Lesson 4: Securing Women’s Land Rights Requires not Only Legal Measures, but also Broad Awareness of Women’s Land Rights, Processes that are Inclusive of Women, Enforcement of their Rights, and Efforts to Reshape Discriminatory Practices

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INTRODUCTION

Women in Mozambique have insecure rights to land, despite constitutional principles that guarantee their equality and protect them against discrimination on the basis of sex. The daily lives of rural women are regulated by customary laws and traditional practices that favor men. While rural women are the primary producers of food for their families, they continue to rely on men for access to the land they depend on for their survival.

Constitutional reforms and new laws in Mozambique have opened channels for women to assert their land rights and thereby assume a more proactive role in shaping the country’s rural development. Their ability to take advantage of these reforms largely depends on the awareness of both women and men of the legal rights they enjoy, and the procedures for exercising them. Women also need affordable access to the means to defend those rights, and changes in attitudes and beliefs regarding their land rights.
HISTORICAL PERSPECTIVE

Under customary law and traditional practice in Mozambique, women acquire access and use rights to land through their husbands, fathers, uncles or other male relatives. This inequality persists in spite of the fact that women in Mozambique have the primary responsibility for cultivating family land and producing food. Moreover, during significant periods of the country’s recent turbulent history, many women have managed the family land, routinely made decisions regarding land use and cultivation, and controlled production.

During the century of colonial rule, men in many rural areas were forced to look for employment in the new towns or across the border in South African mines. The colonial rulers imposed onerous taxes on residents who had limited access to cash, and a growing number of large commercial enterprises relied on cheap labor. Most women remained in rural areas and were responsible for cultivating the land, managing household assets, raising the children, and caring for the elderly. After marriage, new wives often worked side by side with their mothers-in-law, learning local production techniques and where to find and use communal resources such as grazing grounds and forests. After a year or two the women developed their own household plots on available community land. They farmed to feed their families and used surplus production to obtain goods and services and assist other family and community members. These communities developed strong social support networks.

Seventeen years of civil war destroyed Mozambique’s rural economy. Soldiers took food surpluses and crops, and widespread insecurity and land mines restricted access to natural resources and agricultural plots. Families abandoned their land to escape the violence, and many women who lost their husbands to the war or the surging HIV/AIDS pandemic became the heads of their household and managers of their assets, including land.

After peace was declared in 1992, the displaced population began returning to their homes. One-third of these returning households were headed by women. Most returnees returned to areas where they had previously held land rights and could quickly resume farming. They were also dependent on communally managed forests and rangeland for fuel wood, food, grazing and medicinal plants. In most cases, customary land tenure systems resumed, including rules and authority structures that marginalized women.

Many returning families found their land occupied by other groups displaced by the war and by investors and other newcomers who had been given use rights by the government to seemingly abandoned land. While all community members had to deal with this situation, women-headed households were least able to assert their rights and were often relegated to less productive land.

THE STATUS OF WOMEN TODAY

While peace has brought stability and economic growth to the country, the situation of many rural women and their rights to land remains unchanged. Women and girls in the rural areas of Mozambique have been among the last to benefit from the economic and social achievements of the last twenty years. Fewer girls than boys attend primary school and only 48% of girls aged 15-24 are literate compared to 58% of boys.

With less education, fewer skills, and more limited mobility due to family responsibilities and traditional roles, Mozambique’s rural women are highly dependent on agriculture for their livelihoods and are still the mainstay of family food security. However, customary law continues to grant men primary control over land. Men also often control the use of surplus production and income earned from land.

Customary tenure systems have traditionally ensured that women obtain access to land, even if they lack control over it, and retain their rights in the event of widowhood. However, customary rules have not adapted to the reality of much younger HIV-AIDS widows. Women today are more vulnerable to eviction from their marital land and homes when the families of their deceased spouses or in-laws blame them for their husband’s death, or simply want access to his assets. Moreover, with increasing value being attached to land in Mozambique, competition for land is increasing and rules that once protected women’s
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interests are beginning to erode. Women may find it more difficult to hold onto their rights to resources used in common – like forests or water sources – which are often critical to their livelihood strategies.

FORMAL LAW

Mozambique’s formal laws have attempted to remedy these inequalities. The Constitution establishes the principle of gender equality and prohibits discrimination on the basis of sex. Women and men have equal rights to hold property. The 2004 Family Code, which recognizes common law and registered marriages, provides for equality in marriage and the sharing of marital assets.

While the country’s Land Law recognizes community land rights and permits the use of customary law to govern tenure within those communities, customary rules that challenge basic constitutional principles, including the principle of gender equality, can be overruled. Thus, women who marry into a household are entitled to a right to use and benefit from land held by their husband’s family. The law allows both women and men to apply for individualized land rights within the community DUAT, or for new rights in other areas outside their community. Moreover, since their land rights can be proved by oral testimony, women are not disadvantaged by a lack of documents or education.

These progressive laws have had little impact on the lives of most rural Mozambican women. Many are unfamiliar with the formal laws and their rights continue to be dictated by custom and tradition. In addition, some laws have yet to be revised and brought into line with the principles of equality and nondiscrimination. For example, Mozambique’s inheritance law gives widows lower priority than the parents of her deceased husband.

In addition, few women are able to effectively enforce their rights. Most women lack the education, financial resources, and mobility to approach a lawyer or use the formal court system. Local community tribunals are more accessible, but their adjudicatory bodies are often male-dominated and their rulings may reflect entrenched paternalistic norms.

THE POTENTIAL FOR WOMEN IN THE LAND LAW

In addition to the basic constitutional guarantees, Mozambique’s land legislation offers an opportunity for women to achieve greater equality. This is because community held land is managed according to the principle of co-titularity, in which all community members – men and women – have equal say in decisions on community held land and resources.

The participatory framework for community land delimitation gives women an opportunity to articulate their interests, learn about their rights as community members and as individuals, and assume leadership roles in the process. The delimitation process considers community demographics, including the number of women and their activities. Importantly, it requires that men and women work in separate groups, thereby allowing women to comfortably express themselves and describe what they have rights over and how they use that land. These rights are usually customary, but women and
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Men can learn how the rights of women are safeguarded in the law through the delimitation process. The delimitation process requires the community to elect a land committee of up to nine members. There is no requirement to conform to traditional leadership or other structures, and the law demands that the committee include women. These new structures are important for the development of new ideas and leadership, and for giving women important roles in a non-customary context.

The delimitation process also provides an opportunity for women to engage in the preparation of a community-based project or land use plan, perhaps even integrating plans for private investment. Women – as co-titleholders - should participate in the negotiations, design, and implementation of these projects in ways that ensure their interests are fully taken into account.

By taking advantage of the opportunities created by the delimitation process, women can increase their knowledge of their rights and take an active role in community development. As communities increasingly recognize their interests, abilities, and role, more opportunities should arise for them to serve on and influence community land governance bodies. As these institutions mature and begin to apply constitutional and even international principles to the customary context, women should have increasing opportunities to acquire land rights on par with men without risk of estrangement from the community or loss of access to communal resources.

Mozambique’s legal framework sets the stage for advancing gender equality, including providing a foundation for advancing gender equitable rights to land and natural resources. Making these rights real will mean acquainting all community members with the knowledge and tools they need to uphold and promote the rights of women, as well as ensuring that women have affordable access to redress and the ability to spearhead efforts to reshape customary rules and practices that discriminate against them.

Sources


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