



# A COMPARATIVE STUDY ON ACCESS TO LAND FOR WOMEN IN EASTERN AFRICA

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# SEALAN PROJECT LEADER'S PREFACE

## RESEARCH OUTCOMES OF THE EASTERN AFRICA LAND ADMINISTRATION NETWORK (EALAN), UNDER THE DUTCH FUNDED NUFFIC PROJECT – SEALAN 2016-2020

The Eastern Africa Land Administration Network (EALAN) plays an important role in development and support of Land Administration education in Eastern Africa. The Network was formed in 2009, out of interest and informal agreement by four Eastern African Universities to support each other in offering Land Administration related programs. The interest to network was motivated by lack of qualified land administration lecturers across the Eastern African countries. The EALAN network started with 4 members institutions across four countries in 2009, and currently has 12 member institutions across 8 countries in the Eastern Africa Region i.e. *Makerere University* (Uganda), *Technical University of Kenya*, *Ardhi University (Tanzania)*, *Bahir Dar University* (Ethiopia), University of Burundi (Burundi), *Universite Evangelique du Africa* (DRC), University of Juba (South Sudan), RCMRD (Kenya), INES-Ruhengeri (Rwanda), University of Rwanda, University of Nairobi (Kenya) and Woldia University Ethiopia. Universities indicated in italics were the pioneers of the EALAN.

In December 2015 the Netherlands Initiative for Capacity development in Higher Education (NICHE) funded the project "Strengthening the Regional EALAN Network to Build Capacity in Land Administration and Land Governance in the Great Lakes Region" - in short, SEALAN. SEALAN has three focus themes i.e. i) Land administration ii) Land governance and policies, and iii) Access to land for women and vulnerable groups, and of course to support the network to be more professional. The SEALAN project was awarded to the ITC Faculty of the University of Twente. ITC collaborated with the Dutch Kadaster, MDF, and a Kenya-based Land Development and Governance Institute (LDGI) to implement this project.

Through the SEALAN project, two researches were collaboratively undertaken by EALAN staff with facilitation by ITC, University of Twente:

1. Research on land governance in Eastern Africa: Focusing on existing land governance arrangements and conflicts that emanate from multiple land governance arrangements within and across the Eastern African countries. Questions guiding this study were:
  - i) What are the existing land governance arrangements in Eastern Africa countries?
    - Who are the actors involved in land governance?
    - What are the roles of land governance actors?
    - What are the main land governance processes?
  - ii) What are the conflicts that emanate from existing land governance arrangements?
    - What types of land conflicts exist in the region?
    - What are the roots causes of land conflicts in the region?
  - iii) How can conflicts in land governance be addressed?
    - How have actors addressed land conflicts in the past?
    - What are the other approaches to resolve land conflicts?

2. Research on Access to land for Women in Eastern Africa region: Focusing on organizations that provide interventions on access to land by women within and across the Eastern African countries. Study adapts the methodology by Quintero et al., 2014 and uses similar questions to guide the study i.e.:

- i) What are the problems commonly reported to your organization?
  - ii) What are the root-causes of those problems?
  - iii) What interventions are you providing?
  - iv) How does the intervention address the root cause of the problems
  - v) What are the key outcomes of your interventions
  - vi) What are the key challenges you are facing during the implementation processes
- Eight country papers were produced for each topic. The articles were peer reviewed by external (outside EALAN) and internal (peer-review by EALAN staff). Policy briefs have been developed from the country papers. Results of both the country papers and comparative study have been disseminated at the Eastern Africa land Administration Conference 2019 held in Zanzibar, as at the Africa Land Policy Centre (ALPC) Conference on Land Policy in Africa, CLPA-2019: “Winning the fight against Corruption in the Land Sector” held in November 2019 in Abidjan, Ivory Coast.

Two books present the outcome of the SEALAN project researches on the topics of Land Governance and on Access to land for women. Results have implications on policy and practice.

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## PREFACE

Women's access to land has been recognized by the United Nations as a sustainable development issue and a key mechanism of reducing hunger and poverty. In sub-Saharan Africa where most of the people to land relationships are undocumented, women's rights to land are either completely ignored or violated especially for widows and divorcees. The aim of this study was therefore to examine the land administration shortcomings that affect access to land for women in the Eastern Africa region with the major focus on the problems that curtail women's access to land and what kind of interventions if any are being implemented by both the government and non-state actors to support the women.

The study took place in eight countries in Eastern Africa that are members of the Eastern Africa Land Administration Network: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda.

The study was based on the chain of justice framework (Quintero, Lodenstein, Apotheke, & Ahikire., 2014) and drew from a mixture of qualitative and quantitative research methods. The chain of justice framework is an analytical framework that uses a gender and rights based approach to understand injustices by exploring the different failures of recognition and redistribution of women's land rights, and their root causes (Fraser & Honneth, 2003), in the process of claiming and realizing their rights in the justice system. In this study, the chain of justice framework was treated as one system based on interviews and focus group discussions with representatives of organizations that support access to land for women such as government institutions, Civil Society Organizations (CSOs), Non-Governmental Organizations (NGOs) and other actors in the eight countries.

The findings show that government and non-state actors are using a number of interventions to improve women's access to land. These include; raising awareness among the women, empowering women financially through women groups, running pro-gender land certification projects with emphasis on issuing land documents to women and ensuring that pro-gender land laws are enacted and implemented. Entrenched cultural practices, absence and/or slow pace of the implementation of gender sensitive laws and inadequate funding to the land sector were noted as the major challenges hindering the positive outcomes of the interventions.

Key words: Eastern Africa, access to land for women, land rights, chain of justice framework.

# CHAPTER 1

## INTRODUCTION

### 1.0 Background

It is an undisputable fact that the demand for land increases because of its significance for everything to mankind. Land is generally recognized as the basis of all wealth, social status, power, shelter, food as well as being a source of livelihood to mankind (FAO, 2002). Its role in economic development has dominated political, social and economic discussions at continental, regional and national levels in Africa. In Africa, land is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas. Generally, access to land for African women as a right remains one of the worst traditional practices which affect the core foundation of the continent. This is why improving women's access to land and control has been an important agenda of both the African Union and the United Nations. Securing women's rights to land, particularly rural women, is a strategic way forward to reducing hunger, malnutrition, and poverty at household level (FAO, 2011). Additionally, Sustainable Development Goal 5 which aims to achieve gender equality and empower all women and girls cannot be achieved without improving women's access to land.

Generally, securing land and property rights in sub-Saharan Africa is a critical issue. In sub-Saharan Africa, most landownership rights are not registered (Toulmin, 2005). This situation further aggravates when it comes to access to land by women. This is partly due to the fact that gender equity and land are two controversial issues in this region (Lastarria-Cornhiel, 2005). Families and community members tend to violate or ignore women's rights to land, especially in case of polygamy, widowhood or divorcee. This problem becomes even bigger as the number of female-headed households increases in some countries and in post-conflict situations. Laws that are gender-biased are primarily the barriers to securing land rights in many countries (Lastarria-Cornhiel, 2005). Even in countries where women have legal rights to own land, tradition and patriarchal customs constrain women from enjoying these rights or having them enforced. Lack of awareness of women's land rights or lack of access to a legal system that would enable them to claim their legal rights is another barrier to most women in sub-Saharan Africa.

Within the Eastern Africa region, the right to land is recognized and guaranteed by statutory laws which forbid discrimination due to sex, tribe and/or religion. This has provided formal protections for women's land rights particularly those married as first wives, even though the implementation of these provisions is still

very low and in practice many challenges remain. In Kenya, for example, only 5% and 1% of the land title deeds are held jointly by women and men, and women only, respectively. This is in spite of the fact that in terms of population, the percentage of women is higher than men and they provide a major labour force in commercial agriculture (World Bank, 2017). Various studies (AfDB, 2016; Quintero, et al., (Eds.), 2014; Sebudandi & Ndikumana, 2012), conducted within the region show a similar trend to that in Kenya. The reasons for this state of affairs range from gaps in the legal framework, high prevalence of poverty and ignorance of the women especially the rural women, the patriarchal nature of most societies within the region. This patriarchal nature of societies place women's access to land at the mercy of their husbands and/or male relatives and the general absence of the required political will to push through the changes required.

Land has frequently been the basis of social upheaval and much effort has been devoted to developing systems to administer land rights. Most countries in Eastern Africa have undertaken land reform processes at least in the past two decades to improve and secure access to land. Some, like Rwanda, have made land registration mandatory, others like South Sudan, lack adequate legal framework. Countries like Ethiopia, Kenya and Uganda have attempted land registration but ensuring gender equity is still an issue. DRC and South Sudan face the challenge of the existence of both statutory laws and customary laws, where the latter rarely recognize women's rights to land. This study identifies the land administration problems in the eight (8) countries in the Eastern Africa region that affect women's access to land.

The aim of this study is to examine the land administration shortcomings that affect access to land for women in the Eastern Africa region. In particular, the focus of the study is how problems of access to land by women are being addressed and their outcomes. The study goes beyond a discussion of the problems which are limiting women's access to land and will include the identification of the root causes of the problems. Additionally, the interventions that have been designed to address the problems will be assessed with a view of identifying the challenges that may curtail their successful implementation. Although informal tenure rights exist in the region, this study does not look into it.

### 1.1 Land rights and access to land

Two common concepts, that is, land rights and access to land are used extensively in this study. Although these concepts are commonly used in policies, laws and literature - they often carry different and sometimes

mixed terminology. This study contextualizes land rights to refer to the concept of the 'bundle of rights' that are attached to the same piece of land, which highlights the fact that different parties may have different rights such as rights to sell the land, rights to use the land, or rights to travel across the land, etc. on the same piece of land (FAO, 2002).

In this study the rights of access to land can take the form of ownership rights, use rights, control rights and transfer rights (FAO, 2002). Within the Eastern Africa region, women generally have only use rights i.e. women for example have the right to grow subsistence crops for feeding the family. Husbands, on the other hand, have exclusive control rights including the right to sell, lease, transfer or mortgage usually without the consent of the wives. Additionally, husbands have the right to sell and enjoy proceeds from crops especially commercial crops even when in most cases it is the women who may have planted and looked after the crops.

## 1.2 Study area

The study takes place in eight countries in Eastern Africa: Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, South Sudan, Tanzania and Uganda. These countries are selected because of their membership in the Eastern Africa Land Administration Network (EALAN), which is a network of institutions engaged in training and research on land administration matters in the region. The region is conducive for a comparative assessment due to two main reasons:

### a. Contexts of land rights in the Eastern Africa region: legal pluralism

Access to land is governed through a variety of land tenure systems, where land tenure represents the land to people relationship, which is normally defined statutorily or customarily (FAO, 2002). Within the region, land is generally categorised as private land, public land and communal land. Legally recognized are:

- i) Private land represents the assignment of land rights to a private party usually by the state. Usually this grants exclusive possession to the party for either perpetuity or a period less than perpetuity.
- ii) Public land includes unalienated land that is lawfully held, used or occupied by State organs including national parks, sanctuaries and game reserves. It also includes any land not classified as either communal land or private land under the national law.
- iii) Communal land represents the categorization of land which includes customary land, community land

and rural land as understood in different countries. The major characteristics of this categorization is a right of commons, which means that within a community every individual member has a right to use independently the holdings of the community

Against this background, tenure rights – and the issue of access to women's land rights occur in the context of a dual legal system. It is generally known that customary tenure rights are incompatible with the formal tenure right from different perspectives. For example: whereas formal laws accord women the rights to own/use/transfer/inherit land, the implementation of these laws remains difficult because of customary practices.

Access to informal tenures through non-state regulated actors also exist in the region, however, it is not the focus of this study.

### b. Organizations supporting the land rights

A variety of organizations exist across the 8 countries featuring state and non-state that lend support through interventions that aim to protect or strengthen women's rights to land. Often, cultural norms negatively affect women from accessing their land rights according to formal laws. But governments may also lack enough capacity and resources to secure women's land rights, and this is where the non-state organizations come in, to close this gap.

## 1.3 Methodology

The context of this study is guided by the gender and rights based approach (Quintero, 2012). This approach acknowledges that, "Many of the obstacles poor and marginalized people – and women in particular – meet are beyond institutions and the law. They relate to the social position and role of the people involved, and social relations between the different systems, the beneficiaries and the institutions themselves. This affects people's ability to access justice before, during and after an injustice (dispute, conflict) occurs. This is what is called the 'chain of justice' " (Quintero, Lodenstein, Apotheker, & Ahikire., 2014). The chain of justice framework is an analytical framework that uses a gender and rights based approach to understand injustices by exploring the different failures of recognition and redistribution of women's land rights, and their root causes (Fraser & Honneth, 2003), in the process of claiming and realizing their rights in the justice system. A study by (Quintero et al., 2014) used the gender and rights based approach and the chain of justice framework to analyze access to justice, by interviewing CSOs that protect women's land rights in Uganda, where the chain of justice framework was broken down into three phases of access to justice i.e. before disputes arise; during the dispute resolution



itself and the decisions made by the different formal and informal justice authorities. Similarly, this study uses the gender and rights based approach and the chain of justice analytical framework. However, in the study, the chain of justice framework was treated as one system and furthermore, it includes organizations that support access to land for women such as government institutions, CSOs, NGOs and other actors in the eight Eastern Africa countries. Representatives from these organizations were interviewed using various formats such as focus group discussions and face-to-face interviews. They responded to the following sub-questions (Quintero et al, 2014):

1. What are the problems commonly reported to your organization?
2. What are the root-causes of those problems?
3. What interventions are you providing?
4. How does the intervention address the root cause of the problems?
5. What are the key outcomes of your interventions?
6. What are the key challenges you are facing during the implementation processes?

Field work took place between July and November 2018 and results are compiled and analyzed by identifying common themes and patterns that emerge from the responses across the study area.

## CHAPTER 2

### WOMEN'S ACCESS TO LAND IN BURUNDI: WHAT ARE THE LAND ADMINISTRATION SHORTCOMINGS THAT AFFECT ACCESS TO LAND FOR WOMEN?

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#### 1.0 Executive Summary

"In most societies, women are worse off than men. As girls they have less access to ...as adults they get less... and have few or no rights of ownership" (United Nations development Program, 1995).

That women are disregarded in many societies is no longer a question. For now the question is, on this earth, what do women have right to? In many societies, women have less or few compared to men. This study aimed to answer a similar question on women's right to land tenure and what problems they do encounter in Burundi. Data were collected by reviewing the existing literature in the field and administering a questionnaire to experts involved in land issues; Burundi Government through the Ministry of gender affairs (Ministry in charge of Social Affairs, Human Rights and Gender) and Land Title Direction as well as the Association of Lawyer Women participated in this study. Results revealed that there is no women's land access law. Women own only 17.7% of lands while the rest is owned by men. This is in fact connected to the fact that Burundi is a patriarchal society with a dual law status- the written and customary laws. Lack of land succession law, economic causes- low financial means (impossibility to purchase land), women low literacy level (lack of awareness), and legal framework for women's access to land were found to be the main root-causes to all the encountered problems in women's land access process. However, women rights players are undertaking actions in advocacy and sensitization for women rights promotion and protection since women enjoyment of land rights relies on inclusive

land law that cares about women and improvement of customary practices.

#### 2.0 Background

Burundi is among Eastern African countries with overpopulation. It has an area of 27,834 km<sup>2</sup> with a population which was estimated to have reached over 11 495 438 in 2017, i.e., an average density of about 413 inhabitants / km<sup>2</sup>. This makes Burundi one of the most densely populated countries in Africa. This population density varies according to the region: in the Northern provinces, the density is 650 inhabitants / km<sup>2</sup> while in the center and west the density is 500 inhabitants / km<sup>2</sup>. The population density got much emphasis since it is a key factor in land access. With an annual population growth of 3%, projections estimate the Burundian population at 25 million in 2050, a triple in less than 50 years. Thus, the bigger a family is the smaller land family members will get.

It is evident that although land is of great interest in Burundi, scarcity of arable land will have heavy impact later on. Land is the primary resource for almost all the Burundians, who are predominantly rural and 90% of the population, lives on agriculture, while the average size of a farm is of the order of 0.50 ha per household. This clearly explains the observed land conflicts in rural areas. There is, then, an interrelationship between small lands, overpopulation and land-based conflicts. This is in line with Bigirimana's (2013), where he indicates that 'Land disputes in court are predominantly intra-family (51%)'. Another impact of the population growth is land fragmentation. An interviewee in a study conducted by RCN *Justice et Démocratie* mentions it in these words: "We are no longer able to divide plots of land horizontally between brothers; we are at the point of dividing the plots already fragmented vertically". Another testimony was from Ngozi province, where an informant indicated that brothers have to alternate while exploiting the small piece of their family land. This implies, therefore, that a large family will have enormous difficulty to share their property among heirs.

As Burundi is a patriarchal society, inheritance is gender-based issue. Only men are heads of households and so have the right to inherit land. This also applies when it comes to inheriting from parents. Consequently, girls are out of favour with their parents and brothers when it comes to land inheritance. The lack of Burundian girls/women's access to land has a negative impact on improving the living conditions of the community in general and that of women in particular.

As Sebudandi and Ndikumana (2012) indicate it, it is possible to argue that “the impossibility for women to access land, constitutes a serious infringement of the principle of equality between men and women, and plays a decisive role in power balance that exists within rural households and society.”

Apart from the land exiguity and little control for women, there are other causes of downgrading the women’s status in Burundi such as ignorance, customs and discriminatory laws.

### Aims of the study

This work explores problems women report to agencies and Organizations while supporting access to land for women, their progress towards addressing these problems, the roots causes of non-access to land and the appropriate mechanisms and frameworks for addressing the challenges faced by women as a category of population with little or no access to land.

### 2.1 Women’s access to land situation in Burundi

In Burundi, there is a significant difference between men and women in terms of access to land. According to the general census of population and housing/settlement conducted in 2008, there is a disproportionate ownership of land between men and women in Burundi - for 80.2% of plots of land, women own only 17.7%. As women make up the largest fraction of the Burundian population (52%) and so the labour force in land exploitation, they play a crucial role in household tasks as mothers, wives and educators of children in general and food providers in particular.

But despite their role in production activities, they are excluded from access to land. The literature about women’s access to land in Burundi highlights that women are economically and socially dependent, vulnerable as well as victims of food insecurity. Therefore, though land is the first wealth and the common source of production in rural zones, women are deprived of independent production capacity. The lack of land means lack of production, which in turn leads to food insecurity and poverty. The latter highly affect women (ISTEEBU, 2008).

Owning land would instead be the main source of income and esteem. A woman who owns it has the power of decision in her environment. When women have access, use and control over the property, the benefits become enormous and are for the entire family as well. ‘[...] plots of land owned by women are increasingly being used for the benefit of the whole family, as opposed to those under the exclusive control of men, which are sometimes sold or used to the detriment of the household’ (APDH, 2015).

The above quotation shows that land enables women to be economically and socially empowered as they become autonomous in caring for themselves and their dependents since there is a booming up in terms of women’s personal development and financial stability stemming from earning more and starting small income-generating activities. Then, taking into account the role of women, one wonders why this part of the population who uses the land resource for the well-being of the whole family or even the whole community is paradoxically denied the right of ownership.

### 2.2 Methods

The aim of the study is to find out challenges and their root causes, and interventions towards securing women’s rights to land in Burundi. Main question is: what are the land administration shortcomings that affect access to land for women?

The context of this study is guided by the gender and rights based approach (Quintero, 2012). This approach acknowledges that, “Many of the obstacles poor and marginalized people – and women in particular – meet are beyond institutions and the law. They relate to the social position and role of the people involved, and social relations between the different systems, the beneficiaries and the institutions themselves. This affects people’s ability to access justice before, during and after an injustice (dispute, conflict) occurs. This is what is called the ‘chain of justice’” (Quintero, Lodenstein, Apotheker, & Ahikire, 2014).

The chain of justice framework is an analytical framework that uses a gender and rights based approach to understand injustices by exploring the different failures of recognition and redistribution of women’s land rights, and their root causes (Fraser & Honneth, 2003), in the process of claiming and realizing their rights in the justice system.

A study by (Quintero et al., 2014) used the Gender and rights based approach and the chain of justice framework to analyze access to justice, by interviewing CSOs that protect women’s land rights in Uganda, where the chain of Justice framework was broken down into three phases of access to justice i.e. before disputes arise; during the dispute resolution itself and the decisions made by the different formal and informal justice authorities. Similarly, our study uses the gender and rights based approach and the chain of justice analytical framework, however, in our study, we forego separating the chain of justice into the three components (before, during and decisions after), but take it all as one system.

Therefore, this research is primarily qualitative and will employ the use of both primary and secondary data. The methods that will be used include interviews, focus group discussions and existing documents on access to land for women and vulnerable groups. The people to be interviewed include stakeholders in land administration agencies, professionals in the land sector and policy makers. The analysis will employ thematic categorization approach among others.

### 2.3 Data collection

For data collection, a questionnaire was elaborated and administered to different stakeholders engaged in supporting access to land for women. The questionnaire aimed at identifying the problem and interventions concrete actions undertaken by stakeholders, the interventions outcomes and challenges as well as perspectives. Stakeholders involved in supporting access to land for women and vulnerable groups, NGOs and women associations took part in this study.

They responded to the following questions

- i. What problems do women encounter in land access?
- ii. What are the root causes of those problems?
- iii. What are the undertaken interventions and how do they address the root causes of the problems?
- iv. How does the intervention address the root cause of the problems?
- v. What are the key outcomes of the interventions?
- vi. What are the challenges met during the implementation processes?

### 2.4 Findings and discussion

Without pretending to be exhaustive, factors of women's inaccessibility to land include inheritance right that fully benefits men, the primacy of customary regimes over succession practices, lack of socialization on the legal framework protecting women, culture, and so forth.

