

Institutional approaches towards addressing the Challenges facing land ownership among Women in Kenya.

Type of Submission

Conference Papers

Conference Theme

Conference on Land Policy in Africa (CLPA-2017): The Africa; We Want: Achieving socioeconomic transformation through inclusive and equitable access to land by the youth. ADDIS ABABA, ETHIOPIA

PRESENTER: EDWIN MADEGWA.

UNIVERSITY OF NAIROBI

P.O BOX 100381-00101,

NAIROBI, KENYA.

MOBILE NUMBER: +254716419914; PHONE NO.: +254736730319

E-mail: madegwaedwin@gmail.com

Date of submission: September 2017

Institutional approaches towards addressing the Challenges facing land ownership among Women in Kenya.

(I)TITLE

Institutional approaches towards addressing the Challenges facing land ownership among Women in Kenya.

(II) SUMMARY.

Purpose

This is to study and examine various approaches used by various Institutions in Kenya towards addressing the Challenges facing land ownership among Women in Kenya. Then this can be used to enact a legal and institutional framework to address systematic violation of a basic human right of the women on land ownership.

Methods

The study targeted 141 institutions, 3 each from the total 47 Counties in the Republic of Kenya and 500 relevant individual stakeholders in all the 47 Counties in Kenya. Both qualitative and quantitative data were collected using interview schedules consisting of fixed and open-ended questions administered in face to face interviews. Stratified random sampling method was used to select the samples for the study. The quantitative data were analyzed using the statistical package for social scientists (spss) computer package while the qualitative data were analyzed manually.

Findings

The study showed that a number of approaches were being used in addressing Challenges facing land ownership among Women in Kenya, the major one being; creation of awareness on land rights by the civil society, financial assistance through subsidized loans, abolition of discriminative cultural practices, provision of training and mentorship to women, formulation of policies by both the National and County Government to empower women towards land ownership. The other findings was that most of the approaches being used were generally effective and these includes ; creating awareness on land and human rights among women by various institutions, lowering land rates on lands owned by women, provision of institutional and legislative framework to protect women against violation of their rights, supporting of more women rights associations / NGOs in Kenya e.g Federation of Women Lawyers (FIDA), Kenya Women Chamber of Commerce, Kituo Cha Sheria , Women Parliamentarian Association among others to protect women against violation of their landownership rights. Nevertheless, there are a number of short comings institutions face in addressing the land ownership challenges among women in Kenya and the key ones include ignorance among women, inadequate resources to conduct land rights campaigns among women, low self-esteem, cultural influence, high levels of illiteracy among women, lack of reinforcement of the existing laws and policies, marginalization and discrimination against women in almost all aspects of their lives, religious beliefs & practices, frustrations from their male counterparts and false perceptions e.g a women must not be wealthier than a man. However, from the findings of study, there were viable ways through which these challenges facing women in land ownership in Kenya could be addressed. The key ones included the implementation of the new constitution in Kenya, adopted in 2010, that calls for the elimination of gender discrimination in law, customs and practices related to land in Kenya and enforcement of land legislation act that gives married women a presumption of joint

ownership of matrimonial property. This will protect the women against the loss of their matrimonial land and will ensure that women have consented to the sale or mortgage of land in which they have an interest.

Conclusion

This study concluded that there were approaches the selected institutions were using in addressing challenges facing women in land ownership and these approaches were generally effective. However, effectiveness of these approaches could be hampered by other constraints.

Key words: Land, Women, Kenya

(III) BACKGROUND INFORMATION

Kenya is a country in Africa and a founding member of the East African Community (EAC). Its capital and largest city is Nairobi. Kenya's territory lies on the equator and overlies the East African Rift covering a diverse and expansive terrain that extends roughly from Lake Victoria to Lake Turkana (formerly called Lake Rudolf) and further south-east to the Indian Ocean. It is bordered by Tanzania to the south and southwest, Uganda to the west, South Sudan to the north-west, Ethiopia to the north and Somalia to the north-east. Kenya covers 581,309 km² and had a population of approximately 45 million people in March 2016 (According to Kenya National Bureau of Statistics).

