

From Formal to Implemented Rights

FOKUS – Forum for Women and
Development

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Summary

The text in this paper is mainly based on experiences made by some of our partners in Tanzania, Uganda, Kenya and Ethiopia. It shows the challenges of moving from formal to implemented land rights for the women in these four countries. The root causes for the violation of rural women's rights are to a great extent linked to culture and traditions and the consequences are huge, both to the women themselves, their family and the society. In the last part of this paper we try to show how a holistic approach is needed if the women's rights are going to be implemented on the ground.

FOKUS

FOKUS – Forum for Women and Development – is a knowledge and resource center for international women's issues with an emphasis on the spreading of information and women-centered development cooperation. FOKUS' primary goal is to contribute to the improvement of women's social, economic, and political situation internationally.

FOKUS' history dates back to the TV Telethon in 1989. Forty-six Norwegian women's organizations and committees collaborated on a television fund-raiser program called, "Women in the Third World". One hundred thirty five women's organizations in more than thirty countries have since then been given support for projects for girls and women as a result of this joint effort. Experience and results from this TV Telethon program led to Norwegian women's organizations wanting lasting cooperation on international affairs and development. As a result, FOKUS was formally inaugurated in 1995.

As of January 2013, the organization consists of 75 women's organizations and women's committees in political parties, trade unions, and solidarity and aid organizations. FOKUS receives financial support from the Norwegian Agency for Development (NORAD) and the Ministry of Foreign Affairs (UD) through framework agreements on development and information activities. Since 2010 FOKUS has been the Norwegian National Committee for UN Women.

FOKUS support projects in 15 different countries. All of the projects are within the six thematic areas of women and climate change, sexual and reproductive health and rights, violence against women, women, peace and security, women's economic participation and rights and women's political participation and rights. We base our work on the The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), and its Optional Protocol (1981), The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women in 1995, the United Nations Security Council Resolution 1325 (2000), and follow up Resolutions 1820, 1888, 1889, 1960.

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

According to the law, women's land rights are secured in most of the country where FOKUS work, including Tanzania, Uganda, Kenya and Ethiopia. In Tanzania for example, women's social, economic and political rights are provided for within the United Republic of Tanzania constitution of 1977 which is the basis of all the citizens' rights. It clearly spells out women rights by first prohibiting discrimination on any ground and emphasizes equality of all persons. Additionally the Ethiopian and Ugandan constitutions stipulate clearly that women and men have equal rights. The new constitution in Kenya eliminated the formal discrimination of women on land issues.

Unfortunately the rights of women as described in the constitutions and laws are very often not implemented on the ground. One challenge is customary laws that don't respect women's rights as they are described in other legal instruments. Women are very often not seen as equal owners of land even when it is jointly purchased with their husbands and we have many examples of men selling the land without their wives consent. Although women are generally allowed to inherit the land and the wealth of a deceased husband, this right is often neglected if her children don't stay with the mother and if she wishes to remarry all wealth can be taken from her and be given to the children. There are many examples of girls that are only allowed to inherit their parents if they are not married. If the girl or woman decides to get married, she may lose her rights of inheritance.

In Ethiopia there have been several processes of land redistribution and all citizens over the age of 16 years are eligible to own land. During the initial phase of redistribution there was no proper documentation of the ownership of the land and in the past few years the government has been working in issuing land ownership certificate to the current holders. Hence, it is expected that households who were married during the land distribution and married women and men with their own lands be given a joint ownership certificate. In many cases this is not happening and usually it is issued in the name of the husband only. This is creating problems mainly during separation/divorce and a lot of women have to leave the house without the land which was given to them during the land redistribution.

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

We see many of the same reasons or root causes for why the rural women don't enjoy their land rights in Tanzania, Uganda, Kenya and Ethiopia. All the four countries are still to large extent patriarchal societies. This makes it difficult to get rid of the male chauvinism which is still predominant and makes women feel inferior before men in relation to decision making in the family and the society at large. Women are often stereotyped and meet negative attitudes against women's power and competence in the whole process of accessing their rights including land, property and inheritance rights.

In the past, women in this region as a result of cultural influence and practices were denied a lot of human rights, both formally and in practice. Girls did not get any education, women had no rights to ownership of land or other properties and a woman whose marriage was broken lost custody of her children as they belonged to the husband and his clan or family. Even the right to eat healthy food like chicken and eggs was often denied girls and women due to culture and taboos.

Though many things are formally changed, many women, especially in rural areas, still today because of this patriarchal culture and practices lack self confidence to demand their rights. They consider men to be masters and lords with regards to land. Women also often lack information and education on their rights, including the right to own land. Ignorance or lack of knowledge about their rights makes them shy away in the face of intimidation by their male counterparts. To oppose a man is often seen as a taboo. And if a woman knows her rights and decides to get land registered in her name, this can be a complex and time consuming process. Most villages neither have village certificates nor a land registry to facilitate title deeds.

The women themselves are not the only ones with inadequate knowledge on land and human rights. In addition to the public at large, this is also a challenge to law enforcers from the village to district levels. Access to legal rights is often limited due to deprived women's lack of legal assistance and services, and because the awareness of the community on the importance of referring their cases to courts of laws is minimal. As a consequence, legal matters are often resolved at the family level or referred to village leaders, institutions that to a large extent are governed by patriarchal values. Many places there are also a dualism in the land tenure system because of legal technical gaps where policy allows for women inheritance of clan or family land to be governed by customs and traditions. From Tanzania we know that the Ward Tribunals cause a great barrier to women's access to land due to Ward Tribunal's strong influence on use of local experience, tradition and culture in dealing with land disputes. This has been evidenced by various land disputes referred to the ward tribunals by women and the decisions made there.