#### 2.4.1 Findings

##### 2.4.1.1 Association des Femmes Juristes du Burundi (Association of Burundi lawyer Women )

Since 1995, this association is making effort to promote women's rights and help them to access justice to protect their rights. The association covers 6 provinces: Bujumbura, Cibitoke, Kayanza, Kirundo, Muyinga and Karuzi.

The association respondent has identified among others Legal gap (lack of succession law), domestic and conjugal violence, and women non-empowerment especially in rural areas as problems related to the limited woman access to land.

The root causes are traditional/ancestral and socio-cultural beliefs/practices in a patriarchal society. As access to land for women is concerned, the association is intervening in various manners: advocacy towards institutions involved in land issues, sensitizing/ raising awareness for mentality change, contributing to the implementation of legal framework which promotes women's access to land (law bill proposed), providing legal assistance to victims (helping women accessing justice).

Though they have to overcome many barriers such as the mentality that hardly changes and absence of Law on land succession, their intervention has helped to resolve several conflicts. As future action, the association plans to work hand in hand with local community leaders to set out Alternative Dispute Resolution mechanisms and will continue sensitization for community change.

##### 2.4.1.2 Ministry in charge of Social Affairs, Human Rights and Gender (Ministère des Affaires sociales, des Droits de l'Homme et du Genre)

The respondent from the ministry in charge of gender affairs acknowledges that the constitution of Burundi and the international legal instruments ratified by Burundi guarantee the equality and non-discrimination principle in favor of all Burundians without distinction of any kind. However, the areas of inheritance, matrimonial property and gifts continue to be ruled by customary law under a traditional patriarchal and patrilineal system. Poverty, custom, absence of succession law, minority ethnic group (Twa) and lack of awareness have been identified as problems related to access to land for women.

The field of succession, matrimonial regimes and liberalities is still ruled by customary law which favors a traditional and matrilineal system. The ministry has contributed to make/establish the proposed law bill on succession, matrimonial regimes and liberalities. Furthermore, it has executed many projects aiming at registration of public/state land and private land (= Land Management project). For instance, the Ntunganyamatongo project which allocated land certificates to owners, contributed much in land conflict resolution (a step towards woman access to land journey). Moreover, land certificates for public and private lands were given to owners which contributed to land conflict resolution.

##### 2.4.1.3 Land Titles Branch (Direction des Titres fonciers)

According to Land Title Department respondent, the woman access to land in Burundi is still limited. This limitation is rooted in the fact that the big majority of Burundian women are rural and thus, lives under

precarious conditions and poverty, that is they cannot afford purchasing land, as well as matrimonial regime which is not favorable enough to women's access to land (patrilineal inheritance), cultural barriers as well. Marital setting would favor married women to acquire land but the absence of the law on matrimonial regimes remains a big obstacle. Policy and economic causes played a great role in these shortcomings. Reason why there is need for advocacy for measures that raise awareness to counteract cultural barriers and improve woman traditional apprehension. They should aim at protecting laws, policy implementation and citizen sensitization to change positively the traditional apprehension of women.

## 2.4.2 Discussion

The succession, main barrier to the Burundian woman's land access. Succession is the transmission of, often after death of the first owner, a defunct inheritance to a living person. Heritage, locally known as "*ibisigi*", i.e. *what is left by the dead*, includes tangible property, rights and obligations. This implies that in Burundi, the succession takes place only after the death of the person from whom one inherits. After the partial bereavement of the deceased, the heirs make an inventory of all existing property and tentatively assess the consistency of the succession, its liabilities and assets.

### 2.4.2.1 Daughters do not inherit land

According to Burundian custom, the daughter does not inherit from her parents, and remains in a very unfavorable position on her husband's succession list. The custom recognizes two categories of heirs: legitimate or regular heirs and irregular heirs. Legitimate or regular heirs are those who are related to the deceased by a legitimate relationship (a blood relationship), while the irregular heirs are: the spouse, daughter, the natural and adoptive children, the aunts and paternal sisters of the deceased.

As it has been emphasized that in Burundian customary law girls do not inherit, it could happen that a family leave their inheritance to male relatives if the deceased gave birth to girls only (APFB, 2002, p.70).

### 2.4.2.2 Case of widow

In the case of a widow, as AFJB (ibid) puts it, the usufruct plays its role:

Whether she has children or not, she inherits a usufruct exercised over the entire succession of her husband. She enjoys this usufruct if she continues to reside with the family of her deceased husband, with the consent of the family of her deceased husband, may continue to exercise her right of usufruct, especially if she has custody and responsibility for the education and upkeep

of a minor heir, when she remarries or resides in her family of origin.

On the contrary of this situation of a widowed woman, the widowed husband keeps the management of the property of his deceased wife although the latter dies without children. To this Sinarinzi (1998) observes that as "*master and lord of the conjugal union during the marriage, the widowed husband collects all the property of his deceased wife without children, in preference to other members of the family*". This also shows how the males enjoy some right while women are denied the same right even if their state of "widowed" is similar to their male counterparts.

## 2.5 Root causes of those problems

### 2.5.1 Prevalence of customary law in matters of inheritance

Despite the progress made in ensuring equal rights for men and women in a number of areas, some important matters, such as inheritance, remain ruled by customary law until today due to the lack of a clear and written land succession law. The inheritance is transmitted from father to son and the girl has no right to inherit from her parents (Nizigama, 1973). On the sole ground that a girl is to get married in another family elsewhere, she is thus not considered as a continuator of her family but rather as a mere child to be raised and educated so that ultimately she will go and live in another family where she will be catered in everything. In case a girl does not get married and remains under the parents "roof", she keeps her portion that she exploits in usufruct to provide for her basic needs. The latter will succeed in the rank of irregular successors only if she has children (AFJB, 1998). This means she has the jurisprudential right to derive profit from a piece of land belonging to her parents but she has no right to sell it for example.

In short, it is customary for girls not to inherit land but to receive a small plot of land known locally as "*Igiseke*" or "*igisimbo* = a basket" that is, a piece of land that they can cultivate throughout their lives, but cannot sell or bequeath to their children. When their brothers refuse them this right, they can seize the court and sue their brothers or anyone disposed to usurp them the customarily recognized little privilege. It should be noted that such basket can be under different forms: it can be a plot or more often of a viaticum (money, bull, household goods, clothes...).

It is true that the issue of inheritance rights for women remains hectic because it faces significant obstacles. The most heard reasons behind such little will to solve the pending question of women inheritance right are

the risk of aggravating land fragmentation and the fear of change, which would involve significant disruption to already complex plot configurations. Some of the reasons put forward by the legislature in its reluctance to tackle the issue fall in the lines of Guichaoua (1989)'s comments that:

The permanent work of delimiting the plots and the inevitable conflicts that it cannot fail to arouse in this context of scarcity of the soil makes it possible to imagine the extraordinary complexity of any external intervention that would attempt, as in the case of a consolidation, to profoundly alter balances as marked by their history as by the vital necessities of reproduction.

It does not seem, however, easy to compromise with the principle of equality between men and women, which obstructs the preparation of the way for an egalitarian law in this area. If things flow proportionally, the pressure put by some stakeholders and activists, the Burundian succession system up to now governed by custom would have already been the subject of legislation. The latter could be updated taking into consideration gender balance as stipulated in various international laws that Burundi has ratified. These include the Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly of the United Nations in 1979.

### **2.5.2 Absence of the legal framework for women's access to land**

Written law has been less concerned with settling the succession problem; the rules relating to testaments continue to be governed by the general principles of conventions. However, initiatives to ignite debates or discussions on succession and women's access to land have been initiated, but with little impact. The bill was initiated by the Association of Women Lawyers, in collaboration with the Ministry of Human Rights and Gender and Parliamentarian Women, who sensitized all actors. At the level of the Parliament, the women worked a lot on this preliminary project and they obtained the support of some of their male colleagues. The draft law was proposed by the Transitional Parliament and sent to the Government through the General Secretariat of the Government. So far, this bill remains in drawer despite the constant reminders of women's rights movements.

### **2.6 Interventions to address root causes**

We cannot claim to achieve the Sustainable Development Goals without promoting equality between men and women. Conscious of this reality, the Government of Burundi has ratified several conventions that advocate non-discrimination based on gender. The Constitution of

Burundi (2005) in its article 13 speaks about "equality between all Burundians and the enjoyment of the same rights for all citizens without distinction based on gender". Burundi's national gender policy 2012-2025 calls on all sectors to integrate the gender dimension into their policies and programs. However, in terms of access to land for women, many instruments or apparatuses remain ineffective.

Important advocacy work has been carried out by NGOs working for women's rights in general and their land rights in particular. These gender equality activists include civil society organizations (APDH), women's associations (AFJB, APDH, APF, MukenzeziMenya ...), parliamentarians, and international NGOs (GIZ, NCR, Justice and Democracy), international organizations (UNICEF, UNIFEM, UNDP, OHCHR, DFID ...), and the media. The action of these partners has resulted in the initiation of a legislative process in this area and a related draft law has been produced although its effective implementation was doomed to failure.

Efforts are being made by various stakeholders to shift attitudes towards women's integration and consideration for access to land, an incommensurable economic source. As a result, there are significant advances at the community and grassroots level. "Discriminatory practices evolve especially under the decisive action of the courts and tribunals which, in their decisions, are inspired by the principles of modern law, particularly the general principles of the right of equality and non-discrimination and of equity", (APDH, 2015).

One might ask themselves what the mechanisms available to stakeholders to successfully tackle the fight against women's lack of access to land are. Some worth mentioning are the following:

### **2.7 Uprooting of root causes**

By different methods, the change of mentalities and socio-cultural practices, the introduction of new modes of land acquisition by women, judicial intervention, advocacy for the promotion and protection of the rights of women, these are the few actions undertaken in these interventions.

As far as social practices are concerned, there is a positive evolution in favor of women's land rights. Currently, in almost every corner of the country, populations, administrative and community leaders, men and women are unanimous that single women must inherit all of the land ownership (APDH, 2015). Another major improvement is that all the property assets acquired by families, by purchase, are, in some localities especially

in towns, shared equitably between the descendants of girls and boys at the same level of equality.

Moreover, though it is not common, some women do not cross their arms and wait for inheritance law, but have organized them to buy individual plots to face the inaccessibility to the land. This was due to a large-scale sensitization and many actions were then carried out for the economic empowerment of women especially in rural areas as. APDH (2015) attests that *“many of them mobilize sufficient financial resources to acquire their own land by purchase”*. This testifies the achievement of women’s land right lobbyists leaders.

In the same context, the judicial body is a bulwark not only for the acquisition but also for the safeguarding of women’s land rights. For the most part, legislative systems do not recognize customary and informal tenure. They are therefore not recommended because they do not guarantee tenure security. They are often the cause of conflicts due to boundary encroachment and abusive dispossession. This also shows how cracking is the solid wall obstructing the women’s access to land right.

the Law and Jurisprudence Journal notes, when they do not have brothers, girls inherit from the family property, as if they were boys. *“The members of the nuclear family take precedence over all others for the benefit of girls. In the absence of sons, the courts have given primacy to girls over uncles, nephews, cousins and even often they have been equitably divided between brothers and sisters”* (International Human Right Law Group, 2002).

The court’s stance and firmness on the law detrimentally to custom habits is showing another positive aspect in the journey to women’s (land) inheritance right. The bare case law confirms this dynamic in favor of equality between girls and boys, as the Law and Jurisprudence Review reports that *“in nine cases where boys (or men) challenged girls the right to inherit in eight cases, the court wronged them”* (International Human Right Law Group (2002).

The only resistance of the opinion concerns the equal division of the family property. It should also be noted that the serious reservations concern only the married woman. The public does not understand why this one would seek to share with her brothers a property which is not enough for them, whereas she is well settled with her husband. On the other hand, the divorced or widowed woman who wishes to return to her parents’ home, or the unmarried girl, does not meet the same resistance, which is also another promising aspect on that journey by women rights activists.

Equally, in customary law, children do not inherit in the maternal line. A positive evolution, however, is palpable. It should be noted that in cases where girls who have inherited their father want to pass on this legacy to their children, there is usually a protest by the maternal uncles of the children. But currently the courts are giving reason to these children, and even recognize the right of women to test in their favor.

## 2.8 Intervention outcomes

Since the remote times in the history of Burundi, *“the woman saw her field of action for a longer time limited to the works that did not allow her to move away from her home, while the less restrained dynamism of the man left him a wider field”* as Pierret (1973) writes. The space of activity of the woman was thus limited in comparison with that of the man. As a result, she did not benefit from a broadening of knowledge in various fields; henceforth she remained less trained and less informed.

But the sensitization campaign carried out by various human rights organizations and the courts that have enshrined the primacy of the nuclear family over the extended family has freed the grip of the past. We are witnessing the emergence of “new” women who are not only capable of undertaking various economic activities, but also of taking legal actions to claim their land and other rights.

This confirms De Beauvoir’s argument that:

When we concretely call women to action, when they recognize themselves in the goals they are called, they are as bold and courageous as men. Many defects that are reproached to them: mediocrity, smallness, shyness, pettiness, laziness, frivolity ...express the fact that the horizon is barred to them. The woman is said to be sensual, she wallows in the immanence, but first, she was locked up.

The proportion of women who go to court to claim their land rights has been steadily increasing in recent years. A study conducted in 2009 by RCN, *Justice et Démocracie* (Justice and Democracy), shows that 38% of complainants on land disputes are women. The data collected by the APDH in 2015, in 10 courts residence courts, show that 49% of the disputes were introduced by women. And in some communes, one finds that women are very numerous compared to men in claims for land rights.

A new practice is traceable too: women invest more in economic activities that allow them to collect sufficient resources to be able to buy their own plots by purchase.

This shows how land is very important for a Burundian woman; but not having it denies women's independence.

## 2.9 Challenges and obstacles to overcome

### 2.9.1 Legal gap

Despite the significant advances that are reflected in changing attitudes, the challenges remain. The judges are claiming for a law that would legitimize good practices, the equality of children in the succession of property assets of the family. According to the opinion of the judges in the courts of residence, *"the absence of a law on inheritance and matrimonial regimes leads to hesitation and speculation as to the decision to be taken on the land rights of women"*. However, some magistrates say that they still favor the 'superiority' of boys over their sisters in matters of succession.

The absence of such a law remains a headache for the Burundian jurists because applying legal solutions implies an inclusive land code. Such a veritable revolution of mentalities and land law in Burundi seems to be difficult as it relates to family relations. Hence, still is pervasiveness of divergent practices for land administration services to women; some jurists prefer to highly consider the custom in their judgments whereas others are inspired by the international law which devotes fair judgments without distinction of gender.

### 2.9.2 Discriminatory and self-discriminatory cultural barriers

Not all Burundian women have the courage to face the barriers erected by the society. Some are not aware of the process of changing mentalities in the matter of female succession and do not adhere to change simply due to resignation or ignorance. What is more, the land registration, a tool at the disposal of women to reduce land tenure insecurity, seems less used by women. The data collected by the APDH show that women apply for land certificates and withdraw them in the same proportions. An intriguing question is 'Do they withdraw their applications willingly or there is another reason behind?'

Another challenge is that although the Communal Land Service has been set up at the decentralized level since 2008, women (especially widows, single mothers, girls from families without boys and divorced who are the most disadvantaged) often lack the endorsement of Collective Reconnaissance Commissions to register their properties in the communal land services.

## 2.10 Conclusion

Burundi, a small country in the Great Lakes region of

Africa with an essentially agro-pastoral subsistence economy, is facing a galloping population and unprecedented land scarcity. In addition to the fragmentation of land, the patriarchal regime, which had been set up as a method of succession and therefore excluded Burundian women from access to land, was making the situation worse. The issue of the accession of Burundian women to the land remains intractable and is the source of many family conflicts. The real causes of this recurrent family instability are mainly inheritance, the predominance of customary law in matters of inheritance and the absence of laws and legal framework for women's access to land. These elements that underlie social injustice are intensified by the social consideration of Burundian women, which relegates them to the traditional economic dependence.

With the evolution of the local and international context, a kind of awareness is emerging to reverse the phallic situation that has been excluding women in land access issue. This reversal state of affairs is an intervention triggered by civil society movements, local and international non-governmental organizations that are trying to uproot the causes of women's landlessness. Nevertheless, the legal vacuum and the discriminatory and self-discriminatory cultural barriers lie in the path of Burundian women.



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# CHAPTER 3

## ACCESS TO LAND BY WOMEN IN THE DEMOCRATIC REPUBLIC OF CONGO

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### Executive Summary

Access to land by women remains a concern in Democratic Republic of Congo (DRC). Procurement and land tenure security procedures place woman in an uncomfortable situation. As land is a source of economic, political and psychological power, beyond legal failings, the community is not yet ready to internalize what is provided by law. NGOs and United Nations agencies have developed models that currently allow some women to access land and secure their land tenure by formalizing customary transactions, strengthening women's economic power, and accompanying victims of poverty of such atrocity to recover their land rights. However these models suffer from junction. The government is struggling to take ownership either by integrating land transfer management as an independent mode, or by complementing existing land management with customary land management.

### 3.0 Introduction

#### 3.1 Context

Access to land in the Democratic Republic of Congo has always been at the centre of conflict and insecurity in both urban and rural areas because of inadequate laws and discriminatory practices. Indeed, during colonization and the dawn of independence, the land and the underground belonged to individuals who could dispose of them according to their wishes. Most of the land occupied by the colonists was taken from the natives or bought at a low price. The land law of 20 July 1973 brought a significant change by allocating land and underground to the State. This law aimed at equity in access to land and the strengthening of state power in the land through "the standardization of land rights, nationalization and domainializations of "indigenous" lands under the previous regime "

This law has certainly allowed recovering the lands left by the colonizers but was not followed by accompanying measures and did not prohibit the customary chiefs to have a power in land governance. On the other hand, large areas of land nationalized or abandoned by colonizers and other opponents of the regime were declared "goods without a master" before being attributed to individuals. These new acquirers do not have means to develop them and do not want the surrounding populations to access them. So, to access

land, people have to comply with the requirements of the family or big landowners.

#### 3.2 Research objectives

The main objective of this study is to identify the conditions of access to land for women in DRC. Specifically, this study aims to identify hindrances that do not allow women to enjoy their land rights and to reflect on appropriate strategies that can facilitate her enjoyment.

#### 3.3 Scope of the study

This study is devoted to the case of Democratic Republic of Congo. The surveys were conducted in the provinces of South Kivu and North Kivu from June to October 2018. The choice of these provinces was motivated by the fact that they are among the territorial entities of the country where the land problem extremely arises and where rural women live mainly from agricultural activities. In addition, these provinces are areas where insecurity is recurrent because of armed groups. Thus, not only armed groups and large concessionaires occupy several areas of land, but it is also a home for IDPs and Rwandan and Burundian refugees. Of more than 2.2 million Congolese citizens currently living on displaced land in DRC, 422,000 are located in South Kivu and 883,000 in North Kivu (OCHA, January 2017).

#### 3.4 Equity and Control

The constitution of Democratic Republic of Congo in articles 11, 12, 13 and 14 puts a particular emphasis on the equality of citizens. The latter are equal in dignity and rights. The public power guaranteed to ensure the elimination of all forms of discrimination against women and ensure the protection and promotion of their rights. According to the law n° 73-021 of July 20<sup>th</sup>, 1973, as modified and completed by the law n° 80-18 July 1980, the land and the under ground belong to the State. Anyone who needs it must make a request to the services having land in their attributions. The latter issue a land title called long lease certificate for rural lands or a certificate of registration for urban land. For reasons of equity, the name of the woman must appear on the land title in addition to that of her husband. And according to custom, the customary chief is the landowner. It has great traditional prerogatives to allocate land to the applicants for a customary fee.

#### 3.5 Access to land

According to the law, every citizen who needs land must make a request to acquire it without losing sight of the fact that it is a property of the State.

This means that women who have means can acquire land. However, according to custom, land is not considered as a good that can be bought or sold. Rather,

it is managed according to family and parental structures, customs on marriage and religion. And as a general rule, women own their land rights through the male members of their family, usually the husband, father, uncle or heir. During inheritance, the land is distributed to male children regardless of their age. The girls must wait until the mother dies to inherit the clothes. It is through arrangements with men that girls access the lands left by their parents. The custom states that “women can neither directly access the land nor inherit it, nor buy it and control the land in rural households it is placed in the hands of the head of the family legally defined as man”.

Women who have no land at all or who want to have enough space proceeds through the temporary tenancy system or sharecropping system. A piece of land of about half a hectare is rented at one hundred US Dollars or against payment of two goats per crop season. Those who do not have the possibility to pay the money must agree to share the production with the landowner (at least ¼) and must volunteer to work for him at least twice a week. Admittedly, sexual exploitation is not excluded and the contract can be terminated at any time. The landlord is often requisitioned by the landowner to perform other voluntary work at his home or in his concessions.

### 3.6 Actors and solution

Actors involved in allocating land to women are both formal and informal. However, almost 90% of women access land through informal actors. The formal or institutional actors are the wardens of Real Estate Titles. As for the informal actors, we cite (1) traditional authorities (chiefs of sectors, heads of groupements and village chiefs); (2) family members, usually the husband, uncle or family heir; (3) The managers of public bodies (Chief Executive Officer, General Manager, Division Head, Head of Antenna or Office), (4) Big landowners or their managers; (5) The military as well as police officers and intelligence officers; (6) The leaders of armed groups or their collaborators; (7) The authorities of decentralized or deconcentrated territorial entities (mayors of cities, mayors of communes, heads of districts and avenues, administrators of territories, heads of administrative positions);

To allow woman to access land under better conditions and to have the power of control, vulgarization of land law has to be encouraged. However, the best conditions are the standardization of land rights. Customary chiefs should lose the power to allocate land and obligation must be made to big landowners to allocate few hectares to neighbouring populations for agriculture.

