



2009 CASLE CONFERENCE IN TANZANIA



**“EQUITABLE ACCESS TO LAND IN AFRICA
THE RIGHTS OF WOMEN, ORPHANS AND MARGINALIZED
COMMUNITIES”**

**DISADVANTAGED MEMBERS
OF THE SOCIETY**

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Venue: **White Sands Hotel**

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PRESENTATION OUTLINE

- Historical background and definition
- Legislations and policies on land in East Africa
- Lessons from other Countries of Africa
- Relevant international human rights - instruments related to women's land rights
- Way forward: Recommendations



DEFINITION

Disadvantage members of the Society include:

Rights of women, children, HIV victims, minority communities (Hadzabe, Pigmy, etc.)

This presentation focuses mainly on women



PRE-COLONIAL TIMES EAST AFRICA

- Each country had their own legal system based on their customs and practices
- The customs were enforced by elders, clan leaders
- Land tenure systems were communal
- Most of the tribal customs were based on patrilineal systems
- Male elders usually managed the land



PRE-COLONIAL TIMES EAST AFRICA (Cont...)

- Women generally had secondary rights of:
 - uncertain duration,
 - subject to change and
 - dependent on the maintenance of good relations with the clan, family or person through whom women obtained their access to land



PRE-COLONIAL TIMES WOMEN (Cont...)

- Women were secondary users of land also called usufruct right.
- If the husband died the societies linking the widow to the land as secondary user could still provide her with access to land.
- However if societies deteriorated or the widow refused to be “**inherited**” by her late husbands brother, she risked being forced off the land.



Colonial East Africa

- Colonial history had an enormous impact on land tenure systems, gender relations and **women's rights to land**.
- Land systems introduced by the colonialists were introduced **to suit their own interests**.
- Customary rules –continued to apply but became subordinated to the “**received**” **British law**.
- Thus, all existing rights inland were at the mercy of the colonial powers.



East Africa (Cont...)

After Independence the three East Africa countries:

- Tanzania, Uganda and Kenya enacted their own Constitutions, Policies and Land Laws.



Uganda

- Uganda Constitution of 1995 prohibits discrimination on the ground of sex and, also
- Prohibits application of customary Law to the extent that it discriminates against women.



Uganda Inheritance Laws

- There are three Laws on inheritance
- The Succession Act has a definition of legal heir which is discriminatory.
- Islamic (Sharia) Law.
- Customary Law. The Constitution and Succession Act restrict use of customary law.




Uganda (Cont...)

- In Uganda Land Act was passed in 1998.
- The Act include a clause presuming co-ownership
- The land Act include a clause presuming spousal co-ownership
 - It includes provision which spell out women's equal rights to land and
- has additional provisions protecting women's interests



Tanzania

- National Constitution: The current constitution prohibits discrimination on the ground of sex
- National Land Policy of 1995, Section 4.2.6 recognizes the rights of women.
 - It states that “In order to enhance and guarantee women’s access to land and security of tenure, women will be entailed to acquire land in their own right, not only through purchase but also through allocation”.
 - However inheritance of clan land or family land will continue to be governed by custom and tradition provided they are not contrary to constitution and principles of natural justice.



The Land Act, No. 4 of 1999 and The Village Land Act No. 5 of 1999

- The Land Laws are elaborate and contain most provisions on women's equal rights to land and
- Section 3 (2) states: The right of every woman to acquire, hold, use, deal with and transmit land shall be to the same extent and subject to the same restrictions be treated as a right of every man.



Tanzania – Land Laws (Cont...)

- The laws have also include:
- a presumption of co-occupancy in terms of registration of matrimonial land,
- both spouses will hold the land as occupiers in common unless rebutted at the registrar.
- He spouses security of holding land is guaranteed by virtue of his/her contribution or by his/her labour in the productivity, up keep and improvement of the land

Customary Law of Inheritance Tanzania

Declaration Order No. 4, 1963,

- Clause 20: Women are not allowed to inherit clan land. A woman is entitled to use clan land that belongs to her father, her husband or her sons but she is not allowed to own them.
- Her rights to use the land ceases when she marries or when she dies.
- Clause 27: A widow can not inherit if the late husband had his relatives. The widow is supposed to be taken care of by her **children**.