Kenya obtained independence in December 1963. Following a referendum in August 2010 and adoption of a new constitution, Kenya is now divided into 47 semi-autonomous counties, governed by elected governors. The capital, Nairobi, is a regional commercial hub. The economy of Kenya is the largest by GDP in East and Central Africa. Agriculture is a major employer; the country traditionally exports tea and coffee and has more recently begun to export fresh flowers to Europe. The service industry is also a major economic driver. Additionally, Kenya is a member of the East African Community trade bloc.

The British colonized Kenya from 1888-1963. British imperialism had a large impact on Kenyan culture and still does today. Before British colonization, women played important roles in the community from raising children and maintaining the family to working on farms and in marketplaces. The influence of a patriarchy became even stronger with colonization which stripped women of many responsibilities and opportunities they once had. Even after Kenya regained independence in 1963, women were still oppressed and not given many opportunities like education except for a small number of young women. Women still faced many problems such as child marriages and arranged marriages, Female Genital Mutilation (FGM), the AIDS epidemic as well as lack of education. There are very few women in power in Kenya which also plays a role in the continued oppression of the female population.

(IV) PROBLEM STATEMENT.

In many developing countries, there are gender disparities when it comes to access and control of land and women are mostly constrained. Among other valuable resources are forest, freshwater, animals, fuel etc and where land is concerned for instance laws and customs impede women to fully utilise land as an input into production or as collateral for instance for credit. Cultural and social attitudes are often more favourable to men as compared to women which limits access to and control over land. Rural women are often financially dependent on men or do not have control land. Unfortunately, in Kenya and especially rural Kenya, women have little access and sometimes no control over land and this inadequacy hinders women participation in Land Management for development. These challenges arise from different gender roles, rights, access and control to natural resources of women and men, access to information and technology related to Land Management, with most related initiatives targeted for men and traditional norms become a great cause of women being absent in Land Management decision making processes at all levels. Where women have access to and control over land, it is largely within circumstances of female headed households, through inheritance for instance with a resource like land or when women have an education or background training that has led to securing a dependable income. Despite this factors influencing rural women access to and control of natural resources, taboos and cultural perceptions look down on women's ability to manage NR especially at communal level. It is against this background that this study sought to identify challenges facing women when it comes to access and control of natural resources.

(V) JUSTIFICATION.

This study is expected to provide information and build on the existing knowledge base as concerns the challenges facing women whilst accessing and gaining control over land in Kenya. The findings of this study will be relevant to stakeholders in addressing gender issues in Kenya when it comes to Land Management, at county level. Lastly, it is expected that the study would be resourceful to other researchers who may venture into a similar study.

Kenya's legal framework is undergoing significant changes following promulgation of a new Constitution in 2010. This is particularly true in the areas of land and property rights and women's rights, which require the development of new legal frameworks that conform with the provisions of the Constitution. Relevant provisions include: a Bill of Rights recognizing the right of women to equal treatment under the law and prohibiting gender-based discrimination; devolution of services, including land-related services to the county level; recognition of traditional dispute resolution mechanisms; a prohibition on the use of traditional dispute resolution mechanisms in a way that contravenes the Bill of Rights; and, requiring legislative implementation of the principle that women make up at least one-third of the members of elected or appointed political bodies. A set of land laws giving effect to the Constitution, the Land Act, Land Registration Act, and National Land Commission Act, were approved in 2012. A new set of marriage laws, the Matrimonial Property Act, 2013, and the Marriage Act, 2014, recently replaced the older framework, which included seven different marriage laws but did not include explicit provisions governing customary marriages. Other legislative reforms, including

Community Land and Evictions and Resettlement Bills, are currently under development and debate.

Despite a progressive legal framework, Kenyan women's land rights continue to lag behind those of men. Customary law, which often discriminates against women and limits their land and property rights, governs at least 65% of land in Kenya, and the patriarchal nature of Kenyan society often limits the rights of even those women not living on land governed by custom. Some estimates indicate that as little as 1% of land is titled in the names of women and 5-6% is titled jointly by women and men.