## 3.7 Methods

### 3.7.1 Conceptual framework

The key concepts used in this work are among others the concepts: access to land, big landowner (cessionnaire) and woman. Indeed, according to the dictionary, the land is a surface on which humans, animals stand and walk. It is an area of cultivable surfaces, object of possession. According to the land law in Democratic Republic of Congo, the cultivable surface is subdivided into two distinct domains namely the public domain of the State and the private domain of the State. State public land cannot be subject of a land contract because it is directly allocated to the public. For example road, railway, park, etc.

On the other hand, lands in the private domain of the State are those over which the State can conclude a contract with third parties. It is on these private state lands that women or any other person, whether moral or physical, may have a right of enjoyment. The land law is therefore about this. The problem of women’s access to land, which is the subject of this study, therefore applies to lands in the private domain of the State. Regarding the woman, it is about a female person who lives from the work of the land. As for the big landowners (cessionnaire), it is a physical or moral person who owns large areas of land favourable to agriculture but which most of the time remains vacant.

### 3.7.2 Actors

Data have been collected from public services with gender and land issues in their mandate in Democratic Republic of Congo. Non-governmental organizations and United Nations agencies working on women’s land rights or similar issues were involved. These include: UN Habitat, GIZ and its local implementing partners including AZOP, Human for Homan, Land Alliance, CORDAID. These organizations work in most of cases with funding from DIFID and USAID.

### 3.7.3 Structure of the interview

We spoke with service managers at their workplace based on their availability. The information was collected on the tablet after obtaining their consent. Those who opposed the recording method, however, allow us to take note, which had a negative impact on our agenda. However, those who felt that they did not have enough time to interact with us required the questionnaire to answer in writing. Focus groups were also held with some non-governmental organization staff who are in permanent contact with women in the field. Each focus group consisted of 3 people and in total, three focus groups were organized.

### 3.7.4 Data

Since the research was qualitative, the data collected in audio on the tablet was then saved on the computer before being transcribed in paper format for better interpretation.

### 3.7.5 Analysis method

To analyse data, we cross-checked the information collected based on interviews with those obtained from the written documents. The response patterns were taken into consideration for a wise choice of what to retain.

## 3.8 Results and analysis

In this section, we answer the fundamental question of identifying the gaps in land administration that affect women's access to land. For a better understanding we identify the problems, the main causes, the different interventions for mitigation and the way integration can be the root cause of the problems. Certainly, we seek to understand the key results of interventions and the key challenges that actors face during the process of implementing mitigation activities. Gaps in land administration that affect women's access to land are determined.

### 3.8.1 Problems

In the Democratic Republic of Congo, land governance is flawed both in law and in practice. The coexistence of two legislations (law and custom) on the management of rural land does not break barriers that prevent women from accessing land. Not only the state is unclear on how land and customary land is managed, but customary law also seems to take precedence over land tenure law in rural areas, and therefore customary practices to the detriment of women are fully in application. Almost all rural lands are conceded to thirds by customary chiefs, and customary law gives men power to manage land. Women are therefore simple farmers. According to this practice, the family gives a portion of land to the woman bearing in mind that she is not the owner. She cannot sell it or rent it. In case of incapacity to exploit it, the family takes it back. By family is meant the husband, eldest son or uncle. Thus, the woman does not have enough power of decision for development and control of the land. On the other hand, although the woman's name is currently on the land title, more than 90% of women do not know the provisions of the land law. The few women who dispose of the land do not feel the need to have a title in their name. So, the man always remains the focal point. The power of selling and renting land is always the prerogative of man. The woman is often late informed that the land has been sold or rent.

### 3.8.2 Main causes

Beyond the limited access of women to land that is symptomatic of ambiguous legislation and customary retrograde practices, the aggravating causes appear to be the limited economic power of women, intolerance, illiteracy, lack of vulgarization of the land law, the high cost and the lengthy procedures for obtaining a land title.

In fact, at the sociocultural level, the community is not yet ready to internalize the legislative requirements. Although the law does not prohibit women from buying or inheriting land, women who have tried to obtain the land titles on their names have got ennui with their relatives, mainly with their husbands. The logic of a husband, head of a family and having marital power reduces woman to silence and naivety. Man does not allow the woman to separate what is economic or individual from what is family. Thus, for reasons of social peace and marital harmony, she prefers to have anything to her name. And when she goes to court to sue her husband's marital authority or managerial power, she is threatened.

In addition, the government is doing nothing to support non-governmental organizations working at the grassroots to support and mentor women. They have limited access to credit for renting land and accessing seeds. And concessionaires occupy large areas of undeveloped land while residents lack spaces. Admittedly, the high rate of illiterate women restricts women from claiming their rights, and no law guarantees married women the opportunity to get access to land. Certainly, women are less represented in decision-making bodies.

## 3.9 Interventions to enable women to access land

There are currently some legal and practical innovations to allow woman to access land.

Indeed, in legal terms, the Congolese constitution of 18/02/2006 as revised in 2011 in its article 14 devotes the elimination of all forms of discrimination against women and gender equality. Similarly, the law n° 78-021 of July 20<sup>th</sup>, 1973 relating to the regime of property, land and real estate system and the system of security as modified and completed by the law n° 80-008 of July 18<sup>th</sup>, 1980 with its articles 49 to 51 does not make any distinction between man and woman to acquire land. And the 1987 Family Code as revised, currently resolves the problem of inheritance to the extent that the legislator speaks of the "child" without distinction of sex. And according to articles 758 and 760 of the same code of the family the woman is entitled to the inheritance. These provisions reinforce the inheritance rights granted to women even when they are still girls. It is even

admitted that in the management of household property the husband must not allow himself to pose certain acts of disposition without informing his wife.

On a practical level, United Nations agencies, non-governmental organizations and some public agencies are working to strengthen the capacities of women through diversified activities: adult literacy, micro-credit, training on both cultural techniques and human rights and education for life, support for economic empowerment, legal support, custom-based decentralized land management, etc. The idea of supporting women's income-generating activities is that if women's economic power is increased, their power to access land is increased at the same time. When the woman is economically strong, she automatically has the power of decision and she is respected. The mediation committees set up, followed by legal and judicial support, not only make lawyers available to victims of land disputes to recover their rights but also formalize traditional access to land. It is about helping women to formalize extrajudicial arrangements to leave the orality in order to secure property and resolve conflicts in the long term. Victims of male brutality are legally supported to be secure in their households and to protect their land rights.

### 3.9.1 The adverse effects of activities

The woman being always intersected by laws, customs and practices to her disadvantage, she is at the present stage in a position of renunciation. She finds normal the conditions in which she lives so that innovative ideas are welcome but they are not applied for reasons of social peace. Some women who have obtained the means that allowed them to acquire land to their names have encountered misunderstandings in their homes. Some men force the women who acquired the land as part of a project to register it to their name. Given the weight of custom and masculinity, some women are simply accepting this state of things. They give up to the pressure of their spouses, and end up simply registering the land property in the name of their brothers or their children. Others oppose wills and other acts legally posed by their parents during their lifetime. If the urban girl is comfortable acquiring property on her behalf and enjoying it, the rural girl usually loses her land rights when she gets married.

### 3.9.2 Key results of the interventions

The various awareness campaigns coupled with literacy have allowed some women to understand that they are entitled to the inheritance of land, that they can acquire land in their names and that it is important to protect their properties by land title or customary certificate.

The services with land issues in their attributions were mobilized to facilitate households obtaining the titles on which appears the name of woman. The costs of the households targeted by the program have been borne by the project. And given the fact that the acquisition of land is not often formal, the collaboration with the administration allowed the formalization of the customary transactions because they do not have the legal form of the legal acts. This is what we call a custom-based decentralized management model. The community has understood that deeds of sale and verbal arrangements are not enough. Hence the importance of the customary certificate.

In addition, women enrolled in the program who do not have means to access land were given the means to rent land and were accompanied to learn about contemporary farming techniques. And to allow them to produce, they have received food ration and sometime, cash. Big concessionaires have understood the need to give some space to residents who lack land. Income-generating activities have enabled women to acquire property on their own behalf.

In addition, women trained in advocacy techniques and on human rights are currently federated and take positions in decision-making bodies. Admittedly, the economic empowerment of women is a guarantee of their consideration in society. The women who benefited from the project activities and who actually produced are respected and their productions benefit all the villages in which they live. They have their children studied, take care of their dependents and even create employment for their husbands because some buy goats and others get business funds.

### 3.10 The main challenges

Despite field activities and legal arrangements, the problem of women's access to land remains, largely in rural areas. On one hand, the different legal norms are not known by the bulk of the population and on the other hand the appropriation of the activities remains a concern. The beneficiaries of the various interventions seem to be passive and too limited to their customs. Women who know the importance of a land title are always indifferent to the consequences that usually result from verbal arrangements, including: dispossession, encroachment of boundaries and many other abuses. Most women who have their concessions prefer to register them on behalf of their husbands, sons or brothers.

In addition, those who have access to credit and seed respectively for renting land and planting leave either

the area before producing due to insecurity caused by armed groups, or use the aid received for other purposes. So, for example, instead of renting the land and sowing using the received means, they buy mattresses and clothes. Other women who have easy access to land have been dispossessed by their family members (uncle, eldest son) or the big landowners (concessionaires) often before even producing because of jealousy or as a result of little dispute. The most at risk are married women, widows, displaced persons and refugees. In addition, cohabitation between agricultural farmers and livestock farmers remains a major challenge during implementation. After spending money on renting land, preparing fields and sowing, domestic and even wild animals continually reduce the woman's efforts to zero by ravaging plants. The Congolese Institute of Nature Conservation (ICCN) is limited to advising farmers and other residents near natural reserves to repel wild animals in stray while breeders only apologize.

On the other hand, the coexistence of land administration and customary administration in the management of rural lands remains a problem that the State is slow to resolve or to clarify. Models developed by non-governmental organizations and United Nations Agencies suffer from linkages, although they are in use and produce interesting results. The State should take position either on the complementarity of these models, or their subservience or on their independent distinction. Various steps to adopt an edict or a law remain unsuccessful until then.

On the other hand, the culture of writing is not yet anchored in the Congolese mentalities. It is thought that issuing an act of provisional disposal is a danger whereas this system protects no one and gives free way to illegal occupations.

### 3.11 Recommendations

To create conditions that allow women to access land and to maintain the power of control requires a clear law. The State will have to standardize land management models either by integrating land transfer management as an independent mode, or by complementing existing land management with customary management. In addition, it is important to sensitize the community toward women dispose of land titles on their names. This mass awareness should be coupled with literacy program. Subsidies to local organizations are essential for the management of farmers.

The government and other partners need to facilitate women's access to credit with a competitive repayment rate to allow them to rent land and access seed. Peasant fields must also be rented by the State and made available to women who need them. The organization of the free land registration campaign with the obligation to see the woman's name on the land title with 50% proportional rights in case of sale is an asset to guarantee the land rights of the land to wife. The State will also have to revisit the titles of major concessionaires by forcing them to provide the riparian communities with some areas for agriculture and livestock. A law will have to guarantee land to married women facts.

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# CHAPTER 4

## ACCESS TO LAND FOR WOMEN IN ETHIOPIA

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### Executive Summary

Vulnerability, the susceptibility to harm, results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability results from developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighborhoods and environments, and the complex interactions of these factors over the life course. The priority given to varying vulnerabilities, or their neglect, reflects social values.

Vulnerability may arise from individual, community, or larger population challenges and requires different types of policy interventions—from social and economic development of neighborhoods and communities, and educational and income policies, to individual medical interventions.

Vulnerable groups often encounter discriminatory treatment and need special attention to avoid potential exploitation. These structural norms create subordinate-dominant relationship (Chatterjee and Sheoran, 2007). These groups in Ethiopia include women, orphaned children, HIV/AIDS victims, pastoralists, persons with disabilities and the urban and rural poor. Though several laws including the FDRE constitution and the country's GTP takes in to account the right of vulnerable groups especially of women, empirical evidences show that there are still practical problems in the implementation.

Beyond the constitution and the proclamations governing on property issues in Ethiopia, it is also necessary to note that Ethiopia is a member to other regional and International Organizations including ACHPR, ICCPR, ICESCR, CEDAW, CERD, CRC, etc. These instruments have directly or indirectly added the equality of all kinds of persons without discrimination on the right to property. The current domestic legal frame work governing access to land in Ethiopia includes the FDRE Constitution, the federal and regional land laws and international conventions ratified by the country.

The FDRE Constitution under its article 9/4 states that *“all international agreements ratified by the country are integral parts of the law of the land”*.

Though there is no clear indication as to which groups should be considered vulnerable in Ethiopia, the groups mentioned under section two are practically considered vulnerable. These groups in Ethiopia include women, orphan children, HIV/AIDS victims, pastoralists, poor peasants, persons with disabilities and the urban and rural poor. Moreover, no proclamation in the country has listed who vulnerable groups are. Only a single proclamation i.e proclamation number 916/2016 tries to highlight the presence of some fabric of society who are considered as vulnerable without further explanation under its article 34/13/c. However, the National Social Protection Policy of Ethiopia identified the types of vulnerability prevalent in Ethiopia including agricultural vulnerability, natural calamities, economic shocks, health and nutrition risks, demographic vulnerability/population explosion.(ENSPP, 2012). Elderly, HIV victims, disabled and unemployed are the groups of vulnerability.

The main causes which affect the lives of the women and other vulnerable groups emanate from policy, legal, customary, social and political loopholes in the country. One mechanism to do this is creating enabling environment for vulnerable groups to participate in the affairs that affect their interest. This can be realized through encouraging women and other vulnerable groups to participate in policy making, administration and decision making. As noted above the number of these vulnerable groups in land administration and land dispute resolution are minimal which resulted in their vulnerability. So securing representation in kebele or higher organs of administration and decision making is a better solution.

Moreover, the mere selection of these groups for the position of land administration, policy making and dispute settlement would be meaningless in the absence of adequate advocacy programs for the affected parties. Involvement of women in local institutions does need emphasis and support. However, the cultural influences that suppress women's involvement in decision-making structures will make it difficult for women to play their role effectively in such a system. Strengthening women's organisational capacity should be prioritised such as in women's associations. These can create a conducive atmosphere for women to air their problems freely.

### 4.0 Introduction

*“the most essential value, because the most concrete, is first and foremost the land; the land which will bring them bread, and above all, dignity.”* (Fanon, 1968; 44) The quotation, Fanon's saying on his book, *Wretched of*



*the earth*, is even most likely applicable on vulnerable groups access to land especially in developing countries like Ethiopia. This is because, anyone who coercively denies another of ownership or access to land in actual fact denies that individual access to life, thus violating that individual's most fundamental right, the right to life (Mabogo, 2013). Right of property which right holders can express their personality according to the Hegelian philosophy of private property is more daring in developing countries like Ethiopia where vulnerable groups including women are at a disadvantage.

Vulnerability, the susceptibility to harm, results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability results from developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighborhoods and environments, and the complex interactions of these factors over the life course. The priority given to varying vulnerabilities, or their neglect, reflects social values.

Vulnerability may arise from individual, community, or larger population challenges and requires different types of policy interventions—from social and economic development of neighborhoods and communities, and educational and income policies, to individual medical interventions. Vulnerability is usually treated similarly to notions of need, risk, susceptibility to harm or neglect, or lacking durability or capability caused by age, sex, and race/ethnicity, family structure, marital status, and social networks and by access to resources (Mechanic and Tanner, 2015). Vulnerable groups often encounter discriminatory treatment and need special attention to avoid potential exploitation. These structural norms create subordinate-dominant relationship Chatterjee and Sheoran, 2007). These groups in Ethiopia include women, orphaned children, HIV/AIDS victims, pastoralists, persons with disabilities and the urban and rural poor. Though several laws including the FDRE constitution and the country's GTP takes in to account the right of vulnerable groups especially of women, empirical evidences show that there are still practical problems in the implementation. The Ethiopian constitution under its articles 25, 35, 40, 41, 89 among other provisions are the instances that stipulate equality of persons without any kind of discrimination for access to social and economic rights including access to land. The country's GTP also promotes the participation of the youth and women in decision making process including ensuring equality of women in access to and control of land and other productive assets (GTP II, 2015).

Based on the authority granted to them by the federal

constitution, the regions also have the power to enact laws to administer rural and urban land in accordance with the federal laws within their territory (Art 52 (2)/d. Currently, all the regions have enacted their own land laws in conformity with the federal land law though there are major disparities among the laws.

Moreover, Ethiopian is a member to many international and regional human right conventions like International Convention on Civil and Political Rights( ICCPR, art 1, 27), International Convention on Economic Social Cultural Rights (ICESCR ) (1, 11), Convention on the Elimination of all forms of Discrimination against Women(CEDAW ,art 14), Convention on Elimination of Racial Discrimination (CERD), Convention Right of Child, African Charter on Human and Peoples Rights (21, 60, 61). Though these conventions do not directly enshrine land rights (except art 21 of the ACHPR which says ... "right to natural resources which can include land), they all guarantee the right of socio economic development. These international agreements contribute a lot to strengthening the right to property including the land without any form of discrimination (IFIAN international, 2008). The state party to the conventions is, therefore, under duty to ensure the protection of these rights.

Despite all these guarantees, access to land for women and other vulnerable groups is not yet secured because of customary practices against women, societal attitudes and lack of political will (Cotula et al, 2004). Even when these vulnerable groups have access to land through the instrumentality of the laws and policies of the country, it is far from truth that these groups have actual control over land. The problems are embedded in the deeply rooted socio-cultural norms, attitudes and customary practices (Asmare, 2016). "Laws without enforcement will not help much when there are strong traditions against them, but can be an important step in the right direction with proper follow-up (UN-Habitat, 2008)." Therefore, there is a need to look beyond the legal and policy reforms and adopt broad based social change towards women's and other vulnerable groups at African women's land rights conference, (Negadras ,2011). As Negadras G/Baykedagn ,2011 beautifully stated, "God gave us the land which is the source of everything so that we can be the master of it which will also guarantee our destiny: if we exploit it we will become masters of the land, if we don't we will become slaves and the government should consider this." It is, therefore, a question of life and death that access to land should be given the best possible consideration in laws, policies and practices of a certain state. When a multifarious reason for inadequate access and control to land of

the women and other vulnerable groups are unearthed and only when there are firm commitments to create an enabling environment to practice the opportunity might become sinews for women and other vulnerable groups empowerment so that their voices will be heard.

#### 4.1 Objective of the study

The overall objective of this study was to examine the land administration shortcomings that affect access to land for women in Ethiopia.

The following specific objectives are designed to be achieved to undertake the study:

1. To explore the nature of vulnerable groups in Ethiopia
2. To examine the land administration related causes affecting women and other vulnerable groups access to land
3. To describe the mechanisms to enhance the participation of women and other vulnerable groups in accessing and controlling land

This is to contribute to the comparative research of the Eastern African Land Administration Network (EALAN), which is examining access to land by women within the Eastern African region. The study was guided by the following questions:

- 1) What problems do women face while accessing land?
- 2) What are the root causes of those problems?
- 3) What interventions have been undertaken to address the problems?
- 4) How do the interventions address the root causes of the problems?
- 5) What are the key outcomes of the interventions?
- 6) What are the key challenges you are facing during the implementation processes?

#### 4.2 Right and access to land

##### 4.2.1 Right to land

The importance of the land question relates to and is the fundamental issue of discourse about human rights precisely because it must always be related to the primary human right, namely, the right to life. For this reason, anyone who coercively denies another of ownership or access to land in actual fact denies that individual access to life, thus violating that individual's most fundamental right, the right to life (Mabogo, 2008). This violation becomes even serious whenever the violation occurs against persons whose livelihood is highly dependent on land and its products. As is the case in developing countries like Ethiopia. Those countries

which are not able to use their land effectively and efficiently are deemed to pledge it for other capable countries: "if the present generation doesn't think that it's not paying the prices, slowly but certainly the future generation will pay it" (Negadras, 2017). The International Farmers' Movement La Via Campesina has often articulated the need for a human right to land, particularly for subsistence farmers (Wray Witten, 2007). And just as clearly they have demonstrated that there is none recognized internationally.

Instead, what we find are a variety of general and specific human rights related to land (or the more ambiguous 'home' or 'property' which may or may not include land). These international rights related to land are all in the nature of more general human rights to due process of law, equal protection of law, and non-discrimination (ibid). That is, if a person has land or if some right to land is recognized (as when a government-sponsored land redistribution occurs), then the right to land should not be taken, lost or denied without due process and equal protection of law, and no other recognized rights should be dependent on whether the person has land or not. However, domestic land rights are rarely affected by international instruments (ibid).

We must look to domestic systems. For the bizarre and diverse nature of land rights, and the ability to fragment them in novel ways, appears to be limited only by failure of human imagination. In addition, each of these rights may be held by one or more different parties. For example, the right to use the surface may be owned by one party, granted conditionally to another, leased on to several others, future interests assigned to yet others, and taken at any time in whole or part by the State. Thus, what is sometimes called the 'bundle' of land rights is, in almost all cases, fragmented and distributed over many holders so that an individual's rights in a particular parcel of land are actually quite restricted and limited by the rights of the State and other parties. Conflicts between all those holders of rights are, of course, common (Wray, 2007).

The right of access to land, however, is given recognition in many international as well as regional human right instruments. UDHR (Art 17), ICCPR (Art 1, 27), ICESCR (Art 1, 11 and 26), ACHPR (60, 61, 21, Convention on the Elimination of all forms of Discrimination against Women (CEDAW, Art 14) etc. These provisions directly or indirectly recognize the right to property including right to land for every person without discrimination. Other provisions of these international instruments are also directly relevant for the analysis of the right and access to land and its implementation.