It seems like the four countries mentioned in this paper have in common that there has been a political will to formally establish legal rights for women to own and inherit land, but not to realize and implement these rights on the ground. The laws that may be in place are simply not effectively implemented to realize the desired results.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

Women's rights to own and inherit land are critical to women to benefit equally and participate fully in community affairs and the violations of these rights have consequences both for the women, their families and the societies at large.

Rural women are mostly smallholders cultivating cereal crops on rain fed land and raising livestock. Use of inputs is limited and productivity generally low. Women that don't own the land that they are cultivating experience difficulties when it comes to accessing loan and capital and therefore are not able to fully utilize their land resources. Without a bank guarantee the female farmers are not able to invest in their plots and access new technology.

The women's economic and social opportunities are limited and decision making regarding allocating labour, choosing what to grow and determining how to grow, sell and consume, are left to husbands and other men. But the men often work outside the farm, maybe even live in a different part of the country where they were able to find work, and therefore have very limited knowledge about farming and agriculture, a factor that hinders effective productivity.

The Food and Agriculture Organization of the UN (FAO), in their report *The State of Food and Agriculture 2011* shows that by giving women equal access to productive agricultural resources—land, inputs, training, credit—women's farm productivity would increase by 20-30 percent, countries' total agricultural output would increase by 2.5-4 percent and 100-150 million fewer would be hungry. These are findings that on a micro-level and without the exact numbers and figures are confirmed by our partners.

The fact that rural women are denied their rights to own and inherit land also make them vulnerable to other types of discrimination and abuse and gives a general feeling of uncertainty about the future. The women for instance know that they are often disposed from land when widowed. The fact that women know that they will have no access to the land if they are divorced often make them stay in relationships where they experience violence and other types of abuse. We also see examples of women who acquire land secretly without their spouse's knowledge and if it is discovered, they face a lot of violence or threats to be deprived of the land.

A relatively new challenge facing rural women is climate change. The effect of climate change is much worse in poor and destitute households, as it will affect not only their productivity but all their access to natural resources including forest and water resources. Women with no land ownership and sustainable means of income will be in disadvantage as they will be in no position to implement any adaptive initiatives to climate change and hence their capacity to adapt to climate change is greatly compromised.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The promotion and protection of the land rights of rural women demands a holistic approach and it is important that women are not left alone to realize their rights. This is a process that needs to involve both men and women and different institutions in the society.

First of all it is of great importance to create awareness and increase the knowledge of women and men on land rights and laws giving women access to own and inherit land and property. COWA-Centenary Vocational Training School is a former partner of FOKUS in Uganda. In addition to giving vulnerable girls orphaned due to HIV/AIDS and other causes education, they are creating awareness in these young women about their rights. To know that they have a right to inherit and to own land and properties is of great importance to these girls. The school offers training workshops to teach the students about the Uganda inheritance law and the Domestic Relations Bill. One of the results of this training was that a student, whose father wanted to sell off their land because all his children were girls, reported this to the authorities and the father was stopped because the land rightfully belonged to the children even if they were all girls. COWA has also offered legal rights awareness training to parents/guardians and other community members. Especially the women participating often have a lot of questions regarding land ownership to ask the female lawyer who normally facilitates the training.

In addition to workshops, trainings and public meetings we have seen good results from collaboration with local drama groups to promote legal awareness and knowledge dissemination through dramatization and staging of local shows or "Moot Courts". This is a method that has shown good results in for instance Tanzania. Posters and T-shirts are also good channels to reach a broader audience. Also the mass media, especially radio, is an effective way of reaching and informing many people about their rights, where to get services and appropriate action to take if needed.

It is of great importance that the relevant laws and policies are made available to people living in rural areas in a language that they can understand. Not everybody can read and write and information must be made available in both written and oral form.

To train local groups with paralegals on women land rights and inheritance rights and to include women in these groups are also activities that have shown good results. The paralegals should engage in legal aid provision in their respective communities and educate the villagers on rights and who to lobby for solutions if they face legal problems. In addition to give legal advices regarding land rights, the paralegals can also help people to write their last will and testament.

It is of course crucial that also the government stakeholders and law enforcers are trained and that the Ward Tribunals are empowered to know their roles and responsibilities. Today most ward tribunal officers have neither sufficient knowledge on land laws nor their roles as ward tribunal officers due to their strong confinement to traditional and cultural norms.

Poor people can very seldom afford to pay for legal aid and these services should be provided free of charge to women that are trying to access their land rights. To save costs and time it is also of great importance to make it as easy as possible to acquire land titles in the women's respective villages, for

example by establishing and training village land councils. As for the groups with paralegals, women should be represented in the councils.

Through our partners we have also seen the importance of network and strategic partnerships towards the advancement of women's rights. Local women's organizations should be established, supported and nurtured so that the government are kept accountable not only to formally secure the women's rights to land, but to realize the rights. To cite one of our partners in Kenya: "Though we have a constitution that has eliminated a lot of discrimination of women on land issues, the uphill task however is to educate the community to understand the new laws, and also to have the new laws implemented".

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

- Have a holistic approach and learn from the NGOs and local communities' best practices. Formal rights are of limited value if they are not implemented on the ground.
- Show that land rights of rural women are smart economics and an important contribution in the fight against world hunger.
- Develop tools to keep the governments accountable.