzania

3.4 Human Rights Principles

The inclusion of the Bill of Rights in the Tanzanian constitution was done during the 1984 amendments. The amendments contain provisions that are relevant to the protection of women’s land rights. The Constitution provides that the government shall offer equal opportunities for all citizens including men and women. In addition; it prohibits the enactment of any law, which is discriminatory. Further, the law prohibits any enactment whose effect has the potential of being discriminatory. One of the weaknesses of provisions which prohibit discrimination as designed in such a way that they offer general prohibition without specifying that gender discrimination is prohibited under the law.

The Constitution of Tanzania prohibits any citizen to have rights, status, or special position based on lineage, tradition, or descent. Despite of this provision, traditionally there are social classes in Tanzanian societies in which social groups have different preferential treatment. For instance, social groups such as children and adults have no equal rights because of their traditions and cultural setting. In addition, Tanzania has ratified various international human rights instruments and declarations, which are relevant to the protection of women’s land rights

4.0 RESULTS AND DISCUSSION

4.1 challenges for women's land rights in Tanzania

4.2 Bride Price

It is notable that women are part of communities and women expect to follow the customs and traditions to which they belong. One of the most venerated cultural practices is the payment of a bride price to the bride's family as a prerequisite for marriage ceremony. The majority of married women in Tanzania secure their land rights through their spouses. Most traditional customs in Tanzania do not allow women to own land or have some form of land ownership. However, women are permitted to enjoy user rights or derivative rights. One of the barriers, which undermine the ability of women to enjoy their land rights in Tanzania, is the payment of bride price to the groom's family.

According to many customary traditions in Tanzania, family land remains in the male bloodline and married women are not considered to be part of the male bloodline. The payment of the bride price to the woman's family indicates that the woman is bought into her husband's family, but she is not part of her husband's family bloodline. Therefore, the family land or clan land cannot be allocated to the woman because she does not share her husband's bloodline. In addition, many customary rules are linked to the bloodline of male children only. Women have no prospect of being allocated lands from their own biological families because once they get married, they are expected to settle with their husbands and accordingly, enjoy user land rights. Inserting legal provisions in a statute book stating that men and women have equal rights over the husband's family land and women can own land independently of their husbands goes against core cultural practices, which may have serious ramifications

4.1.3 Religious Teachings

The right to freedom of religion is a human rights principle, which is supposed to be recognized, respected and enforced. Both African traditional and modern religious teachings perpetuate male superiority and emphasize that women should be submissive to men. It has been reported that some men use this as a justification to undermine equality rights and perpetuate male domination. Women as part of the cultural society expect to follow the tenets of African traditional religions and customs. They are supposed to enjoy their land rights as provided under statutory provisions. On a few occasions, the application and interpretation of customary and religious teachings have taken precedence over statutory provisions and international law.

Strict observance to religious marriages such as Islamic marriages is an example of a religious doctrine, which affects women's ability to enjoy their land rights. In Islam, the right to divorce belongs to men. When a husband wants to divorce his wife, he is required to make four declarations to his wife stating, "I divorce you". This is a valid divorce in Islam and once the divorce has been pronounced, the wife is not allowed to share any property rights acquired during the subsistence of their marriage.

4.1.4 Economic interests

Tanzania's statutory protections focus on promoting land formalisation engrained with economic liberation. It has been argued that statutory protection weakens women's rights more than protection afforded under customary law. One may ask whether the focus should be on state law, which encourages liberal economy and its eventual benefits, which promote economic interests or whether the focus should be on encouraging customary land tenure, which is mostly based on collective land rights, which tend to offer better protection of women's land rights.

The problem of African customary landholding is that land in Africa is more than just a means of production. It is intrinsically linked to other aspects of life such as socio-economic, cultural, and religious manifestations. It is paramount to stress that the African land tenure system is designed to nurture the inhabitants of that land, which relates to ancestral veneration and worship. The religious practices, which occur on the land, regulate people's relationships within the family or clan. Various African traditional religions do not consider a woman who is married into the family to be part of the husband's family. Although Tanzania does not allow customary law to undermine women's land rights, this seldom happens in reality. Olukayode argued that despite many legal instruments, which protect women's rights in Africa, there have been surmountable challenges, which hinder the implementation and enjoyment of women's rights in Africa. He added that deep-seated and ingrained cultural and religious practices have been among the main impediments of the enjoyment of women's rights in Africa. This scenario creates a dilemma among women because of the different choices they face in relation to realising their land rights.

4.1.5 Land Use

Women's land rights are entrance for women to enjoy their human rights. The amount of human rights principles involves civil, political, cultural, social, and economic rights. Various African governments prioritize the enforcement of human rights principles, others focus on first generation rights such as civil and political rights and a third group concentrates on second generation rights, for example, economic, social and cultural rights.

According to the customary landholding system, private individuals were granted user rights over traditional lands. Currently, Tanzania is actively promoting land markets through formalisation, registration and titling. This exercise is designed to promote national macro-economy through the generation of capital inflows by encouraging foreign investments and through stipulation of local investors to engage in land-based investments.