In this sense, respect for and protection of the civil and political rights contained in the International Convention on Civil and Political Rights (ICCPR) such as the right to live and not to be arbitrarily deprived of life (art. 6); the right to freedom from torture or to cruel, inhumane or degrading treatment or punishment (art. 7); the right to freedom from slavery, servitude, forced or compulsory labor (art. 8); the right to liberty and security of person, and not be subjected to arbitrary arrest or detention (art. 9); the principle of equality of all persons before the law and the right to due process (articles 14 and 26); the right to freedom of expression; and the right to freedom to seek, receive and impart information (art 19); the right of peaceful assembly (article 21); the right to freedom of association (art. 22); the right to take part in the conduct of public affairs (article 25), are absolutely crucial in the political process of making decisions and implementing policies and programs related to access to land and agrarian reform (Willy-Brandt-Platz., FIAN International, 2008).

The right to property including the right to land is also recognized in the Ethiopian constitution under article 40. In Ethiopia, every citizen has a right to ownership of private property subject to public interest limitations (Art 40 (1). Moreover, land is owned by the state and the people of Ethiopia and citizens have right to use the land (Art 40 (3). To implement this constitutional provision both rural and urban land laws are enacted by the federal and state governments pursuant to their constitutional mandate as state under articles 51 (5) and 52 (d). According to art 51 (5), it is the federal government which is entrusted to enact laws relating to land and natural resources. States have also a power to administer land and enact land administration laws (Art 52/d). Accordingly, all the nine regions are supposed to have their own land laws. Concerning the nature of the right provided to the farmers, the Federal and Regional Land Proclamations uphold the constitutional principle that denies private ownership of land. Rather, these proclamations provide farmers with a right termed as "holding right." The Federal Rural Land Law defines the term "holding right" as right of peasants and pastoralists "to use rural land for purposes of agriculture and natural resource development, lease and bequeath to members of his family or other lawful heirs, and includes the right to acquire property produced on his land thereon by his labour or capital and to sale, exchange and bequeath same (Art.2.4 of Proc. 456/2005)." Similar definitions have also been included in the other regional rural land laws. The general understanding today is that peasant farmers will have all the rights of an owner except sale and mortgage. They can use the land for agriculture production, have full ownership to the produce collected there from, have right to rent to

fellow farmers (sharecropping), lease to investors, and inherit and donate (as a gift) to family members. Peasants shall have such right for life time and beyond, since they can donate and inherit it to others. It has been declared that "...rural land use right of peasant farmers, semi-pastoralists and pastoralists shall have no time limit" (see Id. Art. 7(1); Art. 5(3) of Amhara; Art. 5(1)(b) of Tigray). In a way, this gives tenure security to the holder of the land as the right of using the land and the investments made thereon will not be threatened by time limitation. It must be noted that the longer the duration of rights of using land are the better in terms of ensuring tenure security. The missing element in the Federal Rural Land Law is, though, the issue of pastoralist lands. The pastoralists are people who live in the lowlands of the country depending on animal husbandry.

They do not have a plot of land like the highland farmers to settle on; they are always move in search of food and water for their animals. Now the point is that how could we define their right of grazing over vast territories of the lowland as holding right, a right that includes lease, rent and donation? The type of property regime dominating the areas is more of communal rather than private holding. The remedy would be for the lowland regions to come up with their own rural land laws that take in to consideration the regional reality. (Wray, 2007: Weldegebriel, 2012).

### 4.3 Access to Land for Vulnerable groups

#### 4.3.1 Who are Vulnerable Groups?

Vulnerability is a concept troubled with puzzle. "Confusing, complex, vague, ambiguous are but a few of the labels scholars across disciplines have used to refer to it." (Peroni and Timmer, 2013). A central paradox of vulnerability is that it is both universal and particular. Both of these features *arise in the first place from our embodiment: as embodied beings we are all vulnerable*, but we experience this vulnerability uniquely through our individual bodies (Ibid). According to Mary Neal, "vulnerability speaks to our universal capacity for suffering, in two ways. First, I am vulnerable because I depend upon the co-operation of others (including, importantly, the State)... Second, I am vulnerable because I am penetrable; I am permanently open and exposed to hurts and harms of various kinds. (Ibid) Thus, as vulnerable subjects we are constantly susceptible to harm. Harm comes in many varieties that intersect and reinforce one another such as bodily, moral, psychological, economic and institutional injuries, just to mention a few(Ibid). Martha Fineman points out that the experience of vulnerability "is greatly influenced by the quality and quantity of resources we possess or can command." (Ibid)

Vulnerability connotes the imbalance between threats and coping up mechanisms; meaning when people's threats are greater than their ability to avert that problem. But definition and nature of vulnerability varies according to economic, social, political and historical circumstances of states' local context. Values affect how society views the vulnerable—as victims or sinners—and thus whether or not to provide public assistance (David and Jennifer, 2007). Vulnerability, the susceptibility to harm, results from an interaction between the resources available to individuals and communities and the life challenges they face. Vulnerability results from developmental problems, personal incapacities, disadvantaged social status, inadequacy of interpersonal networks and supports, degraded neighborhoods and environments, and the complex interactions of these factors over the life course (Human Research Ethics Committee Further Exploration of Vulnerable Groups HREC Document No: 6, 2008 Pages 1-7). The priority given to varying vulnerabilities, or their neglect, reflects social values.

Vulnerability may arise from individual, community, or larger population challenges and requires different types of policy interventions—from social and economic development of neighborhoods and communities, and educational and income policies, to individual medical interventions (Ibid). From an economic perspective, including access to land, vulnerability may refer to the whole legal, cultural, political, religious and societal views that people of certain groups prone to damage and the inability of these groups to overcome the damage by themselves. According to the general perspective of International Law of Human Rights, disadvantaged and/or vulnerable groups are the people who are denied free access to the guaranteed rights in their free exercise (Gade, 2012). Based on the socio, economic, cultural perspectives, the classification of these groups vary from country to country. In general, women, children, socially, economically, culturally deprived sections, disabled, minorities etc. form part of disadvantaged groups (Ibid). Poverty is the main contributing factor towards degradation of the status of these people that are classified as disadvantaged groups.

#### 4.3.2 Access to Land for the Vulnerable Groups

According to General Comment 12, the obligation to fulfill includes two aspects: On one hand, the obligation to facilitate which means that the State must try to initiate activities with the purpose of strengthening the resources and the means of the population so that they have improved access to land and productive resources (Till and Nikki, 2008). When an individual or group is incapable, for reasons beyond their control, of enjoying

the right to adequate food by the means at their disposal, the State has the obligation to fulfill that right directly (paragraph 15).

The obligation to fulfill the access to land of indigenous peoples and of women is contained in Article 19 of Convention 169 of the ILO: Article 19- National agrarian programs shall secure to the peoples concerned, treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) The provision of the means required to promote the development of the lands, which these peoples already possess (Ibid).

And in Article 14.2 g, h of CEDAW (Convention on the Elimination of all forms of Discrimination against Women):

"2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on basis of the equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications."

The venerable group refers to the power of protecting access to land in the following paragraphs:

States should facilitate sustainable, nondiscriminatory and secure access and utilization of;

- i. resources consistent with their national law and with international law and protect the assets that are important for people's livelihoods. States should respect and protect the rights of individuals with respect to resources such as land, water, forest, fisheries and livestock without discrimination.
- ii States should pay particular attention to the specific access related problems of women and of vulnerable, marginalized and traditionally disadvantaged groups, including all persons affected by HIV/AIDS. States should take measures to protect all people affected by HIV/AIDS from losing their access to resources and assets.
- iii States should take measures to promote and protect the security of land tenure especially with respect

to women, and poor and disadvantaged segments of society, through legislation that protects the complete and equal right to own land and other property, including the right to inherit land and other property (Tilly and Nikki, 2008).

#### 4.3.3 Factors affecting access to land for Vulnerable Groups

Irrespective of the factors affecting vulnerable groups of their right to economic, social, political and cultural forms, the idea behind such practices is to keep away such people from the forefront of the social activities and deprive them of their life and liberty (Gade, 2012). Further, keeping them aloof, depriving their economic, intellectual capacities to sub serve the needs of the rich and dominant people of a society (Ibid). In general, the discrimination often based on humiliation, harassment, intimidation, through social, political, economic, customary, and cultural factors negatively affect these groups enjoyment of their rights in their everyday life. The discrimination can be either direct or indirect discrimination and in both the aspects, harassment is the common factor. This is because of segregation of specific group of people with an aim to deprive their dignity in order to create an intimidating, hostile, degrading, humiliating, or offensive environment in every moment of their life (Gade, 2012).

The economic factor contributes for the cause of vulnerability of people. However, it cannot include other aspects of discrimination based on gender, disability, social, cultural, customary, caste and other types of discriminatory practices that are prevalent in each society. Apparently, an economic criterion alone projects a narrow outlook in the determination of vulnerable and disadvantaged groups (Ibid). In order to measure the vulnerability in a holistic perspective, it has to be evaluated from social availability of resources along with consumption, health, conventional traditions, practices that are followed in each society.

Discrimination against the vulnerable groups and women with respect to right to property including right to access to land may emanate from structural and/or cultural discrimination. Structural discrimination refers to rules, norms, generally accepted approaches and behaviours in institutions and other social structures that constitute obstacles for subordinate groups to the equal rights and opportunities possessed by dominant groups. Such discrimination may be visible or invisible, and it may be intentional or unintentional (Chatterjee, Sheoran, 2007).

Structural norms are attached to the different relationships between the subordinate and the dominant group in

every society. A group's status may for example, be determined on the basis of gender, ethnic origin, skin colour, etc. The norms act as structural barriers giving rise to various forms of inequality.

Cultural discrimination on the other hand refers to the discrimination based on norms, values, religious beliefs that help to justify the marginalization of certain sections of a society. Sometimes formal laws are not isolated from, and have not pre-empted, replaced or overridden customary laws. Instead, there is a certain degree of fluidity in the use of land rights mediated by the multiple and overlapping legal domains, and these legal spheres provide people space to contest right to land (Mackenzie, 1995). What must be investigated in each country is whether the mechanisms, rules and administrative bodies for administering different legal spheres are equitable, available and accessible to women (Ibid). Customary laws are more complex and more numerous, as every cultural group has its own array of customary laws pertaining to land and property. Often they are oral in nature, flexible and ever-changing according to changing political-economic and socio-cultural contexts. Because they reflect cultural norms – and cultural norms reflect power relations, they also tend to be patriarchal in nature (RituVerma, 2007).

Both the practice of customary and statutory laws cannot be separated from patriarchal norms, nor from ideological and symbolic processes associated with them, which consolidate control over material property in the favour of men. The situation is a complex one with overlapping legal regimes, and whereby people contest and negotiate rights by drawing on whatever legal resource they can (RituVerma, 2007). These form of complex, deep and manipulative discrimination is deeply rooted in the fabric of almost every corner of Ethiopian societies as it is also common in other east African countries (Ibid). This coupled with the country's Civil Code of 1960 which is highly influenced by patriarchal thinking reflecting the then prevailing situation of the country has made the vulnerable groups voiceless in every form of decision affecting their lives. Despite the country's ratification to many international human right instruments protecting the vulnerable groups and its enactment of the proclamation number 456/2005, the vulnerable groups including women are suffering from practical discrimination.

## 4.4 Methodology of the study

### 4.4.1 Research Design

The study was dominantly shaped by the view that the research participants should be benefited by the action agenda for reform of their lives, institutions in which they

live or work (Creswell, 2007). The researchers believe that the nature of the research requires studying issues like oppression, domination, suppression, alienation and hegemony. The structural causes for domination, oppression, suppression, alienation and hegemony shall be deconstructed which won't, therefore, be possible without listening and giving advocacy for the oppressed so that they can get their voices heard. Accordingly, the research was mainly based on a qualitative design. This design was proper to deeply investigate the realities in the legal, policy and practical situations of access to land for women and other vulnerable groups and a case for improved access to land for women and other vulnerable groups. Through this design the country's specific, unique and idiosyncratic situations in land rights for women and other vulnerable groups. However, the study will also be substantiated with a quantitative design which will be helpful to know the extent or the level of access to land for women and other vulnerable groups and the seriousness of the causes for the shortcomings of access to land for women and other vulnerable groups.

#### 4.4.2 Research Approach

The researchers used a transcendental phenomenological approach to investigate the lived experiences of the women and other vulnerable groups in Ethiopia. By investigating literatures and approaching the participants in a manner where they should express the experiences they have been in and the systematic analysis of policy, legal and social realities with respect access to land.

#### 4.4.3 Data source and collection instruments

The research is dominantly of a desk research type but some field works will be performed for validity purposes. Accordingly, researches conducted in relation to Ethiopian women and other vulnerable groups were consistently consulted. Key informant interviews with officials and experts on land administration from Federal to regional and woreda level were conducted. Fully structured questionnaires were also distributed to women, peasants, pastoralists, HIV victims and persons with disability. The data collected from the primary sources were analyzed using thematic/segmental analysis by identifying, interpreting and categorizing the opinions of the respondents. The researchers analyzed the laws, journals, texts and reports the researcher using content analysis in a qualitative manner.

#### 4.5 The legal regime governing access to land by women and other vulnerable groups in Ethiopia

Beyond the constitution and the proclamations governing on property issues in Ethiopia, it is also necessary to note that Ethiopia is a member to other regional and International Organizations including ACHPR, ICCPR,

ICESCR, CEDAW, CERD, CRC, etc. These instruments have directly or indirectly added the equality of all kinds of persons without discrimination on the right to property. The current domestic legal frame work governing access to land in Ethiopia includes the FDRE Constitution, the federal and regional land laws and international conventions ratified by the country. The FDRE Constitution under its article 9/4 states that *"all international agreements ratified by the country are integral parts of the law of the land"*. Hence, all international conventions ratified on women's and other vulnerable groups rights and commitments entered to implement the Beijing Platform for Action and to meet the MDGs are included in the constitution and government is obliged to implement these provisions. Land policy is embedded in the FDRE's Constitution and the constitution states: *"The Right to ownership of urban and rural land, as well as of all natural resources is exclusively vested in the state and in the peoples of Ethiopia. Land is a common property of the Nations, Nationalities and Peoples of Ethiopia and shall not be subjected to sale or to other means of exchange"* (FDRE Constitution, 1995: 40/3). In addition, article 35 (1) of the FDRE Constitution says, Women shall, in the enjoyment of rights and protections provided for by this Constitution, have equal right with men. Article 35 (6, and 7), Women have the right to full consultation in the formulation of national development policies, the designing and execution of projects, and particularly in the case of projects affecting the interests of women. Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property. We can deduce that Article 25 of the FDRE Constitution as a substantive equality without discrimination and special provisions under article 35 duly recognized the rights of women but failed to stipulate special recognition to other vulnerable groups including persons with disability. Moreover, the constitution includes special emphasis for peasants and pastoralists access to land. Article 40 (4) and (5); state that; Ethiopian peasants have right to obtain land without payment and the protection against eviction from their possession. The implementation of this provision shall be specified by law. Moreover, Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law.

These constitutional provisions are, however, general statements and are confined to women, peasants and pastoralists and do not include the protection of other

vulnerable groups such as persons with disability, HIV victims and the destitute.

Since Ethiopia is a Federal Government, in addition to the constitution there are federal and regional proclamations on rural land. Currently, almost all the regions except Harari region have promulgated land laws. Article 5 of the federal rural land Proclamation Number 456/2005, Acquisition and Use of Rural Land states that:

- 1/ In accordance with land administration law:
  - a) Peasant ... farmers/pastoralists engaged in agriculture for a living shall be given rural land free of charge:
  - b) Any citizen of the country who is 18 years of age or above and wants to engage in agriculture for a living shall have the right to use rural land; children who lost their mothers and fathers due to death or other situation shall have the right to use rural land through legal guardians until they attain 18 years of age:
  - c) Women who want to engage in agriculture shall have the right to get and use rural land.
- 2/ Any person who is member of a peasant farmer, Semi pastoralist and pastoralist family having the right to use rural land may get rural land from his family by donation, inheritance or from the competent authority,

In this proclamation, women, orphans, pastoralists and peasants are somehow granted a right to access to land but this recognition highly depends on the practical application by the concerned organs of each region. Though the federal rural land proclamation recognizes access to land for some vulnerable groups, the federal urban land lease proclamation no. 721/2011 mentions nothing on the right to housing of all vulnerable groups. Other laws including family and succession laws are also decisive in determining the extent to which rights of vulnerable groups, especially women are recognized and respected. Family law relates to very basic issues of family life, the relationship between husband and wife and the rights each has over family resources. Legislations addressing women's specific issues are necessary to translate women's legal rights to land to reality (USAID ,2008). Family laws are particularly important since control of marital property and equal share in divorce is the main area where women are mostly affected with regards to their rights to land (Ibid). The FDRE issued family law that addresses a range of issues concerning marriage, administering individual and common properties in marriage and sharing property at divorce (FDRE Code, 2000). Women are provided equal rights with men in entering into marriage, within marriage and in divorce. Article 11 of the FDRE Family

Law states that marriage is monogamous and Article 33 asserts that polygamy is illegal and the second marriage entered can be disbanded by law. Regions are provided rights to enact family laws within the framework of the FDRE family law.

The FDRE land policy confirms constitutional provisions. Rural Land Administration and Use Proclamations issued at different times, Proclamation No.89/1997 and Proclamation No.456/2005 affirm that every Ethiopian national without discrimination has right to use rural and urban land. The same proclamation also states that every rural resident who wants to make a livelihood from farming is entitled to use a plot of land free of charge and women have rights to access rural land. These proclamations include provisions on rural land administration. Accordingly, rural land should be measured, registered and land holding certificate should be provided to users/holders. Rural landholding certificate should contain information on land size, land use type and cover, level of fertility and borders. Rural land use has no time limit and farmers are provided rights to lease transfer or inherit rural land use right to family members. Rural landholders are also entitled to compensation in case of eviction.

Land policy should consider interlink with other sectors and sectoral policies should consider land policy to contribute to the overall socio-economic development of the country. Land policy is linked with agriculture and rural development, women's policy and family laws. Ethiopia has a documented policy on women in all aspects of life including an access to land (FDRE a policy package on women, 2006). However, only some mentions are given with in the broad Agriculture and Rural Development Strategy of 2003 about the rights of pastoralists. Be that as it may a policy coverage is given for women, pastoralists and peasants. Especially, the Agriculture and Rural Development Strategy, on Pastoralists, capitalizes on;

"Food insecurity and poverty are as pervasive and deep in pastoral communities across the country as they are in the traditionally drought-prone locations where sedentary agriculture is practiced. It is true that in these areas there are a number of places with dependable surface and underground water supply. But it is well known that rainfall in these areas is too scanty and too intermittent to support rain fed crop production. Therefore, rapid and sustainable economic growth that will ensure food security is strongly linked to livestock development. Needless to state that livestock focused development should constitute the base for change and increased welfare among the pastoralists."

The National Policy on Ethiopian Women is an innovative for Article 35 of the FDRE Constitution. The policy affirms women's equal right with men in social, economic and political spheres. One of the major objectives is to facilitate conditions for rural women to access productive resources particularly land and basic social services (TGE, 1993). Contents of the policy further emphasize on ensuring women's equality through legal reforms, awareness creation, initiating women's participation in formulation of government policies and implementation of programs (TGE, 1993). Furthermore, government had developed and issued National Action Plan for Gender Equality (NAP-GE, 2006). Therefore, women's policy and rural land policy have strong linkages because women's policy put rural women's equal access to productive resources, particularly land, as basic for women's equality.

#### 4.6 Who are vulnerable groups in Ethiopia?

Though there is no clear indication as to which groups should be considered vulnerable in Ethiopia, the groups mentioned under section two are practically considered vulnerable. These groups in Ethiopia include women, orphan children, HIV/AIDS victims, pastoralists, poor peasants, persons with disabilities and the urban and rural poor. Moreover, no proclamation in the country has listed who vulnerable groups are. Only a single proclamation i.e proclamation number 916/2016 tries to highlight the presence of some fabric of society who are considered as vulnerable without further explanation under its article 34/13/c. However, the National Social Protection Policy of Ethiopia identified the types of vulnerability prevalent in Ethiopia including agricultural vulnerability, natural calamities, economic shocks, health and nutrition risks, demographic vulnerability/population explosion.(ENSPP, 2012). Elderly, HIV victims, disabled and unemployed are the groups of vulnerability.

##### 4.6.1 Women

Women are among the vulnerable groups; in fact they are highly marginalized groups of persons because of religious, cultural, political and other factors. Considering these facts the current constitution and the national policy on women have given due emphasis to women. Women's rights on access to land and other status are recognized on the constitutional provisions of art. 25, 35, 40. Not only these the EPRDF Women Development and Change Package (2008) takes a special consideration of women's vulnerability. It has pin pointed the main causes against women discrimination in the strategy document. Patriarical thinking, Lack of adequate participation of women in political, social, economic and cultural affairs, lack of political will to support women are

among the issues identified by the policy document on women (EWDCP, 2008). Be it of such factors or as some say historical problems women have been are still being marginalized which resulted in economic, psychological, political or social status. Researches show that in Ethiopia, women are highly engaged in the production of agricultural products but to their dismay unable or discouraged to appropriate the same. According to IDRC Scoping study citing Alemayehu and Ojulu, "in rural Ethiopia women constitute half of the country's population and play critical role in agricultural production, where they make up the majority of the agricultural workforce by which over 50–80 % of the labor force required in crops and "livestock production as well as environmental rehabilitation is performed by women."(IDRC, 2017). In rural Ethiopia land is not only material and productive resource that enable livelihood of the rural community, but it is also an important symbolic resource that heavily influences status and identity (Teshome 2015). Particularly, for rural women, land is an important resource especially when the household broke up due to migration, war, abandonment, divorce, polygamous relationships, illness or death (Agarwal, 1994) and it is the most fundamental resource to their living conditions, economic empowerment and, to some extent, their struggle for equity and equality (Teshome, 2015).. In the Amhara region, where the study area forms apart, the time and labor input of women in crop production is found to be 50 % (Wudeneshe, 2003).