Kenya

- Kenya's much needed new land Laws has not been enacted by Parliament yet
- However a number of women are able to buy land through women's co-operatives or through land buying companies



Inheritance rights: Kenya

- Inheritance rights have been recognized in statutory laws in Kenya
- However those inheritance Laws do not include equal inheritance right of widows



The African Charter on Human & People's Rights

- Article 18 (2) requires States parties to ensure that “every” form of discrimination against women is eliminated and that the rights of women and children are protected.



Common problems on Land Access in Rural Africa

**In a workshop organized by
FAO – Dimitra – September
2008 held in Brussels,
discussed Gender inequality in
access to land in other Sub-
Sahara Africa**

- Participants were from: Niger, Democratic Republic of Congo, Senegal, Burundi, Madagascar, Rwanda, Burkina Fuso, Also from Kenya and Uganda



Category of problems listed

- **Sociological and cultural:** traditions and customs, patriarchal systems, land tenure system that favour men.
- **Legal and Legislative:** Absence or non-application of laws; dichotomy between Laws and customs, Laws that discriminate against women.




Category of Problems (Cont...)

- **Political:** Women's role and status, decision making reserved for men.
- **Economic:** Difficulties in accessing means of production and loans, limited income
- **Obstacles** linked to education and training, lack of information on women's right etc.



Category of Problems (Cont...)

- **Impacts of HIV/AIDS on land access and ownership:**
 - Loss of land rights including inheritance especially when there is no will written
 - Shifts in ownership tenure
 - Distress-sales
 - Changing of land use
 - Reduction in the amount of land cultivated



Relevant International Human Rights: instruments related to women's land rights

- The universal Declaration on Human Rights.
 - Article 16: It entitles women and men to equal rights before and during marriage and at its dissolution.
 - Article 17: It recognizes every persons right to own property alone as well as in association with others and it stipulates that no one shall be arbitrarily deprived of his property.



Relevant International Human Rights (Cont...)

The International Covenant on Economic, Social and Cultural Rights

- Prohibits discrimination of any kind as race, sex etc
- Obliges the states parties to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Convention

Relevant International Human Rights (Cont...)

The Convention on the Elimination of all Forms of Discrimination Against Women

- **Article 2(f)**. It obliges States parties to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.
- **Article 3**. Requires States parties to “ by all appropriate measures, including legislation, ensure full development and advancement of women for the purpose of guarantying them the exercise and enjoyment of human rights



The Istanbul declaration and The Habitat Agenda

- The Declaration states that Governments will ensure and enhance:
 - Gender equality in policies and programs to shelter and sustainable human settlements
 - Protection from discrimination and equal access to affordable housing for all , and
 - Access to land and credit



Conclusion: The way Forward

- **Promote Statutory laws** which address the issues mentioned in this text regarding gender and land systems, in order to have most equality in the distribution of resources.
- **Create awareness** through information and communication initiatives involving all of the local stakeholders, community leaders, Municipal and government officials.
- **Promoting the empowerment of women** with specific strategies such as lobbying and advocacy, based on information and communication.



Conclusion: The way Forward

- **More research** to provide disaggregated data that allows to better understand the situation and to inform information, communication and advocacy campaigns.
- **Carry out active promotion of property rights for women** (not only to promote but also advocate access to land).



Conclusion: The way Forward

- **Raise awareness throughout the country** on women's equal land and property rights under international and national law; open discussions that challenge discriminatory traditions could imitated by civil society organizations.
- **Amend National Constitutions to:** include a provision that declares customary laws discriminating against women void; include widow's equal rights of inheritance.



Thank you for listening