

Women's land rights in Africa: Does implementation match policy?

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Conference on Land Policy in Africa, 2019: Winning the fight against Corruption in the Land Sector: Sustainable Pathway for Africa's Transformation

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Abstract

This paper assesses the performance of selected countries in implementing the provisions of women's land rights instruments such as African Union Framework and Guidelines on Land Policy in Africa and the Voluntary Guidelines on Responsible Governance of Tenure among others. Field research was carried out in seven African countries⁶ whereby, in each country a national researcher in collaboration with the collaborating nongovernmental organisation selected three heterogeneous locations which capture the range of situations under which rural women use land. Based on field research results complemented with desk review, the study finds that while statutory laws to protect women land rights are in place in all studied countries, with some differences and, in some cases with existing loopholes, adherence to these laws at the community level remain inadequate. This is particularly evident in terms of equality of rights to inherit land among men and women. Women experience constant threat from clansmen and relatives of their husbands. As also documented elsewhere, in many African communities (although not all), most land-holding systems are male lineage based, with men playing an important decision-making role. Malawi represents a specific case in this regard, as most land-holdings are based on matrilineal systems, but this still is not an automatic guarantee of women having more decision-making power on land. Based on these findings the paper confirms that while impressive steps to address women's land rights issues have been taken in recent African policies, law enforceability is yet to receive sufficient political backing, due to widespread patriarchal values, limited financial and human resources and last but not least informal rules of the games that are the same drivers of widespread corruption. Patronage, 'clientage', illegality and opacity of land transactions find fertile ground in a patriarchal system. Understanding the status, causes and consequences of the *de facto* 'unenforceability' of constitutional and legal provisions in favour of women might shed a light on much broader challenges like those addressed in this conference. Holistic implementation and reforms that 1) address existing loopholes in land laws and regulation, 2) align other sectoral policies, laws and regulations, and 3) use transformative actions to revert patriarchal values in order

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to bridge the gender gap in property rights, but also to help creating a fairer environment to contribute combating corruption.

Introduction

In recent years, women's land rights have strongly featured in core agendas of the Africa Union, United Nations Organisations, governments and non-state actors (cf AU Agenda 2063; FAO 2012; Kilimanjaro Initiative 2016). As a result, to date virtually all African states have signed policy resolutions to more equal and less discriminatory land rights for women. The African Union, (AU) has also embraced this aspiration and laid it down in frameworks and guidelines and other legally binding documents in relation to women's land rights. Notable among these are the Framework and Guidelines on Land Policy in Africa (hereafter AU F&G), adopted by the African Union in 2009; and the Voluntary Guidelines on Governance of Tenure, Fisheries and Forests in the Context of National Food Security (VGGTs) that were adopted at the World Committee on Food Security (CFS) in 2012 with the participation of African governments; the AU Guiding Principles on Large-Scale Land-Based Investments (GP-LSLBI) also endorsed by the heads of states and governments in June 2014 and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) adopted by AU in July 2003 .

It is on these basis that this paper examines the extent to which these policy commitments are translated into national legislation as well as practices on the ground. It uses a women land rights scorecard⁷ developed as a quantifiable tool to measure the performance of selected countries in implementing the provisions of women's land rights instruments such AU Framework and Guidelines on Land Policy in Africa, and the FAO VGGTs among others. The scorecard measures the performance of participating African states in implementing the provisions of the selected instruments on women's land rights across five themes, namely: (1) Provisions are made in the law to guarantee women's equal land rights; (2) Women's legislated land rights are protected and enforced; (3) Women make a meaningful contribution to land governance; (4) Women are able to assert their control over the land they use and (5) Women's land rights are protected in the context of large-scale land based investments. We explore these five themes were explored during baseline study carried out in seven countries: Cameroon, Ethiopia, Kenya, Malawi, Mozambique, South Africa, and Togo. These countries were selected based on the presence of existing efforts to secure women's land rights by members of the consortium.