However, the existing literature shows that despite women's significant contribution to the agricultural sector, as women in others parts of the developing world, women in Ethiopia historically had no or limited access to and control over important agricultural resources such as land, livestock, farm implements, capital, knowledge and information (Lemlem et al. 2011; Sachs 1996; Zenebe 2005; Sintayehu 2003; Fong and Bhushan 1996; IDRC,2017)). Moreover, researches show that despite the constitutional and legal recognition of women's access to land the latter do not have actual control over land (Agarwal 1997; Davison 1988; Deere and León 2001; Teklu 2005; Verma 2007). This is because the problem is deeply rooted in the social, political and power relations. The mere recognition by the constitution and the policy of the country is not enough to secure women's land rights because the socio-cultural norms and customary practices did not allow women to decide whether and how a resource should be used, how it is to be allocated and share the benefits. This in turn has made women one of the most vulnerable groups of the society, socially inferior and economically dependent on men (Teshome, 2015). In addition to that the customary laws of inheritance and marriage are designed to the



detriment of women's rights. In most of the regions in Ethiopia, during marriage women are expected to leave their parents home to join their husbands parents. These practices affects the rights of women because it allows them to have an only access to marital land which most of the time is at the disposal of the husbands being the head of the family.

#### 4.6.2 Other vulnerable groups

Pastoralists, peasants, persons with disability, HIV victims, urban and rural poor are some of the vulnerable groups in Ethiopia in addition to women. So far though there are legal and constitutional recognitions on access to land for pastoralists and peasant farmers, no specific and comprehensive legal recognition is granted to the other vulnerable groups including disabled, HIV victims and rural and urban poor.

Moreover, no proclamation in the country has listed who vulnerable groups are. Only a single proclamation i.e proclamation number 916/2016 tries to highlight the presence of some fabric of society who are considered as vulnerable without further explanation under its article 34/13/c. However, the National Social Protection Policy of Ethiopia identified the types of vulnerability prevalent in Ethiopia including agricultural vulnerability, natural calamities, economic shocks, health and nutrition risks, demographic vulnerability/population explosion.(ENSPP, 2012).

Elderly, HIV victims, disabled and unemployed are the groups of vulnerability. But nowhere in the policy or other documents mention the access to land of such groups. Although associations such as associations of HIV Victims, elderly and disabled are formed and recognized in the country their role in promoting the access to land of these groups are minimal or none. The mere recognition of rights with out being backed by effective legal and enforcement institutions is meaningless. An expert from the Ministry of Labour and Social Affairs stated that though the Ministry has a multidisciplinary target in alleviating social, economic and political problems encountered group of peoples such as disabled or persons with HIV it hasn't so far dealt with particular interests such as land.

Ethiopian constitution, considering the special interests of peasants and pastoralists, underpinned the rights of peasants and pastoralists under articles 40 (5,6) and 41 (4,6). Pastoral lands in Ethiopia are largely managed by customary authorities using rules and regulations that evolved over a long period of time. Clans operate in a socially recognized territory over which they have exclusive primary land use rights. Such territories have dry and wet season grazing areas where members of

the clan practice rotational grazing. River basins that are usually flooded during rainy seasons and valley bottoms whose soils retain moisture far into the dry season constitute dry season grazing areas. Neighboring clans who have similar primary land use rights over their territory also have secondary rights in their neighboring clan territories during droughts or failure of water resources (Policy document, 2006). These secondary rights are based upon inter-clan negotiated reciprocity. When such reciprocities are practiced, the guest clan has to observe the rules and regulations of the host clan on the use of the grazing and water resources such as refraining from cutting trees, observing turns at watering points and not stealing livestock. There has been considerable pressure and interference on customary management of pastoral lands in Ethiopia, particularly in those pastoral lands that contain river basins in which the State has initiated irrigation developments since the mid-1950s (USAID, 2010). These interventions have excised out large areas of dry season grazing from pastoral landholdings, reducing their capacity to maintain their livelihood in the face of increasing population and occurrences of drought.

There appears to be a widely held belief that pastoralism is no longer a viable means of livelihood, resulting in pressure on customary systems of pastoral land rights and land management. Even during the Imperial regime and the Derg era, there were efforts to settle pastoralists on irrigated land in the river basins alongside the irrigated state farms that were developed on expropriated grazing lands. Because pastoralists lacked farming know-how, the State built the irrigation infrastructure and farm machinery services while the pastoralists provide labor for weeding and harvesting the crops grown, which was mainly cotton (USAID, 2010). These settlements were eventually abandoned in the late 1980s because the State was unable to sustain these services.

The EPRDF regime in the early 1990s returned the state farms to the Afar Regional Government, which, in turn, subdivided some of the state farm lands and distributed them to elite members of the pastoralist communities for farming purposes (Agricultural Land Policy, 2003). Other state farms were given out on leasehold to local investors. The revenues from these leaseholds were distributed among the clans who have original land use rights on these lands. It is reported that poor members of the clan and women were not beneficiaries of either the land distribution for farming or the distribution of income from the leaseholds. Although the expropriation of land for irrigation development abated during the early years of the current EPRDF government, it is now on the rise as allocations for both private and state-run large sugar and cotton estates are being made. These allocations

will once again erode the sustainability of the pastoralist mode of livelihood (Hundie and Padmanabhan 2008; Beyene and Korf 2008).

### 4.6.3 Causes of vulnerability

#### 4.6.3.1 Inadequate legal and institutional regime

As discussed above, there is no acute shortage of legal infrastructure as long as women's right is concerned. The constitution, International instruments such as CEDAW, the land proclamations and the family law all include provisions on women's right. The mere legal recognition, however, doesn't guarantee the protection of these group because of social, psychological, cultural or religious prejudices against women. But the problem lies in the failure special laws on the protection of other vulnerable groups on access to land. Though there are some informal measures directed for their protection, the absence of adequate legal infrastructure left the vulnerable groups helpless. A disabled person from Amhara region complained, "my brother used to maintain me by cultivating our deceased parents farm land before he died. But after his death I went to a near by town to assist my self by begging on the streets since I cannot cultivate it by myself. But the wereda Land administration office took the land away saying that I have left cultivating it for three years. Though I brought a case to the kebele land committee and the wereda court I didn't still get adequate solution. I can't hire a lawyer for I don't have a penny to pay." Therefore, the absence of a means to protect vulnerable groups' land rights exposed these people to a greater exploitation. But the researchers believe that it is not the lack of legal protection to these groups i.e. women and other vulnerable groups that affects most but the social, political and institutional factors that are deeply embedded in the Ethiopian society that is exacerbating the problem as we will see below.

#### 4.6.3.2 Customary practices

*Besides, laws in themselves will not bring about equity and equality. Investigating the problems and bottlenecks for implementation and finding remedies along the way is vital... Access to land alone cannot bring about food security or eradicate poverty. Land rights for women must be supplemented by other resources like traction power and credit services. Intervention to resolve women's land rights need to take on board these complementary issues so that meaningful improvement in the lives of rural women can be attained and their eventual emancipation realized (Tesfa, 2002:20).*

However, policies and laws that are formulated to bring gender equality could not change the traditions and customary laws that has been exercised within

the society for years. Customary practices could not change the status of men as the owner and head of the household, who is supposed to exercise power over the use and management of household's resources mainly land, most valuable resources of the society. Such type of perception of men has always been a source of conflict between a wife and a husband. Thus, there is still a gap between owning land titles and the enjoyment of the benefits accruing from them, since some women are still involved in different kinds of land-related conflicts and face challenges related to the control and legitimacy of their land rights.

Patriarchal thinking is prevalent in Ethiopia. This attitude has been supported by law, custom and religion for years. The civil code of Ethiopia which is the major private law governing the social interactions of the country is affected by this thinking. The provisions in the civil code relating to family, succession, property and status are the instances which show the superiority of men over women. Even after the introduction of the family law of Ethiopia (2000) the Civil Code's influence is still affecting parties and implementing institutions. This custom has deterred women from participating in the political, social and economic affairs that affects their interest. Where their land rights is not registered after marriage their disputes will be dictated traditionally which will affect their interest since the dispute settlers, who are, most of the time elderly people, not sensitive to women's interests. Moreover, in the muslim community parts of the country in almost all regions polygamy is a custom. In case of polygamy, the second wife will be disadvantaged since land rights will be registered only ones making the second wife landless. The attitudes towards other vulnerable groups such as disabled and the HIV victims are even worse. This is because these groups are legally unprotected and socially ostracised. Researchs found that women in polygamous marriages are largely disadvantaged since husbands usually registered onewife usually the housewife, denying the right of other wives to access land (Zenebework and Yared, 2000). The Ethiopian policy on women identified lack of participation of women to secure their own interests is one cause of women vulnerability. Women are either unwilling or discouraged to participate in the political and economic affairs affecting their interest. This makes them unrepresented and subject to oppression. IDRC found that some of the reasons cited by the women during the discussion were:

1. They were not informed of the dates or locations of the meetings;
2. It is a task for men to attend such meetings; and
3. Women do not go to meetings.

Women's low participation in the land titling process and other socio-political activities is linked primarily with their low position in society. Women are not empowered to claim leadership positions. The traditionalists say, "A women's place is in the kitchen" and this seems to be applicable in the arena of land registration particularly. The majority of women themselves believe strongly that getting involved in land registration is the task of men; they even believe that it makes no difference to their rights whether women participate or not in the registration exercise (Almaz, 2016). Contrary to this, those women who have faced a problem in relation to their land rights because of divorce, inheritance, or boundary conflict are hindered by the lack of women involved in the process. Almaz noted that women's lack of interest to participate is demonstrated by the number of women who prefer to go to the women's desk instead of the Woreda LUAD when facing problems in relation to their land rights registration. She gave an example given during field interviews in WoretaZuria was a number of women who requested clarification of their individual cases at the women's desk because they did not feel comfortable requesting assistance from the LUAC.

Almaz reported that the following interview of one woman on the Goat LUAC was explicit about the importance of having a female member on the committee.

*"She is 34 years old, married, and educated to grade seven. The work was challenging for her in the beginning given the general perception of women not being able to handle such tasks. However, she has proved herself competent and even better than some men on the committee, as witnessed by other male committee members and the Woreda LUAD officer. In her experience, women tend to feel freer telling their problems to other women rather than to a man. She also remarked that women tend to be more neutral and abide by the law in implementing such sensitive policies. She further lamented that a considerable number of men had tried to exclude their wives' names from the registration. In several cases, some of the LUAC members colluded with these husbands, whereas she believed that any women on the committee would stand up for women's rights."* (Almaz, 2016)

It can be concluded that women's socio-political position is very low compared with men. Land ownership is not only an economic issue, but is closely correlated with social and political power. Empowerment of women is essential for them to access land rights. For this to occur, there needs to be greater reinforcement of gender policy at Woreda and Goat levels so that women are better represented on the LUAC. At the community level,

women need greater encouragement and support to participate fully in the land registration process.

#### **4.6.3.3 Lack of political will**

The mere legal recognition to protect women and other vulnerable groups is not enough so that the political will of the government and its enforcing institutions is also decisive. These vulnerable groups where ever they are (Urban or rural) should be protected by a clear policies on their economic, social, political and cultural interests which should also include a determined political will to enforce these policies guidelines. Being the primary beneficiaries on these policies an enabling environment should also be created so that these groups will effectively participate in the making and implementing the policies.

Though there has been adequate policies and strategies to support women the political will on the ide of the government to enforce and mobilize the beneficiaries (women) to get their interests respected has been minimal (FDRE Policy document, 2008). So that there hasn't been an effective political will and women are still under undue subjugation in all aspects of their life including their right to land. The problem is hightened with respect to other vulnerable groups since there is no adequate policy and strategy support.

#### **4.6.3.4 Land administration shortcomings**

Land administration can be defined as the process of determining, recording and disseminating information about tenure, value and use of land when implementing land management policies (UN-Habitat, 2013). It includes land rights, land use regulation and land valuation and taxation (UN-Habitat, 2013). Therefore, good land administration involves good land governance that is land administration systems must, for example, be transparent, operate on principles of fairness and equity, must include accountability and monitoring process and must engage with and reflect the needs of the public. On the contrary, weak land governance lacks these principles and will ultimately affect vulnerable groups. According to UN- Habitat (2013), " weak governance undermines vulnerable individuals and groups by threatening the land rights of the poor and the vulnerable."

Two different researches focused on the land administration process being carried out in four regions of the country (Amhara, Tigray, Oromia and SNNPR) revealed that the process reflected a range of issues in regional similarities and differences (Tesfaye, 2005; Deininger, Daniel, Holden, and Zevenbergen, 2007). These studies reflected community participation at early stage of the land administration process and

decentralization of the process was similar in the four regions. LACs are policy implementing bodies established at the lowest level of local government in Kebeles and Sub-Kebeles. LAC members constitute 92%, directly elected by vote and 8%, Kebele council appointees (Deininger, et al. 2007:8). LACs are required to include at least one female member out of five members. However, research findings reflected low female representation. Only 20% of LACs included a female member from all these regions and female representation was effected in only 8% of LACs established in Oromia (Deininger, et al. 2007:11). Provision of short-term training to LAC members, duties and responsibilities assigned and rendering free service to communities was similar across these regions. LACs' access to written materials was limited in all these regions. About two thirds of LACs received copies of the regional proclamation in Oromia (Deininger, et al. 2007:12).

Rural land proclamations issued in Amhara, Oromia and SNNPR regions mandated joint- titling to spouses and land is registered on names of both spouses. Space is provided on the landholding certificates to put photos of both spouses in Amhara and SNNPR but, not in Oromia (Deininger, et al. 2007). In Oromia the certificate had space to put photo of the landholder only even in spousal joint-registration. The comparative research reflected significant differences between regions that applied spousal joint-registration on number of certificates issued in the name of husbands. Number of certificates issued exclusively in names of husbands in Amhara was less than 9% of the total certificates issued in the region whereas it was 58% in Oromia (Deininger, et al. 2007:13).

Although the government has established an organ responsible for the implementation of land rights registration, the LUACs, there is not adequate staffing at the Woreda level to supervise the process; nor does the government have a gender focal point. The inadequacy of human resources at the Woreda level has a direct impact on the proper implementation of the policy at the community level. Lack of uniformity of the level of understanding and interpretation of the law by the committees - though primarily attributed to their level of education - are the consequences of a lack of intensive training and follow-up by the Woreda desk officers. This is evident, for example, in FogeraWoreda where there are six officers administering the land registration process. There is greater efficiency and participation by women in the Goat LUAC because there are women on the committee. The capacity of the responsible office can constrain the fair implementation of the law. Although the issue of involving women in the process of registration is raised more and more, government

officials still tend to believe that women cannot handle such a difficult task as it is time consuming and requires moving from field to field. In addition, there is the challenge of convincing the local community about the importance of involving women in the process. Although the procedures of the current land rights registration are orderly and community based, the lack of attention for involving women in the process can be a serious drawback in fulfilling the policy commitment on gender equity.

Although the government has established an organ responsible for the implementation of land rights registration, the LUACs, there is not adequate staffing at the Woreda level to supervise the process; nor does the government have a gender focal point. The inadequacy of human resources at the Woreda level has a direct impact on the proper implementation of the policy at the community level. Lack of uniformity of the level of understanding and interpretation of the law by the committees - though primarily attributed to their level of education - are the consequences of a lack of intensive training and follow-up by the Woreda desk officers. According to Almaz, 2016, in one of her study area around Amhara region, there are six officers administering the land registration process. There is greater efficiency and participation by women in the Goat LUAC because there are women on the committee. The capacity of the responsible office can constrain the fair implementation of the law."

#### 4.6.3.5 Enhancing their participation

Understanding and alleviating the problems which caused the vulnerability would help for the strategies to enhance their participation in issues which affect their lives. As shown in the preceding chapters the main causes which affect the lives of the women and other vulnerable groups emanate from policy, legal, customary, social and political loopholes in the country. One mechanism to do this is creating enabling environment for vulnerable groups to participate in the affairs that affect their interest. This can be realized through encouraging women and other vulnerable groups to participate in policy making, administration and decision making. As noted above the number of these vulnerable groups in land administration and land dispute resolution are minimal which resulted in their vulnerability. So securing representation in kebele or higher organs of administration and decision making is a better solution.

Moreover, the mere selection of these groups for the position of land administration, policy making and dispute settlement would be meaningless in the absence of adequate advocacy programs for the affected parties.

Involvement of women in local institutions does need emphasis and support. However, the cultural influences that suppress women's involvement in decision-making structures will make it difficult for women to play their role effectively in such a system (Asmare, 2016). Strengthening women's organisational capacity should be prioritised such as in women's associations. These can create a conducive atmosphere for women to air their problems freely. Such associations could empower women to deal with legal aid issues and gain better negotiation power within the local administration system including the social court. Therefore, education and sensitization programs should be developed. This can be made by deconstructing the hidden factors of customary, religious or other causes which are instruments of oppression. Enhancing the capacity of the land administration experts and kebele and woreda courts through training and education is a requirement.

#### **4.7 Conclusion and Recommendation**

The current domestic legal frame work governing access to land in Ethiopia includes the FDRE Constitution, the federal and regional land laws and international conventions ratified by the country. Since Ethiopia is a federal government, in addition to the constitution there are federal and regional proclamations on rural land. Currently, almost all the regions except Harari region have promulgated land laws. Though there is no clear indication as to which groups should be considered vulnerable in Ethiopia, the groups mentioned under section two are practically considered vulnerable. These groups in Ethiopia include women, orphan children, HIV/AIDS victims, pastoralists, poor peasants, persons with disabilities and the urban and rural poor. Moreover, no proclamation in the country has listed who vulnerable groups are.

Only a single proclamation i.e proclamation number 916/2016 tries to highlight the presence of some fabric of society who are considered as vulnerable without further explanation under its article 34/13/c. However, the National Social Protection Policy of Ethiopia identified the types of vulnerability prevalent in Ethiopia including agricultural vulnerability, natural calamities, economic shocks, health and nutrition risks, demographic vulnerability/population explosion. Elderly, HIV victims, disabled and unemployed are the groups of vulnerability. Inadequate legal and institutional regime, customary practices, lack of political will and land administration shortcomings are among the causes of vulnerability in Ethiopia.

Therefore, addressing such main causes of vulnerability requires nothing beyond alleviating problems related to the legal shortcomings, the inadequacy of legal and land experts, corruption and political reluctance, patriarchal customary practices and bad system of land administration. The government should, therefore, give a serious emphasis in these respects.

# CHAPTER 5

## ACCESS TO LAND FOR WOMEN IN KENYA

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### Executive Summary

This country report presents the results of a short research project on Access to Land for Women in Kenya, as part of a wider, similar investigation in the countries of Eastern Africa in a research that was commissioned by the Eastern Africa Land Administration Network (EALAN).

The objective of the research was to establish, in terms of access to land by women, what the key problems are, their causes, current interventions, the outcomes of those interventions, the challenges met in making those interventions; and to propose ways forward. Three Community Based Organizations (FIDA Kenya, Kenya Land Alliance and GROOTS Kenya) and two Public Institutions (Ministry of Public Service, Youth and Gender Affairs and the National Land Commission) were visited for interviews/written material, while other material was also sourced from publications and the internet.

The research has shown that Kenyan women enjoy formal rights in less than 5% of registered land, which falls far below most international (e.g. SDG 5 on gender equality) and even regional (e.g. the AU gender policy) standards. This is so even as the bulk of economic activities on the land are carried out by women. Factors responsible for this state of affairs were found to include long standing discriminatory patriarchal customary systems in most of Kenya's communities, limited awareness among many women as to their rights, discriminatory and corrupt public officials, expensive legal redress systems, some gender insensitive laws, and women's fear of retribution (such as physical and sexual violence) if they insist on exercising their land rights.

Current and continuing interventions by diverse players from all sectors include efforts to increase the literacy and awareness of women about their rights, economic empowerment of women and advocacy towards improvements in some existing good practices or erosion of some customary practices (such as wife inheritance); and amendment of some relevant laws (such as family law

and succession law). In particular, there are concerted efforts to see that the two thirds gender rule, provided for in Article 27 of Kenya's Constitution is implemented in the constitution of diverse Land Institutions or Boards.

Future success will depend, among others, on increased representation of women in relevant institutions, improved women-friendly customary practices and increased advocacy for women's land rights.

## 5.0 Introduction

### 5.0.1 Background

The Republic of Kenya has an area of about 582646 sq. km and a current population estimate of about 47.6 million . 75% of the population occupies about 20% of the country, which may be classified as medium and high potential areas for agriculture. 78% of the population is rural and agriculture provides employment to 70% of the labour force. The Constitution of Kenya (2010) stipulates that all land in Kenya belongs to the people of Kenya collectively as a nation, communities and individuals and may be classified as public, community or private. The Constitution of Kenya (2010) has brought sweeping changes to land administration arrangements in Kenya and has resulted in many new land laws and institutions that have replaced those that existed prior to 2010.

### 5.0.2 Categories of Land in Kenya

Of the three categories of land in Kenya, public land comprises 13%; private land 19% and community land 68% of the total land area. With time it is expected that the proportion of private land will increase while those of public land and community land will decrease, due to alienation of public land and progressive registration of community land after the process of land adjudication. Public land includes unalienated land that is lawfully held, used or occupied by a State organ, national parks, sanctuaries and game reserves. It also includes all main roads, rivers, lakes, water bodies, territorial sea, exclusive economic zone, sea bed, continental shelf and the land between low and high water marks. Public land includes any land not classified as Community land or Private land under the Constitution. The specific type of public land determines whether the people of Kenya entrust that land to the National government or the County government of the County in which the land is situated.