This study provides an overview of the formal and customary legal framework governing women's land rights in Kenya. Although this study is not a comprehensive review of the legal and customary framework governing women's land rights in Kenya, it provides a broad assessment of the status of women's rights and challenges. This study is also expected to provide information and build on the existing knowledge base as concerns the challenges facing women whilst accessing and gaining control over land in Kenya. The findings of this study will be relevant to stakeholders in addressing gender issues in Kenya when it comes to Land Management, at county level. Lastly, it is expected that the study would be resourceful to other researchers who may venture into a similar study.

(VII)OBJECTIVES.

- i. To examine the challenges facing women's in land ownership in Kenya.
- ii. To identify challenges impeding Kenyan women's access to land in Kenya.
- iii. To identify challenges that hinder women from gaining control over land in Kenya.
- iv. To identify various ways of strengthening the capacity of the Land Authorities in Kenya in coordinating the land rights campaign among women.
- v. To examine various approaches used by various Institutions in Kenya towards addressing the Challenges facing land ownership among Women in Kenya.
- vi. To examine various ways of strengthening inter-sectoral coordination and collaboration with other relevant institutions in combating land rights among women in Kenya.

(VIII)METHODOLOGY.

The study targeted 141 institutions, 3 each from the total 47 Counties in the Republic of Kenya and 500 relevant individual stakeholders in all the 47 Counties in Kenya. Both qualitative and quantitative data were collected using interview schedules consisting of fixed and open-ended questions administered in face to face interviews. Stratified random sampling method was used to select the samples for the study. The quantitative manually.

(IX)FINDINGS

The study showed that a number of approaches were being used in addressing Challenges facing land ownership among Women in Kenya, the major one being; creation of awareness on land rights by the civil society, financial assistance through subsidized loans, abolition of discriminative cultural practices, provision of training and mentorship to women, formulation of policies by both the National and County Government to empower women towards land ownership. The other findings was that most of the approaches being used were generally effective and these includes ; creating awareness on land and human rights among women by various institutions, lowering land rates on lands owned by women, provision of institutional and legislative framework to protect women against violation of their rights, supporting of more women rights associations / NGOs in Kenya e.g Federation of Women Lawyers (FIDA), Kenya Women Chamber of Commerce, Kituo Cha Sheria , Women Parliamentarian Association among others to protect women against violation of their landownership rights. Nevertheless, there are a number of short comings institutions face in addressing the land ownership challenges among women in Kenya and the key ones include ignorance among women, inadequate resources to conduct land rights campaigns among women, low self-esteem, cultural influence, high levels of illiteracy among women, lack of reinforcement of the existing laws and policies, marginalization and discrimination against women in almost all aspects of their lives, religious beliefs & practices, frustrations from their male counterparts and false perceptions e.g a women must not be wealthier than a man. However, from the findings of study, there were viable ways through which these challenges facing women in land ownership in Kenya could be addressed. The key ones included the implementation of the new constitution in Kenya, adopted in 2010, that calls for the elimination of gender discrimination in law, customs and practices related to land in Kenya and enforcement of land legislation act that gives married women a presumption of joint ownership of matrimonial property. This will protect the women against the loss of their matrimonial land and will ensure that women have consented to the sale or mortgage of land in which they have an interest.

data were analyzed using the statistical package for social scientists (spss) computer package while the qualitative data were analysed.

(X)CONCLUSION

Although Kenya's legal framework is progressive in its support of women's land rights, patriarchal social and customary norms continue to limit women's ability to exercise and enforce their rights to land and other property. Significant efforts will be needed to ensure that provisions of the Constitution and other laws guaranteeing gender equality are implemented across the country, including by traditional dispute resolution mechanisms.