Various laws treat land as a commodity, which can be used as a means of production. However, other laws view land as more than a commodity. If land is treated as a commodity, the law focuses on encouraging the market economy. Women in rural Tanzania tend to lose their land rights simply because of an increased demand for land markets. If laws focus on preserving other values besides economic values, the laws tend to protect land for such purposes. This dilemma ensures that women's land rights are likely to be compromised.

4.1.6 Equality

The strict interpretation of equality principles has created problems because access to land to some extent requires financial resources. Furthermore, some African traditional societies view women as subordinate to men. Statutory rules emphasize on the adherence to equality rights, in which, men and women have equal status and in which women must be accorded the same opportunities as men. Similarly, equality principles place men and women on an equal footing in relation to the acquisition of land. However, the majority of rural women have no equal purchasing power or enough resources to protect or acquire lands on their own. Most rural women in Tanzania are disadvantaged in terms of social-political and economic aspects. For instance, they do not participate fully in the governance of their local governments. The majority of African cultures treat women as subordinate to men¹⁰⁴. The lack of economic resources at women's disposal impedes their ability to acquire lands.

4.1.7 Legal Pluralism

The concept of legal pluralism refers to multiple legal rules, which are applicable in a certain jurisdiction. It is up to a nation to decide the nature of legal rules, which are enforceable within its jurisdiction. Legal pluralism presupposes the existence of multiple legal rules, which are recognised in a certain legal system

Tanzania is a party to international and regional human rights treaties; some of which govern women's land rights. On the national front, the legal system of Tanzania recognizes statutory laws, Islamic laws and customary laws. These laws regulate women's land rights. Women's land rights are governed by a range of laws, which have underlying obstacles that prevent the enjoyment of women's land rights in Tanzania. The choice of law determines the breadth of women's land rights in Tanzania.

Alternatively, the law in Tanzania provides that customary law have equal status with statutory provisions. In practice, customary land tenures are more inferior to statutory land tenures. Therefore, the enforcement of women's land rights based on statutory land tenure may constitute a stronger claim than those women who enforce their land rights through customary land tenures. Legal pluralism also results in different forums for land dispute resolution. In Tanzania, a village council deals with land dispute, which involves village lands. When the village council fails to resolve the dispute, the matter is forwarded to a ward land tribunal; the governing law in these dispute resolution bodies is customary law. The problem with customary law when it comes to dealing with land dispute is that it focuses on mediation rather than litigation. Furthermore, customary law does not strictly comply with the principles of the natural of justice and it does not strictly follow the rules of evidence.

4.1.8 Top-Down and Bottom-Up Dilemma

During the era of colonial administration and post colonial administration, a centralised system of land administration was maintained. Significant powers involved in land

administration and allocation remained mainly in the central government. Furthermore, the local government authorities had few powers in relation to their village lands. In addition to the powers of land administration in the central government, the central government had overriding powers, which affected women's land rights at local levels. The local government and land users were supposed to receive directives from the central government in matters pertaining to land issues. The top-down approach removes the freedom of landholders to deal with the lands the way they wish. According to the top-down approach, the government makes decisions and issues directives regarding land use and allocation.

In theory, the law provides that customary land tenure has equal status with statutory land tenure. In practice, statutory land tenure is always superior to customary land tenure. The top-down approach always gives priority to statutory land tenure. Thus, women's land rights held under statutory land tenure are more secure than women's land rights held under customary land tenure.

4.8 outdated Traditions

The institution of marriage is a significant goal for many Tanzanians. Traditionally, marriage affords a person a certain social status and respect. Women owning lands independently are viewed as a deviation from cultural tenets and incompatible with African cultures. As stated previously, the payment of the bride price to the bride's family is equated to purchasing a woman from her family. But the same act of marrying is used in the passive voice for women. Another cultural practice, which signifies the objectification of women, is the practice of a send-off party in which the family of the expected bride prepares a party to send off their daughter to the husband's family. During the send-off party, the bride to be receives several gifts from her family and friends. Everything is brought into marriage by a woman belongs to her husband and the woman is not supposed to own property independently.

Most potential grooms tend to look for a woman who is submissive and follows social norms. Potential grooms tend to stay away from women who own property. This is because property ownership empowers women and potential grooms fear women with strong economic power, and who own property as well. If this happens during the marriage, husbands tend to reduce the power of their wives by engaging in polygamous relationships or in extramarital relationships or they father children out of wedlock and if the wife is working, they usually ask the wife to stay at home to care for the family. If a married woman acquires property independently, she risks losing her marriage relationship. Thus, gaining power through property ownership places married women in a serious dilemma and ultimately affects their potential to own property.

5. Conclusion

The focus of this paper was to assess the challenges of women land rights in Tanzania; the paper concludes that Tanzania has legal protection for women's land rights. Though, the protection provided under the laws of Tanzania is not appropriate in practice. The second conclusion of this paper is that the existence of some African traditions and customs continue to create problem which hinder the realisation and enjoyment of women's land rights in Tanzania.

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