Further, the selected countries present different AU regions with differentiated women land rights' contexts. The selected countries thus provide an indication of the potential and replicability of civil society advocacy efforts in other countries across the continent. The field research aimed to produce evidence to support civil society organisations to contribute to a better understanding and enforcement of women land rights across the African continent. The distinguishing element of this exercise is that the scorecard analysis is grounded into

⁷ The scorecard was developed as a first output of the consortia comprising of Oxfam, Institute for Poverty, Land and Agrarian Studies and Plateforme Régionale des Organisations Paysannes d'Afrique which implement the Women's Land Rights Project in Africa. It can be downloaded at: <https://www.plaas.org.za/sue-mbaya-womens-land-rights-in-africa-2019-scorecard/>

both solid research and grassroots women's (leaders) views, whose dialectic power converged into a systematic monitoring tool. In each country a country researcher in collaboration with the country's collaborating nongovernmental organisation selected three heterogeneous locations which capture the range of situations under which rural women use land. Six semi-structured interviews per country, with purposely selected key informants were undertaken, as well as nine focus group discussions comprising of 10 women per country. Overall, 46 key informants and 630 women were engaged in the baseline study's data collection processes.

Based on the findings from field research complemented with in-depth literature review, the paper finds that while statutory laws to protect women land rights are in place in all studied countries, with some differences and, in some cases with existing loopholes, adherence to these laws at the community level remain inadequate. This is particularly evident in terms of equality of rights to inherit land among men and women. In all six countries except Malawi the study showed that women's ability to access land through inheritance is compromised in practice. Women experience constant threat from clansmen and relatives of their husbands. As also documented elsewhere, in many African communities (although not all), most land-holding systems are lineage based, with men playing an important decision-making role. Malawi represents a specific case in this regard, as most land-holdings are based on matrilineal systems, but this still is not an automatic guarantee of women having more decision-making power on land (Berge 2014). Countries such as Kenya and Malawi have implemented principles to improve gender parity in local land governance structures, but the principles are seldom practiced at the community level and women's influence in decision-making positions is still weak. As a result, men still make pertinent decisions regarding the land inheritance and/or allocation.

Women's land rights in Africa: Research findings and discussion

Women's land rights remain high in academic (cf Quan 1997; Whitehead and Tsikata 2003; Tsikata 2013) and non-governmental organisations (ActionAid 2009; LANDac 2018) debate in Africa. The key question in all these debates is why the existing land policies and legislation with provisions and safeguards for women's land rights are not implemented on the ground. It is on these bases, we examine the selected five themes and below we elaborate our findings based on these themes as follows:

Laws on women's land rights exist but knowledge at grass roots is limited. Technical assessments from all seven countries evidence that laws guaranteeing women's land rights exist. This is in line with declarations including the Maputo Protocol in which governments committed to promote women's access to and control over productive resources such as land and guaranteeing their right to property. However, the baseline studies show that the laws at country level may not be well understood by women at the grassroots level. There is general failure for policies, laws, and procedures to be clearly expressed in applicable languages, and widely publicized as recommended in the VGGTs. For example, in Ethiopia where the Revised Family Code (2000) gives equal rights to women and men in terms of marriage, inheritance, and property under the prevalent tenure regimes in the country, there is limited awareness of this law among grassroots women. Similarly, evidence from Kenya's

Muranga and Narok communities' highlights that majority of women do not know of the land provisions supporting their rights to land in the new constitution, land laws and the national land policy. This is indicative that governments are failing to meet some of the provisions made in the VGGTs, specifically for all persons affected by land reforms, including disadvantaged groups, to receive full and clear information on the reforms, including through gender-targeted messages. As a result of this gap, women in rural areas are seen not to be benefiting from the gender progressive laws that have been put in place by their governments.

This is the case in Malawi and Mozambique where key informants expressed that even some literate women are not aware of their land rights. This lack of access to information and knowledge about land laws has serious implications for women's ability to exercise control over land. Thus, while laws safeguarding women's land rights are now in place, it is necessary for country governments, together with CSOs, to implement programmes that create awareness on women's land rights. A good example of this is seen in Malawi's Phalombe community, where community based organisations are taking steps to improve WLR awareness from about 50% through establishing local land committees.

