

FOCUS ON LAND IN AFRICA BRIEF

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Tanzania

Lesson 4:

Gender and Land Rights Debate in Tanzania

INTRODUCTION

Land rights in Tanzania have been the subject of vigorous debate and remain a contested and divisive issue. Typically, marginalized peoples 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 lesson examines the ways in which women's rights groups collaborated and engaged in the land law reform process in Tanzania.

GENDER AND LAND RIGHTS OVERVIEW

In Tanzania, national land laws include provisions on gender issues that many scholars and advocates regard as generous and progressive. The inclusion of this language can partly be attributed to the efforts and contributions of civil society organizations (CSOs), including several women's groups, during the land law reform process in the mid to late 1990s.

The various groups involved in the process did not always agree on goals, positions and strategies, but collectively their efforts proved effective in shaping the discourse and the laws. Despite these legal gains, however, implementation of the new laws has been slow and piecemeal which has left many

women without secure land rights.

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.

Research shows that women lack 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 his/her father's lineage, and 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 peoples 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.

Some women have also operated within their customary system to acquire land and to safeguard their rights, although their gains are often tenuous and sometimes short-lived. For example, one traditional practice is the institution of "female husband," by which widows safeguard their interests in their husband's land by marrying a woman who then provides labor and also children (who are born in the name of the deceased husband). It has been described "as a system that radically disrupts the male domination and allows women to traverse gender barriers in order to gap up or rectify reproductive, social and economic problems" (Kerata).

Still, most women do not have rights over land sufficient enough to insulate themselves against possible disenfranchisement. Many have turned to women's rights organizations for information on their rights and for recourse. The Kilimanjaro Women Information Exchange and Consultancy organization (KWIECO), Women's Legal Aid Centre (WLAC) and other groups advocate for women's rights by focusing on combating discriminatory customs and by

providing unambiguous protections in laws.

RE-EXAMINATION OF LAND RIGHTS

In the late 1980s, Tanzania ushered in widespread political and economic reforms including a shift from a single-party to multi-party political system and the liberalization of the economy. Given the primacy of land as both a source of wealth and livelihood for the vast majority of Tanzanians, a central issue in these reforms was the apportionment of the country's land to meet national development and economic goals.

The government of Tanzania, under pressure from international donor agencies and financial institutions and a rural backlash against its land policies and practices, especially villagization, commissioned a panel to investigate and make recommendations for revisions to the existing land policies. This Presidential Commission of Inquiry into Land Affairs (also known as the Shivji Commission) began work in January of 1991 and submitted a report in November of the following year.

Although many women's advocates hoped that the Shivji Commission would make gender equity one of their primary areas of investigation, the Commission did not feel a strong imperative to explore the issue beyond its mandate to look at gender in the context of succession of land. The Commission explained that gender issues were not in its terms of reference, that land issues for women were largely encapsulated in succession practices, and that several of its recommendations would advance gender equity regardless of any specific emphasis on this issue. The Commission also stated that time constraints of their study made a focus on gender issues infeasible.

The Shivji Commission was particularly concerned with the rights and wellbeing of smallholders and made a number of recommendations that are regarded by many land experts as progressive and positive. Advocates, including women's rights proponents, were hopeful that the government would prove receptive and incorporate many of the Commission's recommendations in the new land laws. At the 1995 government-sponsored workshop on land in Arusha and in the 1996 release of a draft Land Bill, however, the government omitted many Commission recommendations.

EMERGENCE OF ACTIVISTS

The Women's Council of Tanzania (BAWATA) was registered in 1995 and advocated for gender equity and pushed for land reform. BAWATA grew rapidly, incorporating individuals from across the socioeconomic spectrum. It also grew influential and found itself running up against the

government's favor. The government soon claimed BAWATA was involved in political activism. In 1996, the government deregistered BAWATA, a move that was heavily criticized by pundits and advocates. The women's movement, however, lost an obvious and likely leader in the struggle for gender equity.

Despite this challenge, a number of women's rights groups began to coordinate their efforts and coalesce around the common cause of infusing the draft Land Bill with language that would advance the ability of women to obtain and retain rights to land. Professor Shivji and other scholars and advocates in the broader land movement similarly disturbed by the government's actions, spearheaded the formation of the National Land Forum (NALAF), which sought to advance some recommendations put forth by the Commission. Absent BAWATA, the women's rights organizers asked the Tanzania Women's Lawyers Association (TAWLA) to form a coalition to take up the banner of land reform.