Community land is vested in communities which are identified based on ethnicity, culture or similar community of interest. Community land includes land registered in the name of group representatives or transferred to a specific group or community,

ancestral lands as well as lands occupied traditionally by hunter-gatherer communities. Community land also includes land managed by specific communities as community forest, grazing areas or shrines, land held in trust by County governments (excluding public land that is held in trust); and land that is declared to be community land by Parliament. Private land includes registered land held by any person under any freehold or leasehold tenure and any other land that is declared private by Parliament.

### 5.0.3 Land ownership by women in Kenya

Data on women's participation in land use and ownership indicates that even though it is estimated that the number of women is very close to that of men (50.3%: 49.7%), only 5% of land title deeds in Kenya are held by women jointly with men, and only 1% of land titles in Kenya are held by women alone. 89% of the subsistence farming labour force is provided by women and 70% of labour in cash crop labour production is provided by women. It is also estimated that about 32% of households are headed by women.

Further statistics released, after an audit of over one million titles issued by the Government of Kenya between 2013 and 2017, by Kenya Land Alliance in March 2018 showed that women were allocated 10.3% of the titles while men were allocated 86.5% of the titles. A further analysis covering 47 Land Registries in Kenya revealed that out of 10.1 million hectares of land that is titled, women own only 1.62% of the land area while men own 97.7%. From the foregoing statistics, it may be observed that women's proprietorship of land remains very limited, yet their access to land determines not only women's and households' level of living and livelihood, but also food security in the country.

Delay in full realization of women's property rights has consequences with regard to the economic development of Kenya.

### 5.0.4 Aim and justification of the research

The aim of this research was to understand land administration shortcomings that affect access to land for women in Kenya. The research was based on "the chain of justice framework" that uses a gender and rights based approach to understand injustices. The framework explores the different failures which women and men experience in the process of claiming and realizing their rights in the justice system. The framework is used for exploring the failure of recognition and redistribution and for determination of the root causes of the failures. The initial assumption in the study was that though laws and regulations in Kenya that grant women equitable access to land are in existence, some shortcomings in

land administration affect equitable access to land for women.

It is therefore expected that the results of this research will provide various stakeholders with better understanding of issues and challenges that need to be addressed, and possible solutions to these challenges, in order to achieve equity in access to land for women in Kenya and in the Eastern Africa Region.

### 5.0.5 Scope and limitation of the study

The study was limited to enquiries directed to three Civil Society Organizations and two public institutions that deal with women's access to land and property and which are well known for advocacy of the rights of women. The scope of the study was centred on questions related to identification of the problems; the root causes of the problems; interventions by these organization to deal with the problems and how the interventions addressed the root causes of the problems.

Further questions probed key outcomes of the interventions and key challenges that were faced during the implementation process. The organizations were also requested to indicate future plans that they were making as a result of the outcomes from implementation of these interventions.

## 5.1 Conceptual framework and methodology

### 5.1.1 Conceptual framework

The UNDP Sustainable Development Goal 5 (SDG 5) addresses the issue of gender equality and ending of discrimination against women and girls and states that gender equality is not only a basic human right but it is crucial for a sustainable future.

Unequal property rights in land are in violation of international, regional and national laws that recognize the rights of men and women to be equal. International instruments include the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), The Universal Declaration of Human Rights (UDHR) 1948, The International Covenant on Economic, Social and Cultural Rights (ICESR) 1966 and the Beijing Platform for Action (BPFA) 1995. Regional instruments include the African Charter on Human and People's Rights (ACHPR) 1981, The Common Market for Eastern and Southern Africa (COMESA) Gender Policy and the East Africa Community Treaty. Since the Constitution of Kenya (article 2) states that general rules of international law shall form part of the law of Kenya, Kenya is obliged to consider and follow the general guidelines on equitable rights for women contained in those documents.

In October 2016, Rural Women Assemblies and Women Farmers' Forums from twenty two (22) African Countries launched the "Women to Kilimanjaro Charter of Demands: Actualizing Women's Land Rights in Africa". Thus the discussion of women's equitable access to land in Kenya has many similarities in terms of opportunities and challenges as in a number of other African countries.

### 5.1.2 Methodology

This study was conducted through interviews and literature search based on materials sourced from the internet, conference proceedings and monographs. The authors conducted interviews with officers in some civil society organizations (CSOs) as well as public institutions that deal with issues of women's land and property rights in Kenya. The information gathered was then processed to give a better understanding of women's access to land in Kenya. Since this study is part of a larger comparative study of access to land in the Eastern Africa Region by EALAN (Eastern African Land Administration Network), research questions that were used were the same as those used in the other participating countries that include Tanzania, Uganda, Ethiopia, South Sudan, Democratic Republic of Congo (DRC), Rwanda and Burundi.

### 5.1.3 Civil Society Organizations

Information from interviews, focus group discussions and materials from civil society organizations in this study was mainly obtained from FIDA Kenya, GROOTS Kenya and Kenya Land Alliance.

The mission of Federation of Women Lawyers (FIDA Kenya) is promotion of women's individual and collective power to claim their rights in all spheres of life. FIDA Kenya's vision is of a society that respects and upholds women's rights. FIDA Kenya's core values include being women centred; having professional rigour; being transparent and accountable; learning and promoting a culture of inquiry; having respect for diversity; and utilizing teamwork and collective good.

Grassroots Organizations Operating Together in Sisterhood (GROOTS Kenya) is a national movement of women-led community-based organizations (CBO) and self-help groups (SHG) founded in 1995 after the 4th UN Conference on Women in Beijing. It is a grassroots women's movement, building and organizing with a membership of 3,500 women-led groups in a number of Kenyan counties. These counties include Kakamega, Nairobi, Kitui, Homabay, Kilifi, Kiambu, Laikipia, Marsabit, Isiolo, Nakuru, Nyandarua, Muranga, Machakos, Vihiga and Busia. It was formed to empower grassroots women to shape community development

and governance. Its core mandate is to advocate for accelerated realization of gender equality and women empowerment with particular focus on grassroots women. GROOTS Kenya is a member of Land Sector Non State Actors and International Land Coalition.

Kenya Land Alliance is a leading CSO (Civil Society Organization) in Kenya that is making efforts for women to realise land and property rights. It is currently involved in a project known as Women Land and Property Rights Project (WLPRP) in ten (10) counties of Kenya. These include the six (6) Coast counties of Taita Taveta, Kwale, Mombasa, Kilifi, Tana River and Lamu. The other counties include Meru, Tharaka Nithi, Kitui and Kisumu. It emphasises equitable distribution of resources for men and women with regard to ownership of land and property and seeks to address the gap that exists between the provisions for women's rights in land and property as provided in the Constitution and existing laws and the actual situation.

### 5.1.4 Public Institutions

Two public institutions were visited and interviews carried out to understand the programmes that they implement to support equitable access of women to land and property. The first organization was a National Government Ministry, The Ministry of Public Service Youth and Gender Affairs, while the other organization is an independent Constitutional Commission, The National Land Commission.

Interviews were conducted with some officers in the State Department of Gender in the Ministry of Public Service, Youth and Gender Affairs on issues of equitable access to land and property for women. The Ministry states that its mandate is to play an important role in providing policy direction and management of the human resource function in the public service, as well as promotion of gender equality and empowerment of women and youth. The State Department of Gender in the Ministry deals with gender equality, women empowerment and gender based violence.

The National Land Commission (NLC) is an independent Constitutional Commission that derives its mandate from the Constitution of Kenya 2010, the National Land Commission Act 2012, The Land Act 2012, the Land Registration Act 2012, the Community Land Act 2016 and the National Land Policy 2009. Among its mandates is the management of public land on behalf of National and County governments. The National Land Commission states that its mission is to implement an efficient administration and management of land



for sustainable development. With regard to women's equitable access to land and property, the Commission focuses on strengthening the knowledge of women in accessing and defending their land rights at the local level.

## 5.2 Problems that affect equitable access to land for women

Qualitative analysis and findings in this study were based on *"the chain of justice framework"*. Research questions focussed on the problems that are most commonly reported to each of the organizations and identification of the root causes of the problems. Organizations that were consulted in this research were then requested to explain the interventions that they undertook to address the problems and their assessment of how the said interventions addressed the root causes of the problems. Further enquiry was made regarding identification of the key outcomes of the interventions; the key challenges that are faced during the implementation process; and future action anticipated as a result of the outcomes of the interventions.

### 5.2.1 Problems and their root causes

FIDA Kenya states that despite the new laws, women in Kenya still have to fight for land rights. Even after the passing of the Matrimonial Property Act 2013 that gives spouses equal rights on their enjoined property, the masculine traditions and lack of awareness leave many women ignorant in fighting for their legal rights. In Kenya a woman's right to own property, inherit and manage or dispose of her property is usually under attack from customary practices because the woman is only granted secondary rights to land and property through male relatives. According to FIDA Kenya's Access to Justice Program, most women are not aware of provisions provided for them by the new law. Unfortunately, the Matrimonial Property Act only applies to property acquired in partnership and not ancestral property. Rights experts claim that the implementation of the Matrimonial Property Act and other women's land rights' laws are still slow; especially in rural parts of the country where patriarchal traditions and community justice systems often override the national legislation.

During the interviews at the Ministry of Public Service Youth & Gender, problems that were identified included low literacy levels among women, registration of ownership to land being biased towards men; and the cultural patrilineal problem of women not being regarded as equal to men in the matter of land inheritance. The main causes of the problems of unequal access to land for women were identified as cultural beliefs and practices in many communities in Kenya,

socialization, and lack of empowerment of women by society. Women's lack of skills and managerial practices and training in demanding their rights to access to land and property were also identified as causes of inequitable access to land for women.

Responses from the National Land Commission indicated that some of the causes for lack of equity in access to land for women include:

- a) Male dominance in land management issues due to suppression of the woman's voice by society as well as government
- b) Lack of awareness of the rights that women should be enjoying due to illiteracy
- c) Laxity in implementation of laws and regulations that favour empowerment of women in equitable access to land.
- d) Women's fear due to hostility that they might encounter in the process of demanding for their rights

### 5.2.2 Interventions to empower women

#### 5.2.2.1 Civil Society Organizations

FIDA Kenya has been using media talk shows and legal aid open days to raise awareness among women about their property rights. This includes educating women on the importance of joint registration of property that has been acquired together for safety purposes. The organization notes that for Kenyan women to get their full benefits of the law, they need to be willing to pursue their rights despite the cultural restrictions that they face. FIDA Kenya has also noted that many women often regard belonging to a community or a family as more rewarding than having property. Such women prefer community and family support rather than seeking legal redress over matrimonial property.

In 2005, GROOTS Kenya developed its flagship program, known as the *"Community Land and Property Watch Dog Model,"* in response to growing concerns that women were being disinherited, exacerbating the spread of HIV. The model is operationalized as Watch Dog Groups (WDGs) at the local level and comprises of volunteer women and men, including community health workers, traditional leaders, trained paralegals, and government stakeholders. WDGs have been implemented in more than 30 locations in Central and Western Kenya, and have managed more than 200 cases of women's property rights violations. The Community Watch Dog Committee (CWDG) monitors women's disinheritance locally; mediates land disputes; refers unresolved cases to formal adjudication mechanisms; and raises awareness of women's rights, including

women's land tenure and property rights, violence against women, and HIV risks. Women have identified four reasons to explain their perception that reductions in sexual and domestic violence had occurred, as:

- (i) Improved individual- and community-level knowledge about women's rights and violence against women provided through education and discussion at community barazas,
- (ii) Existence of a community-based mechanism for reporting cases of violence,
- (iii) Responsiveness of the CWDG to cases of violence, and
- (iv) Fears that possible perpetrators had about the legal consequences of perpetrating violence.

In 2012 GROOTS Kenya developed the well documented "*Community-led Public Land Mapping model*", to empower local communities to safeguard public land in Kenya from land grabbers: it involves targeted and sustained civic education to increase citizen pressure for successful land reform.

GROOTS Kenya has also implemented different community-led tools which have mobilized rural communities through:

- (i) Building consciousness among the women population on their rights and the underlying obstacles
- (ii) Getting men to understand the in-depth/magnitude of the inequalities facilitated by lack of land rights for women and how this impacts their own livelihoods.
- (iii) Developing tools/models for community organizing

Kenya Land Alliance has aggressively embarked on a project known as *Women Land and Property Rights Project (WLPRP)* which consists of the following activities:

- a) Public education and raising of awareness on women land rights: These include explanation of the women land rights as set out in the Constitution and existing legislation. Women are trained so that they may train other women (training of trainers) who, in turn, are expected to become active agents (individuals) and movements (groups). This is also done in forums such as workshops and barazas (public meetings)
- b) Dialogue forums with "community gate keepers": These community "gate keepers" are those leaders in the community who command respect and influence. Engagement in this respect has involved the Council of Elders of Njuri Ncheke (Meru and

Tharaka Nithi Counties) and the Luo Council of Elders (Kisumu County). These dialogue forums also include religious leaders, local leaders (including Chiefs). Kenya Land Alliance also works with local politicians (Women representatives, Members of Parliament and Members of the County Assemblies). In these engagements Kenya Land Alliance is a facilitator and avoids political profiling

- c) Development and dissemination of Information, Education and Communication materials
- d) Carrying out research to inform Advocacy Campaigns
- e) Encouragement of women to support each other economically (such as through "merry-go-round" groups) so as to deal with costs relating to court cases on land and property.
- f) Holding Stakeholders Bi-annual meetings
- g) Media Campaigns through Print and Electronic means. KLA supports and pays for Radio programmes and talk shows that support empowerment of women to enjoy equitable access to land and property, particularly on local vernacular radio stations.

Kenya Land Alliance has trained over 600 women on land and property rights and the concept of women land rights has gained popularity among elders, with some elders persistently and consistently defending women's land rights. The organization further states that it has built and strengthened partnerships with government ministries and agencies as well as local and international civil societies. KLA further states that the focus on women's land rights has received increased media attention resulting in greater appreciation of the need to secure land rights for women.

#### 5.2.2.2 Public Institutions

Some of the interventions that the Ministry of Public Service, Youth and Gender Affairs has effected in order to empower women to have equitable access to land and property include the following:

- (a) The Government of Kenya gives women access to preferential opportunities to access government procurement opportunities after getting an Access to Government Procurement Opportunities (AGPO) certificate.
- (b) Ensuring that the "two-thirds" rule that facilitates inclusion of women in land issues, particularly in elective or appointive bodies is adhered to.

- (c) Media publications at grassroots level and encouragement of registration of women groups to enhance communication on women's rights
- (d) Establishment of the National Government Affirmative Action Fund (NGAAF), which is a fund that is administered in collaboration with Women Representatives (who are Members of Parliament), to facilitate support and empowerment of vulnerable groups
- (e) Economic empowerment of women through the Women Enterprise Fund (WEF). WEF is a fund that is set up specifically for women, and which offers loans to women at subsidized or zero interest rates. Women can form groups to access funding from WEF for acquisition of property.

Some of the interventions that the National Land Commission has undertaken to empower women to access land and property include paralegal training to enhance women's understanding and acceptance of their rights in land and property; encouragement of women-groups to actively participate in dissemination of information to women on their rights; and making land laws and policies available to communities. Other interventions include improvement of land rights for women through legislative and other mechanisms and civic education on land laws through local administration, NGOs, CSOs and other local leaders such as village elders and heads of women groups.

### 5.2.3 Key Outcomes from the interventions

Ministry of Public Service, Youth and Gender Affairs indicates that more women have become enlightened and are willing to take opportunities that are offered to them for empowerment for equal access to land and property. It is also noted that women are increasingly getting appointments to appointive bodies under the "two-thirds" rule in the Constitution. Women have participated more effectively in Workshops and Conferences and there is increased uptake of funds by women and women groups, resulting in greater economic empowerment.

The National Land Commission observes that the level of awareness of women rights has increased due to access to information and that the society is increasingly accepting women's rights to land. This is illustrated by instances where society is increasingly willing to grant land to women after intervention; examples include families that are willing to grant land to daughters. Women are more united on advocacy for land rights and discussion on land matters and women's access to land is growing.

### 5.2.4 Challenges in implementing the interventions

According to the Ministry of Public Service, Youth and Gender Affairs, many of the programmes that are designed to empower women to enjoy equitable access to land and property are expensive to implement and involve a lot of bureaucracy. Women still experience challenges when dealing with issues of succession (particularly with regard to land) mainly because of lack of adequate support from the relevant institutions at various levels.

National Land Commission stated that the level of advocacy on women's land rights by both women and men faces a challenge and requires up-scaling and escalation. Advocacy on equitable access of women to land faces challenges due to complications brought about by culture, religious beliefs and selfishness. Illiteracy concerning women's rights is still a challenge and mobilization of women's groups is often difficult owing to the nature of women's responsibilities in their homes. Rural women fighting for their rights often live in fear and there is often conflict between customary law and existing statutes

### 5.2.5 Future Action to realize equitable access to land for women

All the organizations that were interviewed indicated that a lot of effort is required to popularize the agenda for equitable access of women to land. Future action includes working through grass-root movements, community leaders and economic empowerment of women. Educating women regarding their rights and encouraging them to fight for their rights was also cited as an important continuing future action. Some of the organizations indicated the need to involve "community gate keepers" and community leaders to accomplish greater results.

FIDA Kenya indicated the need to involve village elders and chiefs to work through alternative justice systems to ensure that women understand their rights and the gains they have achieved under the current laws. GROOTS Kenya states that it has seen steady grassroots/local movements make good progress in protection and promotion of women land rights with greater success despite the challenges of limitations in scale. GROOTS Kenya identifies a need to continually monitor progress on the issue of equal land rights for all. For effective progress monitoring, official data that is desegregated in terms of gender and age is required so as to support meaningful engagement on inclusion, equal access and control of land. Kenya Land Alliance mentioned that in future it will continue to focus on programmes that empower women to enjoy equitable access to land and property. It will

also continue to work with other CSOs (such as GROOTS Kenya, Action Aid, Daughters of Mumbi and FIDA Kenya) to ensure the implementation of the Kilimanjaro Charter (Women's Land Rights Charter).

The Ministry of Public Service, Youth and Gender Affairs indicates that it will continue to sensitize women about land and property, including their rights and how to access the rights. Programmes that encourage economic empowerment of women will also be escalated. The National Land Commission mentions that it will continue to apply land management and administration support to empower women's access to land. The Commission indicates that it will focus on capacity building for all people at all levels, from the national level to the grassroots level.

### 5.3 Discussion of findings

Findings indicate that the Civil Society Organizations and Public Institutions, which are considered in this research, are actively working towards empowerment of women for equitable access to land and property, and making timely and effective interventions.

#### 5.3.1 Gaps in access to land and property by women

There is clearly a gap between the access and inheritance rights that are enshrined in the constitution, land laws, family laws and the reality that women generally face. Women's rights to property are unequal to those of men in Kenya. Women's rights to own, inherit, manage, and dispose of property are under constant attack from customs, laws, and individuals. Some manifestations of factors contributing to this gap include cases related to:

- (a) Inheritance from husbands: Widows often face eviction or harassment from their "in-laws" who often seek to evict them from their land, especially if they have no male child, often with the objective of taking the land and other property from them. Practices such as those related to wife inheritance often require widows to engage in risky actions in order to be permitted to keep their property.
- (b) Unequal inheritance from parents. Sons are often given larger shares of family land while daughters receive less or no inheritance of land in many communities.
- (c) Unequal division of property upon divorce or separation. Divorced and separated women are often expelled from the family land or may not get the share that they deserve of land and other property after divorce or separation.
- (d) Married women's lack of control over property. Men are typically the registered landowners holding title

deeds to land: and although there is a requirement to get their wives' consent for sale of land, ignorance of women regarding their rights, fear of men and some men's collusion with corrupt officials often results in women not exercising their rights in land.

#### 5.3.2 Hindrances to equitable access to land and property rights by women

A number of factors and obstacles that have made it difficult for women to realize equitable access to land and property rights in Kenya have been identified by various organizations and researchers. These include:

- (a) Discriminatory Customary Practices. Many customary practices emanate from cultural beliefs under customary law which have roots in patriarchal traditions whereby men inherit and control land and other property.
- (b) Lack of awareness by women of their rights in land and property as well as awareness and possession of the means to enforce these rights. Many women lack knowledge of laws concerning purchase, acquisition of land and processes of land registration. When widowed they have difficulty in pursuing succession procedures, making them vulnerable with regard to claiming property left behind by their deceased husbands. Laws are drafted in technical language, not easily understood by women, particularly where illiteracy is high.
- (c) Discriminatory official responses. Cultural discrimination influences official responses to women's property rights. Currently, women find it difficult to pursue remedies for property rights violations. Some leaders and governmental authorities often ignore women's property claims and sometimes exacerbate the problems. A woman seeking the intervention of a local chief or other government official who is influenced by prevailing cultural beliefs, may find that the dispute is not taken seriously. Many chiefs and government officers are men, who tend to identify with, and therefore make decisions that tend to favour men, while silencing women when their rights are infringed upon: this has a disempowering effect on women who seek protection of their property rights.
- (d) Expensive legal system. The legal process is expensive both in terms of time and money: thus becoming a hindrance in accessing justice. Court cases often take too long to be heard and determined and other attendant costs are prohibitive to most women. Even in instances where the judgment that

is delivered is favourable to women, enforcement is difficult and challenging particularly in communities which are hostile to the idea of equal rights for women in land.