Enforcement and protection of WLR is limited with regards to inheritance. Regional guidance such as the F&G and Maputo Protocol highlight the issue of statutory laws which confer title and inheritance rights on male family members while relegating women, especially married women, to secondary access through their husbands or male children. Specifically, the F&G calls for enactment of legislations that provide equal rights for women to inherit and bequeath land, as well as to provide for co-ownership of registered land by spouses. Under the Maputo Protocol, African recognise that women and men shall have the right to an equitable sharing of the joint property deriving from the marriage. However, results from the baseline studies show that women and girls still have weaker rights to inherited land than their male siblings or uncles. In Lamu, Kenya, women and girls inherit a third of their father's land while men are bequeathed half of the same property yet the country's constitution provides guarantees for equitable access to land for all. Even in matrilineal communities such as Balaka and Phalombe in Malawi, the tenure rights of women are still not secure. Women live under the constant threat of loss of land rights from clansmen and relatives of their husband. They may be forced by relatives of their deceased husband to surrender land acquired by the family especially when there is no child.

While laws to protect WLR have been introduced in all 7 participating countries, enforcement at the community level is minimal. This is particularly evident regarding equality of rights to inheritance of land. In Lamu, Kenya, the largely Muslim community believes that men are the core custodians of land even though the constitution provides guarantees for equitable access to land for all. Similarly, unmarried women in Narok County are easily denied claims to their parents' land and properties by their male siblings. In Togo where the Family Code permits women to own and manage land independently, women are generally not allowed to make decisions on the use of the land or to sell land without permission from male relatives or the local council of elders.

Women are poorly represented in decision-making spheres. The study noted the promulgation of regulations to increase women's participation in decision-making mechanisms and processes. Kenya has implemented the two thirds gender principle which makes it possible

for women to sit in county land control boards. Similarly, Malawi encourages gender parity in decision making and requires 50% women participation in Village Development Committee. This is in line with calls from the F&G to ensure that land governance structures include sufficient representation by women, including customary land governance structures and the Maputo Protocol commitment to ensure participation of women at all levels. However, the study observed that this is seldom practiced at the community level. Representation of women in land related decision making structures remains limited. In Ethiopia's Gambella region, women make up only 25% of the decision makers at the local council level compared to the anticipated level of 50%. In Mozambique, there is a strong presence of women in local decision-making structures, however when it comes to land issues, it is men who still make the pertinent decisions by excluding/limiting women in these discussions. The study therefore concludes that women's influence in decision making positions is still weak.

Gender inequality is a major factor in the determination of women's meaningful contribution to land governance (cf Osorio and Gallina 2018). This is despite calls from the F&G for country governments to promote women's participation in land administration structures as well as commitments under the Maputo Protocol for states to ensure increased and effective representation and participation of women at all levels of decision-making. In this way governments are also failing to realise participatory and gender-sensitive approaches in land governance in line with the VGGTs.

Women's ability to assert control over land is limited by social and religious norms and traditions. Our findings show that governments have been slow to realise commitments made in the AU F&G and VGGTs. Specifically, the F&G highlights the fact that the system of patriarchy which dominates social organization has tended to discriminate against women when it comes to ownership and control of land resources in both urban and rural contexts. The VGGTs call for states to ensure that women and men enjoy the same rights.

However, in keeping with other literature, even in matrilineal communities observed in Malawi, the man makes almost all decisions including what to plant, how to use proceeds from the sales of farm produce, and whether to hire farm labourers. More frequently across the region, traditional leadership and customary laws remain rooted in patriarchy which elevates men as land owners, head of households, and subordinates women as to their male counterparts. For example, in Kenya and Ethiopia women in traditional contexts are still not allowed to own land. Women also have limited say in land related decisions within the household structure. As Sulle (2019) also observes, even elsewhere in Africa, these ideas are widely accepted and evidenced by disproportionately more men owning land than women in spite of the aspirations of AU land frameworks.