In March of 1997, women's rights NGOs met to develop a strategy for securing gender-sensitive land law. A direct outcome of this workshop was the formation of the Gender Land Task Force (GLTF) composed of TAWLA, Tanzania Home Economics Association (TAHEA), Women's Legal Aid Centre (WLAC), National Organization for Children Welfare and Human Relief (NOCHU), Tanzania Gender Networking Programme (TGNP), Women's Advancement Trust (WAT), Tanzania Media Women's Association (TAMWA), and by some accounts Women in Law and Development in Africa (WILDAF) and a group within the Institute of Development Studies (IDS).

With the BAWATA deregulation of 1996 in mind, GLTF carefully charted a path to effect changes and agreed to emphasize both advocacy for changes to the draft Land Bill as well as awareness raising and education at the community level. Aided by previous co-affiliation of several member organizations, GLTF entered a loose partnership with NALAF and collectively became the National Land Coalition (NLC). Initially, GLTF and NALAF shared some common objectives and GLTF made efforts to collaborate its activities with NALAF. But it was an uneasy partnership almost from the beginning. The crux of GLTF's disagreement with NALAF lay primarily in two areas.

OBSTACLES AND SUCCESS

One, GLTF and NALAF held differing approaches and priorities. GLTF approached the land issue from the perspective of gender and was primarily concerned with addressing the rights of women within communities themselves. Prof. Shivji and NALAF, in their proposals, focused on the community and tended not to differentiate between groups within a community. How, they argued, would women's rights be relevant if the rights of an entire community were subverted by a government more interested in concentrating power at the level of the state and cultivating international investment than protecting the rights of its people?

GLTF and NALAF also differed on approaches to implementing change at the community level. On the issue of succession, NALAF favored evolutionary law, generally indicating bottom-up gradual change from within the existing dual customary/statutory land system. In contrast, GLTF felt that change would be best enacted through a clear legislative signal and that gender protections should be explicitly written into law. Arguments against the NALAF's view maintain that, without enacting specific policy, jurisdiction over gender discrimination issues can be ambiguous, and even the ability to bring test cases to court is likely beyond the means of most women who are negatively impacted by the current legislative ambiguity.

The GLTF work was divided among its member organizations, according to each organization's expertise and comparative advantages. TAWLA provided legal review of the draft Land Bill and made recommendations for amendments. TGNP

lobbied individual policymakers for adoption of these recommendations. TAMWA was in charge of publicizing both GLTF's activities as well as the perceived deficiencies in the current draft bill. WLAC spearheaded community mobilization, and the remaining organizations handled public awareness-raising campaigns and community outreach.

Various types of workshops were spearheaded by different GLTF members partly to bring all parties in contact with one other. Training workshops were held in Moshi and Morogoro for paralegals drawn from surrounding areas, in Dar es Salaam for Ward leaders from several nearby regions, in Kibaha for coastal villages, and in Bukoba for public sector and religious leaders. In addition, TGNP conducted three lunch workshops for Members of Parliament (MPs) during the February Parliament session in Dodoma. GLTF's cooperation with government officials was facilitated by one of its member organizations which was led by an MP from the ruling party, Chama cha Mapinduzi (CCM). Not all members looked upon this involvement favorably.

GLTF also capitalized on the opportunity to provide public entertainment and conference sessions at Dodoma and Dar es Salaam in order to raise awareness on gender issues among the public and policymakers alike. For example, in September 1997, TGNP organized the Annual Gender Festival with FemAct (now convened every two years), which was attended by about 600 people. In October 1997 a Land Symposium held at Diamond Jubilee Hall in Dar es Salaam was attended by several senior government officials, including the Commissioner of Lands and other Ministry of Land officials. The GLTF also raised awareness of gender issues through television, newspaper, and radio as well as drama groups, role-play, and land issue messaging on hats, t-shirts, and kangas (a traditional wrap).

Catholic, Protestant, Lutheran and Muslim organizations all showed interest in furthering GLTF's mission. At times, GLTF was aided in its efforts by various religious organizations, which shared information on gender issues and GLTF efforts amongst their congregations. In general, however, religious groups did not become deeply involved in GLTF's advocacy activities, partly to avoid constitutional restrictions on the separation between religion and politics.

GLTF's efforts achieved significant outcomes by inducing policymakers to adopt some of its recommendations. For example, the Land Act and Village Land Act, both of 1999, contain provisions for every woman to acquire, hold, use and deal with land under the same rules as their male counterparts. Additionally, the Acts provide that land must be registered under the names of all spouses through varied definitions of occupancy. As a result, co-occupied land cannot be disposed of by one occupant without first obtaining the consent of his or her co-occupiers.