- (e) Fear. Women who aggressively fight for their land rights occasionally face hostility and may be subjected to physical or sexual violence, or ostracized. Many women in that predicament may opt to acquiesce about property rights abuses to avoid physical injury to themselves or their offspring.
- (f) Lack of participation in statutory land institutions and boards. Women are not sufficiently represented in boards and institutions that deal with land, leading to insufficient advocacy and protection of their rights.
- (g) Lack of clarity of women rights in community lands. Women rights under communal ownership and group ranches are also not explicitly defined under current statutes, allowing men to dispose of family land without consulting women.
- (h) Discrimination encouraged by the law. According to FIDA Kenya, the existing family laws are not gender sensitive and have contributed towards entrenching discrimination against women as far as their land and property rights are concerned. The Law of Succession Act (Cap 160) allows equal inheritance rights for men and women, yet at the same time excludes specific gazetted districts in which customary law remains supreme. Furthermore, the Law of Succession Act (No. 160) exempts Muslim women from its provisions.

### 5.3.3 Interventions by Empowerment Champions

All of the organizations that were interviewed reported positive results from their interventions but also indicated that a lot more needs to be done for women to enjoy equitable rights of access to land and property in Kenya. Some of the interventions that were mentioned include:

- (a) Increasing the literacy levels of women about their rights. This can be done through public meetings (barazas) and workshops
- (b) Reaching out to community leaders and people of influence (particularly men) and enlisting their support in educating communities on the rights of women. These leaders include religious leaders, political leaders, community elders, women leaders and local administration officials, among others

- (c) Use of media to reach out to communities. This can be done through local radio stations and print media
- (d) Training of individuals and groups of women to operate as active change-agents and movements
- (e) Formation of women groups for economic empowerment so that the women are able to support each other financially in the fight for their rights
- (f) Advocating for amendment of laws that are unclear or do not grant women equitable rights to land and property
- (g) A unified approach by CSOs, NGOs and public institutions in advocacy and demand for equitable access to land by women. Examples of this include Rural Land Women's Charter of 13 October 2016. This approach would be particularly useful when these organizations require data and other relevant information from government institutions
- (h) Women should comprise at least one third of appointees to relevant elective or appointive positions under the "two thirds" gender rule in the Constitution

## 5.4 Conclusion and Recommendations

### 5.4.1 Conclusion

This investigation has established that Kenyan women enjoy formal rights in no more than about 5% of registered land. Long established patriarchal customary practices, lack of awareness, discriminatory and corrupt public officials, expensive legal redress systems, fear of retributions and inadequate representation have been cited as key impediments to the achievement of equal land rights for women. Some possible measures in mitigation of this situation include implementation of the constitutional two thirds representation rule, improvement of literacy and awareness amongst women, and greater economic empowerment of women.

### 5.4.2 Recommendations

It is recommended, for greater enjoyment of land rights by Kenyan women, that:

- (a) The constitutional provision on fair gender representation be quickly implemented in general, but more specifically in the constitution of the key land institutions and statutory Boards,
- (b) Deliberate steps should be taken to break down

retrogressive customary practices that perpetuate the discrimination of women in land ownership.

- (c) Current interventions should be tested for adequate sensitivity to women using tools such as the one developed by the Global Land Tool Network (GLTN) ([www.glt.n.net](http://www.glt.n.net)) for the purpose, and improved where necessary.

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## People interviewed

Naomi Lanoi	- Kenya Land Alliance
Magdaline KipKemei	- Ministry of Public Service Youth and Gender
Catherine Kayaro	- Ministry of Public Service Youth and Gender
Eliud Mutwiri	- Ministry of Public Service Youth and Gender
Dr Fibian Lukalo	- The National Land Commission
Mitchelle Oyuga	- FIDA Kenya
Esther Ogega	- Ministry of Lands and Physical Planning

# CHAPTER 6

## WOMEN'S ACCESS TO LAND: A CASE STUDY OF RWANDA

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### Executive Summary

Access to land and productive resources for women is low in many countries especially in the developing world where there are less secure property rights in general. Counteracting this trend requires commitment of governments and gender sensitive legal framework as fundamentals to strengthening rights to land especially for women. The aim of this study is to assess the land administration shortcomings that affect access to land for women in Rwanda.

The data were collected using both secondary and primary methods to gather relevant data from different sources. The secondary sources used are different legal instruments governing land in Rwanda, published journal articles, and published reports from commissioned studies, books and other online publications. Primary sources comprised key informants and focus group discussions. Key informants were leaders and specialists at various levels, both governmental and nongovernmental. Semi-structured interview guides were used with key informants. Participants in the focus group discussions included Cell executive secretaries, land committee members, mediation committees, Village leaders, women representatives and other knowledgeable community members. A checklist of questions was used but participants were allowed to discuss pertinent topics of their interest.

The study found out that the legal framework provides equal access to land for both men and women. Legally married women under the community of property regime have a 50% joint share with their spouses. It was also found that about 50% of registered land in Rwanda is jointly owned while 19% is solely owned by women. The government has established institutional framework and mechanisms that support implementation of legal provisions. Nongovernmental organizations and civil society based organizations contribute to the implementation through raising awareness, training and advocacy.

However, there is a problem of women in consensual unions whose rights to marital property are not protected by law. This renders such women vulnerable in cases of separation or death of their spouses. Although many of such spouses have been encouraged to legalize their marriage, some still exist and more are established. The land committees urge such women and men in

consensual union to at least jointly register their land. The main challenges are limited knowledge about laws, persistent cultural practices and administrative constraints in some cases.

There is a need to discourage consensual unions and establish mechanisms to strengthen rights of women in such relationships; continuous awareness campaigns about the law on matrimonial regimes, successions and donations, especially the aspect of succession. There is also a need to decentralize further land administration services to the Cell level, or at least recruit more staff at the Sector that would work with the land manager to reduce the workload.

## 6.0 Introduction

### 6.0.1 Background

Women's access to land and other productive resources is low in many countries, especially in the developing world where there are less secure property rights in general (FAO, 2011). Improving women's access to land and control power over economic resources has been an important agenda of both the African Union and the United Nations due to believed contribution to the achievement of various development goals, including poverty reduction and economic growth. Securing women's rights to land, particularly rural women, is a strategic way forward to reducing hunger, malnutrition, and poverty at household level (FAO, 2011).

Government commitment and gender sensitive legal framework are fundamental to strengthening women's rights to land, especially in countries where women have been traditionally marginalized through gender discriminative cultural practices. In Rwanda, land rights have generally evolved since the past two decades. Currently, Rwanda's story on land reform and gender sensitive laws is considered a success on the African continent. This kind of success is evidenced by the fact that Rwanda is a second country in Africa, after Mauritius, in easy doing business and faster property registration (The World Bank, 2018). Land reform in Rwanda, through the Land Tenure Regularization Program (LTRP), not only made doing business easy but has also strengthened access to land for both Rwandan men and women.

### 6.0.2 Land Tenure Regularization in Rwanda

The 2004 Land Policy, the first of its kind in Rwanda, and the subsequent organic land law of 2005 (revised in 2013), have abolished the dual land tenure system that had existed since colonial period. Before colonization, Rwanda had a customary land tenure system where the king had the supreme power over land. Under the king

there were chiefs who could allocate land to people. The allocated land could be inherited from father to son. During colonial period and the period after, another system of registering land emerged in towns. This led to the creation of a tenure system known as statutory, in addition to the customary system that existed in rural areas. Owing to the various problems related to land and land use in Rwanda, especially in the aftermath of the 1994 genocide against Tutsis, the government established a land policy that made land registration mandatory.

Land registration in Rwanda started as a pilot project in 2006 in some parts of the country. The experiences from the pilot registration informed the nationwide land registration process that started in 2009 and completed in 2013. The registration of land has increased the value of land and boosted the land market in Rwanda. Landowners can use land as collateral to get bank loans. The land administration information system is currently linked with databases of the other institutions, such as the Rwanda development Board, banking institutions, City of Kigali, land valuation system, among others. This has boosted investment, reduced losses that banks used to make, contributed to proper land use planning and facilitates real property valuation.

### 6.0.3 Women's access to land in Rwanda

Land governance in Rwanda has been characterized by major shifts since 1994. The shifts were marked by the adoption of various land policies and laws governing access to property. These include the constitution of the Republic of Rwanda of 04/06/2003 (revised in 2015); the National Land Policy of 2004; the Organic Land Law determining the use and management of land in Rwanda of 2005; the law relating to land expropriation in the public interest of 2007 (revised in 2015); law on matrimonial regimes, liberalities and successions of 1999; the Land Law of 2013, repealing organic law of 2005 determining the use and management of land in Rwanda, and the 2016 law governing matrimonial regimes, successions and donations, repealing the 1999 law on matrimonial regimes, liberalities and successions. This legal framework complementarily determines the different ways of accessing, using, managing, transferring land rights and protection of property rights. Unlike in the past, the current legal framework provides for equal rights to land for both men and women. For instance, the land law of 2013 in article 4 provides for equal rights to land. It states, *"all forms of discrimination, such as that based on sex or origin, in relation to access to land and the enjoyment of real rights shall be prohibited. The right to land for a man and a woman lawfully married shall depend on the matrimonial regime they opted for."*

A wife and her husband married under the community of property regime have equal rights over all family property, including land. During land registration, both names of the wife and husband under this regime appear as co-owners with 50% share each. The law of 1999 on matrimonial regimes, liberalities and successions provided for equal inheritance rights of the deceased parents' property for both male and female children.

According to the land law in Rwanda, women like men can access land through buying, renting, donation, inheritance or succession. The law recognizes the right to land obtained through any of these ways, provided that the claimant has enough supporting evidences. Most women access land from their husbands through marriage, and through succession. This makes the land law and the law governing matrimonial regimes, succession and donations more important assessing the extent to which women access land in Rwanda.

Some studies conducted on land tenure and women's access to land in Rwanda show that despite the increased security of land holders and protection of women's land rights e.g. (AfDB, 2016), challenges that affect full access to land by all categories of women still exist. Such categories of women that still struggle to secure access to land include those in informal marriages/de facto unions, and polygamous marriages (Hughes, Ndagiza, & Ikirezi, 2016). The focus of this study is threefold: first, to identify problems that women face towards accessing land, second is to examine the root causes of the problems, and third is to investigate the interventions made to address the problems.

### 6.0.4 Aims of the Study

The main objective of this study is to assess the land administration shortcomings in Rwanda that affect access to land for women. The study has four specific objectives as follows:

- i. To identify problems that affect women's access to land in Rwanda.
- ii. To evaluate the intervention mechanisms towards strengthening women's access to land.
- iii. To examine the key challenges that women face towards accessing land.
- iv. To find out the way forward.

### 6.0.5 Scope and Limitation

This study focuses on the legal rights of women to land in Rwanda, the implementation practice of such rights, challenges faced and the way forward. It does not include either the economic aspect of holding land by women or the decision-making about land use. The



study did not also include other vulnerable groups due to limited time and resources. Due to limited financial resources, the study was limited to selected areas in three provinces of Rwanda. The population involved was limited to selected individuals who formed the focus group discussions and key informants, using a qualitative approach. We did not hold interviews with individual women to solicit their perception and experience.

## 6.1 Methods

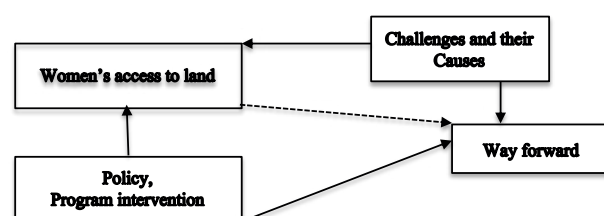
### 6.1.1 Conceptual Framework

Since 2004 with the establishment of the first ever land policy in Rwanda, both female and male Rwandans have equal access to land. This fundamental right is enshrined in the Rwandan constitution of 2003 as amended in 2015. Article 34 of the constitution guarantees rights to private property for everyone, whether individually or collectively owned. Law N° 43/2013 of 16/06/2013 governing land in Rwanda provides for the right to transfer land between persons through succession, gift, inheritance, ascending sharing, rent, sale, sublease, exchange, servitude, mortgage or any other transaction that is not contrary to the law. Both women and men have this right to acquire or transfer land.

Various studies have been conducted in Rwanda generally about land administration and women's rights to land. Such studies document on the successful transition from customary land tenure system and male dominance over land before 1990's to a more secure land tenure system where all individual land parcels are registered, and where both women and men can either solely or jointly own land. Most studies that have been conducted in the past decade have focused on women and vulnerable groups in land dispute management (Rural Development Institute (RDI), 2008), land reform in post-genocide and peace building (Fumihiko, 2011), policy provisions and recognition of women's rights over land (Uwayezu & Mugiraneza, 2011), making women's rights to land and other resources a reality (UNWomen, 2013), the gendered nature of land and property in post-reform Rwanda (Kelsey, Dick, & Bizosa, 2014), gender impacts of land tenure regularization (Ali, Deininger, & Goldstein, 2014), women's experiences of land rights during land reform (Bayisenge, 2015), policy implementers' experiences of women's land rights (Bayisenge, Hojer, & Espling, 2015), women's experience of gender laws (Kagaba, 2015), the rights of women in unofficial marriages to land and property (Hughes et al., 2016), and gender justice in land conflicts resolution (Uwayezu & Mugisha, 2018). These studies have looked at the rights of women to land in the legal framework of Rwanda and the experiences of women in exercising those rights.

However, few of them have focused on the challenges that women still face despite the legal gender equality to landownership, and the root causes of such persistent challenges. For instance, Kelsey et al., 2014 evaluates the law about matrimonial regimes, liberalities and successions, and other laws that seek to promote gender equality in land rights. They examine rights of different categories of men and women (young, middle-aged, old, single, married, monogamous and polygamous marriages etc.) but they narrowly focus on how the local institutions, like *Abunzi* and land committees, practically address such issues that the various categories of women (otherwise not protected by the law) face, and the different program interventions to address the persistent challenges.

This study focuses on the persistent challenges, either emanating from the legal framework or the law enforcement difficulties due to customary practices or perceived cultural norms by some communities. A broad conceptual framework relating to gendered rights over assets and multiple outcomes has been conceptualized by the Gender, Agriculture, and Assets Project (GAAP) (Meinzen-Dick et al., 2014). This conceptual framework considers women's land rights as being influenced by policy & program interventions that can either promote or negatively affect women's land rights. These influences result in development of resilience to the various shocks. In this study, we adapt this conceptual framework to our main objective (figure below).



**Figure 1: Analytical framework for identification of challenges to women's access to land**

Source: Authors

We hypothesize that strong women's access to land is underpinned by the existing land and gender policies that protect women against discrimination. On the other hand, the lack or existence of gaps in the policies and laws may negatively impede women's access to land. In this study we examine the policy framework and various interventions that aim at enhancing women's access to land in Rwanda, and find out if there are any gaps. We also identify challenges and their causes when it comes to executing women's rights to land in Rwanda.

We end up looking at what needs to be done to overcome the challenges, both in legal and practical terms, so as to enhance women’s access to land in Rwanda.

## 6.2 Actors

The actors in securing, advocating and implementing women’s rights to land in Rwanda are in four categories: government agencies and institutions, NGOs, civil society organizations, and community-based groups. The governmental institutions include central and local institutions. The central ones are Ministry of Lands and Forestry (MINILAF), which is the top government authority in charge of administering land at policy level. MINILAF has an agency called Rwanda Land Management and Use Authority (RLMUA) in charge of registering and administering land at technical level. RLMUA works in collaboration with all the 30 districts in Rwanda to ensure faster and good service delivery to all citizens, including women. At the grass root level, there are land committees at the Sector and Cell levels that work together with the local leaders to implement the regulations about land. There are other actors that intervene during land conflicts. These include the courts at different levels and the mediation committees, locally known as *Abunzi*. The table below shows major actors by category.

		<b>Actors</b>	
<b>Governmental Central</b>	<b>Local</b>	<b>Stakeholders</b>	<b>Partners</b>
Ministry of Lands and Forestry (MINILAF)	District One Stop Centres	Rwanda Water and Forestry Agency (RWFA)	Rwanda Initiative for Sustainable Development (RISD)
Rwanda Land Management & Use Authority (RLMUA)	Sector Land Managers	Private Sector Federation (PSF)	HAGURUKA
Courts	Sector and Cell Land Committees	Rwanda Environment and Management Authority	USAID
Women's National Council	Mediation Committees	Ministry of Agriculture and Animal Resources (MINAGRI)	Search for Common Ground
National Human Rights Commission	Village and Cell leaders	Ministry of Environment	UNWomen
Office of the Ombudsman		Rwanda Development Board (RDB)	DFID
		Ministry of Local Government	
		Rwanda Agriculture Development Board	

Source: Ministry of Lands and Forestry

## 6.2 Data collection methods

The data were collected using both secondary and primary methods to gather relevant data from different sources for our study. The secondary sources used are different legal instruments governing land in Rwanda, published journal articles, and published reports from commissioned studies, books and other online publications. Primary sources comprised key informants and focus group discussions. Key informants were leaders and specialists at various levels, both governmental and nongovernmental. Semi-structured interview guides were used with key informants. Participants in the focus group discussions included Cell executive secretaries, land committee members, mediation committees, Village leaders, women representatives and other knowledgeable community members. A checklist of questions was used but participants were allowed to discuss pertinent topics of their interest.

## 6.4 Primary data

Data was collected in three provinces (North, West and South) and Kigali city through semi-structured interviews with key informants and focus group discussions. In the Western province, data was collected from Ngorero District,

while in the Northern Province data was obtained from Musanze District through focus group discussions with women's representatives from the National Women's Council, Rwandan Women's Network, HAGURUKA and the Women's Legal Rights Initiative.

The focus group discussions comprised of 10-20 participants. A checklist of questions was used to guide the discussions to ensure that major topics were covered. The discussion was kept flexible to encourage the participants to speak on topics of particular interest to them. Semi-structured interviews were also held with key informants from ACTION AID, a nongovernmental organization; Directors of One Stop Centers in Ngorero and Musanze, land officers and lawyers.

In the Southern Province and Kigali City, data were collected from the districts of Kamonyi and Gasabo respectively. In Kamonyi District, two focus groups were formed in two different Cells. The Cells are Kagina and Gihara in Runda Sector. The two Cells were chosen based on the fact that they are generally rural but also with some areas that are urbanizing so fast.

These dynamics are hypothesized to affect land use and tenure security, especially for women. In Gasabo district, also two Cells were chosen in Jabana Sector. The two Cells chosen in Jabana for focus group discussions are Ngiriyi and Akamatamu. Each focus group comprised 6-7 participants. The participants were 2 members of land committee, 2 members of the mediation committee (Abunzi), 1 Village leader, Cell executive secretary, and where possible one community member that is knowledgeable about land rights matters. Semi-structured interviews were held with key informants from Runda Sector, Jabana Sector, HAGURUKA headquarters, Rural Initiative for Sustainable Development (RISD), Rwanda Land Management and Use Authority (RLMUA), and the Ministry of Lands and Forestry (MINILAF).

## 6.5 Analysis method

Data were analyzed qualitatively by examining, comparing and contrasting, and interpreting themes. The different themes emerged from the research questions that guided our interviews and focus group discussions. The analysis examines and interprets the responses and discussions from key and informants and focus groups respectively. Findings from recent studies and legal framework analysis are also used for triangulation.

## 6.6 Findings & Analysis

### 5.6.1 Problems women face in accessing land

Our findings show that unlike five years ago immediately after the systematic land registration, very few cases

are registered about women being denied their rights to land. Currently legally married women have right on their family property. This however depends on the type of matrimonial regime that they have chosen. For instance, spouses who are married under the community of property regime (a contract by which spouses opt for joint ownership of all their property) have a registered equal share of land each. The land title bears both names of the husband and wife indicating that the wife owns 50% and the husband 50% of the land. In this case, neither the husband nor the wife can sell, mortgage, donate or make any kind of transaction without a written consent of the other.

This makes legally married women's land rights under this regime more secure. The Ministry of Lands and Forestry indicates that 11,472,816 million parcels of land have been registered in the whole country, and 5,745,771 parcels are jointly owned by husbands and wives (i.e. about 50%). This implies that rights of women found in this category are legally protected. Another interesting fact is that of the 11,472,816 parcels of land, 2,198,296 are solely registered to women (about 19%) compared to 1,283,551 registered to men (11%). The remaining 20% of the registered parcels of land belong to the government and other entities like religious organizations.

Apart from women legally married, other women in illegal relationships or consensual unions and in polygamous marriages have their rights to family property at risk. This is due to the fact that the law does not recognize them. The law recognizes spouses that are legally married and protects them according to the matrimonial regime they opted for. Although participants in the focus groups and key informants indicated that polygamous marriages have been discouraged and significantly reduced, and that the consensual unions have been encouraged to legalize their relationships, other studies show that informal marriages are still common (Kelsey et al., 2014). The problem surfaces in case of separation or widowhood. Such women in consensual unions also lack decision-making power within their household regarding the use of land, its management and control.

Other problems that some of the women in Rwanda face are related to decision-making about land, inheritance and the high cost of pursuing their rights. These problems are not caused by the legal framework or largely by institutional biases, but rooted in the traditional practices where customarily land belonged to men and women had usufruct rights.

### 5.6.2 Limited knowledge about laws

Even if the law guarantees access rights to land for both men and women, some women are denied these rights by their husbands or relatives due to lack of knowledge about their rights. A woman, especially in rural areas, would lose land rights when she separates from her husband in which case her husband will in most cases retain the land exclusively. This happens especially to women who are in consensual unions. A woman in a focus group discussion in Musanze District shared her personal experience. She said *“I recently discovered that my husband has another wife in another part of the country. We had bought land together during the course of our relationship but the land is registered in his name.”* This woman further revealed that her husband left her and their two children and went to his other wife. In narrating her story, it seems that she has no hope of getting the rights to the land that they purchased together. During this time of confusion on the side of the woman the husband can take advantage and sell the property or register it to the second wife. Although the law does not recognize the consensual relationships, it does recognize children that are born from it. One of the participants in the focus group discussion in Runda sector, who is a member of the land committee, told us that when they receive such a case of a woman who has been living with husband in a consensual union, they ask the husband to jointly register the land with his wife. He added that they could neither allow the man to sell the land nor register it with the second wife. The fact that the woman did not report her case to any authority that can help her, she suffers the risk of losing rights to land that she purchased together with her husband.