Absent or insufficient national level policy guiding LSLBI. The study observed that African states have been also been slow to implement policy guidance relating to LSLBI. Principle 4 of the GP-LSLBI specifies the obligations of governments in relation protecting WLR and livelihoods in the context of LSLBI. Principle 4 states that LSLBI must respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and not exacerbate the marginalization of women. In Cameroon, Ethiopia, South Africa, and Togo, the state has not yet provided national policy guidance on LSLBI. This leaves women exposed to the dispossession of their land, poor access to land and related natural

resources such as water and forest products, thereby compromising their rights and livelihoods (Odeny 2013). In study countries where land related policies make reference to LSLBI, (Cameroon, Ethiopia, South Africa, and Togo), there are still gaps in provisions to ensure protection of women and accountability of investors in this regard. Envisaged provisions include those to actively engage women in land negotiation processes. This is the case in Malawi where the government has made progress towards safeguarding the situation of women in the context of LSLBI.

Nevertheless, the government has not held investors to the same safeguard standards. In this regard, governments are failing to ensure that LSLBI observes and respects women's equal rights to own, access, control, and use land as the case may be under different tenure regimes. Indeed, as Hall and Kepe (2017) have shown in the case of South Africa, because of rampant corruption elites have captured land distribution processes in the country.

The level of understanding is also poor or equal to zero for policy resolutions to more equal and less discriminatory land rights for women endorsed by African states and governments. Lack of awareness on these legislation among rural women can be attributed to high levels of illiteracy and poor dissemination of information on land rights at the community level. As a result, women in rural areas are not benefiting from the gender progressive laws that are in place. It is necessary for country governments, together with civil society organisations, to implement programmes that effectively create awareness on women's land rights.

Based on the findings from the studied countries, we argue that the broader and key solution to women's land rights in Africa as many other policies lies with the lack of *active citizenship*.⁸ As evidence show since the 1990s, both development agencies and international non-governmental organisations (NGOs) have increasingly shifted their programmes from complementing government programmes in service provisions to advocating for better public service delivery and citizens' awareness of their rights.

Green (2008) emphasizes effective states and active citizens embrace the reality that both states and the citizens have responsibilities and rights that they need to fulfil to achieve peace, rule of law and development, among other things. Indeed, as Pacho (2014) argues the ignorance of citizens on their basic and fundamental rights calls for a need to have civic education to entice the knowledge and better understanding of citizens' and an individual's rights. In line with Pacho (2014) we argue that there are need to improve citizens' knowledge on women's land rights in Africa. In many communities, civic education is an ingredient to create active citizenship (Pacho 2014; Task Force Ireland 2007), and it is what holds back women's awareness about the provisions made in many of the studied African Unions instruments.

Conclusion

This paper confirms that while impressive steps to address women's land rights issues have been taken in recent African policies, implementation is yet to receive sufficient political

⁸ In this paper we state that the active citizenship concept is broad and it originates from philosophy, political science and sociology, and it varies in many different contexts (cf Task Force Ireland 2007). Hickey and Mohan (2005) argue that active citizenship links action, politics, culture and place.

backing, due to widespread patriarchal values, deep-rooted traditions, practices, and certain religious norms within diverse African communities and limited financial and human resources. Women's land and property rights could greatly be improved if all African Union member countries implemented the existing commitments. These findings are corroborated by ongoing claims not only among government bureaucrats, but more importantly by policy makers in Africa. As recently documented, parliamentarians from ECOWAS lamented the difficulties they are facing in realising women's land rights on the ground. Yet, as one of the parliamentarian from Rwanda rightly stated, the key solution is '*change of mindset*'. The MP argued that African leaders and their citizens need to design and implement policies on issues they value in their own contexts, and they must commit their souls, skills, and resources to get these policies fully implemented on the ground (Sulle 2019). This rightly applies to women's land rights as virtually, all African states and governments have initiated their own policies and legislation on top of the African Union's frameworks and guidelines to which they subscribe to.

Moreover, as African states and government continue to commit towards equal societies where men and women equitably access land, use and control it, the key ingredient that is lacking and where the focus in fighting corruption in land is needed is in building active citizens. As documented mostly in developed countries, in recently in developing countries like Tanzania, enabling people to be active citizens increase their participation in governance issues, particularly women's participation, including taking up demanding leadership positions at the community, local and national levels both in private and public sectors (Oxfam GB 2013).

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