CHALLENGES

Although the Land Act and Village Land Act

positively address several critical gender issues, there are significant implementation challenges. The push for amendments was largely an urban effort centered in Dar es Salaam, so awareness of these protections is quite limited. While, under the new laws, courts must give precedence to state law over any less-equitable customary or Islamic rules or practice, this does not always occur. Limited public awareness coupled with the high cost of pursuing legal action present a high hurdle to achieving equity in practice.

Soon after the passage of the two land laws in 1999, TAHEA convened a capacity-building workshop for 45 members, which provided an opportunity to discuss the rights that the new land laws provide women, as well as ideas on how women can realize and benefit from these rights. Additionally, the GLTF began evaluating the successes and failures of the land debate process. In 2004, several GLTF groups completed a needs assessment which underscored the importance of such training. Most participants of the training workshops during the needs assessment were unaware of the passage of the Land Acts.

In addition to a general lack of public awareness of the Land Acts, other legal challenges complicate implementation. While the new land laws trump previous discriminatory customary, Islamic, and codified law, documents such as the Customary Law (Declaration) Order (No. 4), GN No. 436 of 1963, which was a post-independence attempt to codify customary law, are still on the books. Many former member groups of the GLTF continue to push for the revision or revocation of these mandates. While customs in the 1963 Order must theoretically be reviewed by district councils every five years, to date there has been little movement by councils or the courts to significantly revise the customs or declare discriminatory customary inheritance law unconstitutional.

The Land Acts came into effect in May 2001 and in 2004 were amended slightly concerning mortgage and loan issues, but actual application of the Acts has lagged. Recognizing the slow implementation of the Land Act and the Village Land Act, the Ministry of Lands and Human Settlements Development published a "Strategic Plan for the Implementation of the Land Laws" (SPILL) in 2005. While there are concerns about the implementation and intent of SPILL given its large budget requirement but low level of government subsidization and what some perceive as an over-emphasis on economic growth, the ten-year plan denotes drawing up village education programs on issues including equity and enforcing "laws and bylaws on gender and discrimination of vulnerable groups" as high priority areas (Hakikazi 7).

In recent years, mobilization of the GLTF coalition has at times been difficult and coordinated efforts have waned. The coalition was formed around the very specific goal of passing "a gender sensitive land law that took into account the interests of

men and youth” and its main purpose was to ensure that certain recommendations made their way into final land legislation (Mosha 4). Many member organizations, however, have continued to press for education, and legal reforms on such issues as inheritance practices and division of property upon divorce.

Activities in 2004–2005 by the WLAC, for example, involved legislative consultations, fact-finding missions, lawsuits and public education sessions. The organization has continued to maintain paralegal units in various regions and had 22 of them active as late as 2010. TGNP, in collaboration with umbrella organization The Feminist Activist Coalition (FemAct), has announced that the bi-annual 2011 Gender Festival will be organized around the theme “Gender, Democracy, and Development: Land, Labour & Livelihoods.” According to organizers, “This year’s Festival focuses on the specific struggles and initiatives of grassroots, marginalised women and their organisations and coalitions around Land, Labour and Livelihoods in the context of neo-liberalism and patriarchy.”

While the activities of the GLTF as a unified body seem to have waned in recent years, the period of time encompassing activity around the Land Acts proved to be fertile for the development of gender advocacy beyond the land debate. FemAct got its start in 1996 under the direction of TGNP and was intended to function as a “on-going loose coalition that would serve as an activist body to promote issues of gender equality, development, and human rights” (Mosha 1). Meanwhile, several NGOs were actively working on issues of gender in the fields of education, human rights, and several others. FemAct boasted a membership of over twenty organizations in 2001, and has by some accounts grown to more than 50 since then.

Significant obstacles to gender equity both in law and practice remain, but the process of land reform in the 1990s signified at least a temporary shift in the way that government and civil society groups interacted. After the government’s tightly controlled development of the original Land Bill, women’s rights groups organized themselves into a powerful coalition and effectively engaged in the reform process. Perhaps in response, government officials actively participated in NGO-convened workshops, pro-actively released information to the public, and seriously considered NGO contributions of ideas and information. “This was not a common phenomenon in the past, when government either remained silent or declared its position through public media” (Mallya 196). The resulting land laws and other initiatives were hailed by the then Permanent Secretary in the Ministry of Community Development, Women’s Affairs and Children, as major accomplishments in advancing gender objectives.

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