Women are particularly vulnerable in cases of divorce, as the legal framework governing property rights upon dissolution of a marriage has historically been vague and contained gaps that made it difficult, if not impossible, for most women to assert their property rights following a divorce. The Matrimonial Property Act provides some clarity on issues of spousal property rights, in particular by providing a definition of the term "contribution" that includes domestic work and child care, but it remains to be seen how courts will interpret and apply the Act.

Women are particularly vulnerable in cases of divorce, as the legal framework governing property rights upon dissolution of a marriage has historically been vague and contained gaps that made it difficult, if not impossible, for most women to assert their property rights following a divorce. The Matrimonial Property Act provides some clarity on issues of spousal property rights, in particular by providing a definition of the term “contribution” that includes domestic work and child care, but it remains to be seen how courts will interpret and apply the Act.

Women are also vulnerable in terms of inheritance of land and property. Customary practices generally grant women secondary rights to land that are dependent on their relationships with men, such as their fathers, husbands, or brothers. Under most traditions, women rarely inherit land. This disenfranchisement continues to occur, in spite of the Law of Succession Act’s intestate provisions treating daughters and sons equally. Further, the Succession Act and Matrimonial Property Act allow for the exclusion of inherited customary or ancestral land from matrimonial property, continuing to propagate the trend of male-dominated land ownership. Last minute amendments to the Matrimonial Property Act, requiring spouses to demonstrate contribution to matrimonial property, and the legalization of polygamy without the consent of the first wife in the Marriage Act, indicate that forthcoming laws may be less supportive of women’s land and property rights than intended under the Constitution. However, the legal framework established in the Constitution provides strong support for individuals and organizations seeking to challenge gender-discrimination.

This study concluded that there were approaches the selected institutions were using in addressing challenges facing women in land ownership and these approaches were generally effective. However, effectiveness of these approaches could be hampered by other constraints.

(XI)RECOMMENDATION

- (i) Significant efforts will be needed to ensure that provisions of the Constitution and other laws guaranteeing gender equality are implemented across Kenya, including by traditional dispute resolution mechanisms.
- (ii) The legal framework governing property rights upon dissolution of a marriage need to be crystal clear since it has historically been vague and contained gaps that made it difficult, if not impossible, for most women to assert their property rights following a divorce.
- (iii) More funds to be allocated by relevant land institutions to carry out research and innovations, with aim of facilitating new ways of fighting against violation of land rights among women un Kenya.
- (iv) A great majority of the traditional governance structures in the Counties in Kenya did not have women occupying positions such as chiefs, spiritual leaders, council of elders, clan heads etc as a result, their voices in decision making process is greatly constrained. The County assembly may consider negotiating with traditional authorities (TAs) on ways of expanding women’s economic roles for increased productivity by exploring non-traditional spaces for generating interest in and invoking discussions on the socio-economic benefits of women’s expanded access to natural resources to the family and community. Such activities may include meetings

- and informal interactions, during which time the TAs can be lobbied and involved in designing strategies to support women's activities in the County. The interactions will need to occur at individual, role and collective levels and include both male and female authorities in separate and mixed sessions. Chiefs, spiritual leaders, elders, clan/family heads and head women could be involved in such negotiations. The capacity of all institutions (but especially traditional institutions) needs to be strengthened and/or developed by means of short-term and long-term programmes.
- (v) Formal institutional structures for land management are inadequate and more so, do not adequately reflect the aspirations of the local people. Building communities' confidence in their own indigenous knowledge in Land Management through capacity strengthening will enable them understand and engage with local governance structures and institutions and service providers on how to access information, resources and services they require as such, actions will be based on indigenous knowledge systems. This would also bring about joint responsibilities in the management of natural resources, joint benefit sharing as well as joint visits and exchanges to erode mistrust and build confidence in both formal and informal institutions in natural resources management.
 - (vi) A compulsory curriculum on Land to be introduced in the institutions of higher learning that teaches comprehensively on how on land rights.
 - (vii) More support centres to be built in every ward in Kenya to efficiently and effectively serve the growing population especially women.
 - (viii) Using a Social Norms Approach to address the popularly held beliefs to gradually shift those beliefs in a positive direction so as to achieve the set program.