### 5.6.3 Persistent cultural practices

The existence of laws has not completely eliminated the traditional practices that have prevailed for many years in the Rwandan culture. Traditionally, men had the overall power to manage land and make decisions about it, and the inheritance of land was from father to son excluding daughters. The daughters could only get land as a gift from their parents or in case they separated with their husbands. In the latter case, the land given to the divorced daughter was called *ingarigari*. Today, some men still feel that they have the supreme power to decide about the use and management of land that is jointly owned with his wife. There are cases where women are compelled by their husbands to sign on documents for mortgage or sell of the land when no prior agreement on whether the mortgage should be sought or the land should be sold. Such women accept to sign knowing their legal rights but still perceiving that a husband has a right to make decisions as head of the household. Some women consent to such transactions

in prevention of domestic violence that come as a consequence of their refusal.

Some women feel uncomfortable to raise disputes with their husbands because of the social shame. Women in a focus group discussion stated that in some cases when a woman raises issues she has with her husband, other women whisper, *“how can she bring family matters out in the public?”* Women fear the consequences of pursuing their husbands or their male relatives in public.

### 5.6.4 Administrative constraints

Rwanda has established an institutional framework that administers land and offer related services. At the central level, there is the land registrar who also maintains the land information system. There are also zonal land registrars in each province and Kigali city who are responsible for their respective provinces. The land administration is decentralized up to the Sector level. A land manager at the Sector works under the supervision of the Director of the One Stop Centre at the district. In the past few years, land services were offered at the district, which was difficult for some people who could travel long distances to the district. Today land administration services such as registration, transfer, subdivision, among others, are offered at the Sector. There are about 24 different forms that are filled by land service seekers depending on what the applicant needs. For instance, a person who wants to transfer rights to land voluntarily through sale will fill a specific form for that purpose. For first land registration (for land that was not registered during the systematic registration) the applicant is required to present a marital certificate indicating if they are single or married. For those who are married they are required to bring their spouses so that they are registered as co-owners. One of the village leaders told us that even those spouses that are not officially married were advised to register land as co-owners. This was successful during the systematic registration because it involved the village leaders and members of the land committee who knew whether someone is married or not (officially or consensual).

However, after the systematic land registration there is a concern about some married men who could buy land and register it without knowledge of the wife. This is a problem especially for the couples married under the community of property regime. In an interview with the land manager at Runda Sector in Kamonyi District of the Southern Province, about the problems encountered in the current land administration procedures, she said that they rarely receive complaints from women about land rights but emphasized the likelihood of problems in the future where women would be filing cases where their

husbands bought land and register it on themselves. She clarified that they no longer ask for a marital certificate when registering land transfers. She gave an example where a married man can buy land and finalize the transfer and registration without involving the wife. When asked about this problem, the acting Director of Land Use and Monitoring unit in the Ministry of Lands and Forestry said that they used to require a marital certificate for all land transfers and registration but they later removed it from the requirements to ease doing business in Rwanda. He however said that they want to include it again as a requirement.

Another problem that was echoed by the participants in the focus groups is the issue of mortgaging land. One of the benefits of land registration in Rwanda is the increased efficiency of the land market and acceptance of land as collateral for bank loans. However, there are cases where a husband and a wife mutually agree to use their property for mortgage and later on fail to pay back the money. This can come from the poor use of the money or can be used as a trick by the husband to get the loan and use the money selfishly. In either way, this has two major consequences. First, when they default the bank sells the property to recoup their money and subsequently the wife loses the rights to land. Second, the children become vulnerable since their rights are not catered for in such cases. It becomes worse when the couple separates or divorces as a result of losing their property; children become victims. There is a related case in Jabana Sector where a man with two wives lost a case in court and during the course of the ruling the man died, leaving two widows and orphans. The property is now being auctioned.

## **6.7 The root causes of the existing problems**

The problems that still exist about women's access to land in Rwanda emanate from ignorance about the laws, persistent cultural practices and the legal framework

### **6.7.1 Ignorance about the laws**

Most of the problems that women in Rwanda face towards enjoying their legal rights to land are related to limited knowledge about the laws. There are various laws that protect women and their children such as the land law, matrimonial regime and successions law; and institutions that can offer help in case there are infringements.

However, when some women are deprived their legal rights to land, they remain silent perhaps due to intimidation from their husbands or other family members. One of the participants in the focus group told us that there are some men who feel that they have

absolute control over land and other resources despite the fact that the land title indicates an equal share of 50% each. From this perception such men decide to sell or mortgage land without consent of his wife and then later wife compelled to sign for the transaction perhaps because her signature is necessary. When women report such cases prior to signing, the sale is cancelled.

### **6.7.2 Traditional gender roles**

Customarily, the Rwandan community embraced the male supremacy in all matters related to decision-making at household level. This perception and practice persist in some areas despite the current era of gender equality. The perception is held both by men and women due to the long-practiced customs. Although such perceptions are greatly changing, there are few cases that emerge in some parts of the country, according to our key informants. The worst thing about this problem is that it is known or reported when it is too late to address it. For instance, if a man decides to use land as a collateral to seek a loan from the bank and later misuses the money, the consequences come to the wife and children after auctioning of the property. In such cases a man may abandon the family's responsibility leaving the wife to toil for the children's survival.

### **6.7.3 Legal framework**

The legal framework in Rwanda does not recognize consensual relationships, although children born from such relationships are legally protected. Couples that are not established before the relevant government authority are considered illegal. Problems emerge when the man decides to sell their land or when they separate. The woman leaves the relationship without anything even if they acquired the land together. Our respondents indicated that this is one of the few problems that still persist. As a solution to this problem, the government encourages the couples in consensual relationships to legalize their marriage. Again, during land registration such couples were advised to jointly register their land together. Where this advice was accepted the problems that would emerge during misunderstanding or separation were prevented.

In cases where a consensual couple acquired land after the systematic land registration, the situation is addressed when one of the partners reports the case. In situations where the woman trusted the husband and allowed him to register land on himself and later the husband decides to sell the property or when they separate, the members of the mediation committee told us that they investigate the case and if they find out that the property was acquired by both the husband and wife, they urge them to settle the matter as co-owners.

## 6.8 Interventions and the key outcomes

The government has put in place various programs aimed at raising awareness of the legal rights to land. The famous campaign program to raise awareness is the 'Land Week'. This is where the land service providers from the ministry of lands, land registrar's office and the district authorities descend to the Sector level to respond to various issues that the citizens face concerning land rights. A major outcome is that citizens get land services during that land week event the same day they request them. Such services include land rights transfer, land subdivision, land registration, among others. According to the Ministry of Lands and Forestry, this program has significantly contributed to updating the land information system through the registration of transactions that were not reported to the concerned authorities. It has also helped reduce land disputes.

Decentralization of land administration institutions and establishment of alternative dispute resolution mechanism have contributed to raising awareness and reduction of the costs of resolving disputes. The law governing land in Rwanda (2013) establishes land committees that are decentralized up to the Cell level, responsible for follow up on land management and use of land. The land committees play a big role in raising awareness about land rights, land law and the land use regulations.

They investigate particular cases and inform higher authorities, which would otherwise be difficult for the latter to investigate. For instance, land committees at Cell level recommend ownership documents that are required by the office of the Sector land manager. They also advise consensual partners to register their land as joint owners to alleviate problems that arise when they separate. The mediation committees, commonly known as '*Abunzi*', mediate civil cases including land disputes. This mechanism is cheap because it is free and very close to the citizens. The establishment of mediation committees has reduced the number of cases that are lodged to the courts.

Most land rights issues are addressed in community meetings known as '*inteko z'abaturage*'. These meetings bring together members of the community to discuss and resolve an issue that has been raised by one of the community members. The good thing of these community meetings is that they are local-based and they know each other very well. Most issues are resolved in these meetings.

Civil society-based organizations have intervened in advocating for land rights to land for women and other vulnerable groups. One of such organizations that we interviewed is Haguruka that offers legal advice to the

victims. They have legal personnel in all parts of the country at Sector level. These personnel are known as paralegals and they provide legal assistance to women and children whose rights have been deprived, including land rights. Haguruka also provides legal trainings to land committees and women associations. Haguruka contributes to raising awareness through different programs, including radio broadcast programs.

## 6.9 Challenges that the implementation processes face

Unlike in the past few years, the implementation process of legal provisions to land access in Rwanda have limited challenges that especially related to lack of awareness and ignorance on the side of citizens, and insufficient resources on the side of the government to adequately implement intervention programs. Particularly, the focus groups and key informants highlighted the following challenges.

### 6.9.1 Illegal marriages

Women in consensual unions or illegal marriages face more problems than those officially married. The former have no legal recognition, and therefore limited protection.

### 6.9.2 Succession issues

According to most participants in different focus group discussion that we held, there is an issue when it comes to sharing of the property by children whose parents have died. The law requires that all children, both male and female, have equal rights to succession of their parents' property but male children feel that they should take bigger portions because their sisters have access to their husbands' property. They also feel that it is unfair to share equally with their sisters to whom a lot of resources are spent to them during their wedding. Another issue is that parents might decide to give portions of their property to their sons as '*umunani*' or inheritance when they are still alive, so that when they die a big part, if not all of the property, will be belonging to the male children. These issues bring conflicts among the children.

### 6.9.3 Expensive awareness-raising campaigns

The acting director of land use planning and monitoring unit at the Ministry of Lands and Forestry revealed that the major challenge in implementing intervention programs is the high cost of campaigns aimed at raising awareness among the citizens about land rights. He gave an example of where radio broadcast campaigns cost millions of Rwandan francs, and the ministry has a limited budget. He also added that limited number of staff at the local levels, especially at Sector level delays service delivery.

### 6.10 Way forward

Land administration services, related legal and institutional framework, and the intervention programs need to be improved regularly to reach the required standards. For instance,

- The different actors in land administration in Rwanda emphasized the need to maintain campaign programs to raise awareness of both men and women about the provisions of the law. The legal framework provides for equal rights to land without any discrimination, but some people are yet to change their mind-set that was shaped by the customary practices.
- The land week campaign has proved to be effective in raising awareness, addressing land disputes and encouraging formal registration of land transactions. The actors that participated in our study revealed the need to decentralize the land week campaign further to the Cell level. The land week is currently held at the Sector level.
- Government agencies, NGOs and civil society based organizations have plans to continue advocacy for equal access to land and trainings of grassroots actors in land administration, especially implementation of the law.
- The 2004 land policy is being reviewed to address existing shortcomings in land administration in Rwanda. It is expected that the revised land policy will be in force early 2019.

### 6.11 Discussion of major findings

Concerning legal framework, both women and men have equal access to land in Rwanda. This equal right is enshrined in the constitution, land policy, land law, and the law on matrimonial regimes, succession and donations. The systematic land registration in Rwanda strengthened women's land rights because their husbands cannot transact them without mutual written consent. Legally married women under the community of property regime have a joint registered share of the land they own with their husbands. The land title certificate indicates both the name of the wife and that of the husband, and a 50% share each. The law on succession provides that when one of the parents dies, the primary heirs are their children, if any. Although the succession law protects children and gives them the priority to inherit their parents, there is a likelihood of making children vulnerable when the spouses could mutually agree to sell their property. This is possible since the land title bears names of the husband and wife only. They can decide any time to sell the land and probably misuse the money.

The institutional framework is strong and relatively decentralized. The land administration services were recently delivered at the district. This was difficult and expensive for many people to register their land. This situation would compel some people into informality and insecurity, especially for women. Currently the land administration services are provided at the Sector level but still somehow difficult for some people especially in rural areas. Moreover, the land manager at the Sector is overloaded as they also have other responsibilities including settlement, infrastructure and housing. This situation hampers good and faster service delivery. Some of our informants and discussants suggested the need to bring the land administration services to the Cell level.

Although Rwanda has achieved tremendously in land administration as also revealed by the literature e.g. (Ali et al., 2014), especially in registering land in the entire country and ensuring security of tenure, and has encouraged formalization of marriages, some consensual relationships still persist. Women in consensual unions lack the full security of access to spousal land. When disputes arise, it is difficult to address them because the law does not recognize such relationships. This finding relates to what was found out by Hughes, Ndangiza & Ikirezi (2016).

There is resistance to the implementation of the law on matrimonial regimes, successions and donations by some people who are still clinging on to the traditional norms. Traditionally, land was inherited by male children only, with the belief that female children would get land from their husbands. Some people still maintain that female children should not inherit their parents' land, which is contrary to the law.

### 6.12 Conclusion & Recommendations

#### 6.12.1 Conclusion

Rwanda has done a lot to ensure access to land by women through establishment of a relevant legal framework. Land tenure security has been improved through the land tenure regularization program that started in 2009 and ended in 2013. Women and men have equal rights to land and other resources. There are various intervention programs that have been developed to raise awareness and resolve emerging disputes. Such intervention programs include advocacy and trainings by civil society organizations like Haguruka, land and mediation committees established by government at the grassroots level to resolve land use issues and disputes respectively, among others. However, there are issues related to consensual unions, ignorance about the laws, and land succession.

### 6.12.2 Recommendations

There is need to:

- i. Discourage consensual unions and establish a mechanism to strengthen rights of women in consensual relationships.
- ii. Raise awareness about the law on matrimonial regimes, successions and donations, especially on the aspect of succession.
- iii. Continuous awareness campaigns about women's rights to land in general
- iv. Further decentralize land administration services to the Cell level, or at least recruit more staff at the Sector that would work with the land manager to reduce the workload.

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# CHAPTER 7

## ACCESS TO LAND FOR WOMEN IN SOUTH SUDAN

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### Executive Summary

This study examines how structural factors, customary law practices, and socio-economic hardship shape women's status and hinder their effective participation in their rights to access and control land in South Sudan. It highlights the root causes of the problems in societies, and how these problems impact women livelihood in the region.

It argues that there are still multiple violations of women's rights such as unequal inheritance and access to land due to the stereotypic believes that women do not have right to own land because at the end they will be married and then transfer the land to another family. Furthermore, most South Sudanese tribes look at women as property especially when the husband pay the dowry as long as she became the husband's property. This believes disregard to the equity, justice; and good conscience, due to lack of effective intervention policy by the government to end customary law practices that violated women 's right to own land.

The study recommends to improve land management and administrative system, legal support to women to address land dispute cases in the court and organize dialogues among traditional authorities, women, leaders, and other stakeholders.

Key Words; Statutory law, inheritance right, customary tuner, human rights, women, South Sudan.

### 7.0 Introduction

South Sudan is a country located in the North East of

Africa, declared its independence on the 9<sup>th</sup> July 2011 after two decades of civil wars which spanned 50 years and joined the rest of nations as the 193<sup>rd</sup> State of the United Nations (UN)<sup>1</sup>, and the 54<sup>th</sup> State of the African Union (AU) and the sixth of East Africa Community countries (EAC) in 2016<sup>2</sup>. The country occupies a large territory in central Africa covering an area of 644,330 square kilometers<sup>3</sup>. Its population according to the 5<sup>th</sup> Sudan population and housing census 2008 is 8,260,490 million people.

Female population holding is 60% of the South Sudan population, majority of them depend on land as main resource for life<sup>4</sup>, thereby making the land as the one of the important source for their live hood in the country. This is not a force of nature but a direct result of civil wars that affect the South Sudan areas which delayed development of basic human rights. The fifty years of wars has not only deprived women of their dependents - husbands and sons, but the disturbing and conventional post-war enforce women to take responsibility of their family<sup>5</sup>.

The consequences of these wars is that over 90% of women in South Sudan are illiterate and rigid gender roles are just two of the many challenges for them<sup>6</sup>, for women to access and control land as a right remain one of the worst traditional practices which affect the core fabric of the nation in the country<sup>7</sup>. The customary laws in the country specific to each ethnic group has governed the use and control of land and other natural resources by the male side for centuries<sup>8</sup>. When there is dispute in family such as inheritance property rights, divorce, in time of settlement the customary court institutions, applied the customary laws of parties to resolve the dispute<sup>9</sup> that discriminate women rights to property.

<sup>1</sup> [www.bbc.com/news/world-africa](http://www.bbc.com/news/world-africa) ,accessed on 4/2/2019.

<sup>2</sup> [www.africanews.com/2016/4/15/SouthSudan](http://www.africanews.com/2016/4/15/SouthSudan) ,accessed on 4/2/2019.

<sup>3</sup> [www.afdb.org/Generic-Documents](http://www.afdb.org/Generic-Documents) ,accessed on 26/1/2019.

<sup>4</sup> According to the summery report findings in economic and social costs of violence against women and girls in South Sudan. Indicated that in sector of work women holding 78% of work in agriculture sectors. March 2019.

<sup>5</sup> [www.genderconcern.org/images/gal/women/20in20South%20Sudan](http://www.genderconcern.org/images/gal/women/20in20South%20Sudan) accessed on 25/01/2019.

<sup>6</sup> [www.biritishcouncil.org/voices.magazinc/empowering.women](http://www.biritishcouncil.org/voices.magazinc/empowering.women) -South Sudan, accessed on 25/01/2019.

<sup>7</sup> Customary laws have been practices for a long time in the country and has still serves the needs of the South Sudanese communities especially in the area of personal law and became more powerful in the communities, its believed to have been a common practice in this region for more than two centuries that is why a high numbers of women in South Sudan facing poverty, domestic violence, uneven enrolment is high level of illiteracy among the women in the country.

<sup>8</sup> USAID (2010), Land tenure issues in South Sudan key findings and recommendations for Southern Sudan policy report.

<sup>9</sup> South Sudan Civil Procedure Act, (2007), Section 7 (2) , ' *In cases not provided for by any other law, the Court shall act according to South Sudan judicial precedents, customs and principles of justice, equity and good conscience.*

In order to understand, the customary laws are the oldest source of law to the South Sudanese communities, having existed in various communities and tribes before the advent of Anglo-Egyptian to Sudan<sup>10</sup>, and holds deep attachment for the society and covers the whole region. It is understood and believed in and practiced by the South Sudanese communities during the time of the civil wars and up to now and is known as the sources of the laws in the country<sup>11</sup>. This customary law does not protect the female rights to access land in which the land policies in customary laws have been always discriminating against women in many South Sudanese tribes.

Among many South Sudanese tribes, the female is just meant for marriage and to produce children and serve her husband but has no right to inheritance property within her family<sup>12</sup>, however women enjoy only access rights through males in the family or outside the family. This can be through the brothers or husband, father or in laws<sup>13</sup>. Women suffer from non-protection in controlling the land they work and live on it, this common practice affects the rights of female to access and control land in the country, as well as they do not have equal access to

courts that deal with local and customary issues<sup>14</sup>, these institutions can frequently be biased against women's control and ownership of land rights.

However, these institutions in the country struck down the legal rights that had allowed female to inherit land from their fathers and husbands<sup>15</sup>, although there are challenges that prevent vulnerable groups<sup>16</sup> from fully enjoying their rights over land use as it's a direct effect to consolidate peace among societies, for consequences of traditions and cultural norms.

Despite international instruments which protect the rights of women to property<sup>17</sup>, there still existed many cases of women rights abuses of which the women were being prevented to access to land and also to inherit family land in time of inheritance. This does not only undermine the rights enshrined in South Sudan legal framework, also the idea that made a woman a human being with full rights and entitlements just like any other, the law provides for the protection of women rights to property, this present study examines the access to land for women in South Sudan.

<sup>10</sup> Justices Aleu Akchak Jok, A study of Customary Law in Contemporary Southern Sudan, before the 1820 invasion of Sudan by Egyptian force, the custom and traditions of Southern Sudanese tribal groups were the primary source of law to those people's, March, 2004.

<sup>11</sup> John Wuol Makec, Teaching of Customary Law in the University of Juba, paper was presented at the conference on legal Education in South Sudan, Organized by the College of Law, University of Juba, Juba Grand Hotel South Sudan, on 6th-8th August 2013. Also see Transitional constitution of South Sudan (2011) See article 5 para (c).

<sup>12</sup> Tiernan M., Norwegian Refugee Council, Customary Law and Land Rights in South Sudan, p 22, March 2012.

<sup>13</sup> Aleu .A, Study of customary law in contemporary South Sudan, world vision international, August 2004.

<sup>14</sup> Central Equatoria State (JUBA) Khator B- Court (2015), customary court has ruled against the defendant after the complainer threatens to harm and use of violent words for claiming ownership on their father customary land. The complainer is a man who brought a criminal case against the defendant who is a sister to the complainer in the case. The complainer tried to use force and his position a male to refuse the woman her right of traditional ownership. The defendant denied any knowledge of any wrong doing to his brother who is the complainant. "I have not seen anything wrong claiming for plot equally with my brother from the estate of our late father" she said. During the court session, one of the chief insulted the woman and accused her of violating the customary norms that once a woman is married to another family she does not have the right to own any land like this case with the complainer. The chief ruled against the woman and order her to pay to the claims of the man 1800 ssp plus that has claimed from the rental of the land. According to the court attendance, they were not happy with the court ruling. I was not happy because the chief took side because the complainer was from man and, the woman said she cannot appeal because is the same people who will handle the case.

<sup>15</sup> See Transitional Constitution of South Sudan (2011) Art 16 (5) & Child Act 2008, S 26 (2) (b). The Transitional Constitution, Child Act, Land Act and draft Land Policy recognize that the right to land shall not be denied to any South Sudanese people, by State Government or communities on the basis of sex, ethnicity or religion. In addition, to that the Constitution stipulates that women have the right to own and inherit land, together with any surviving legal heir or heirs of the deceased, although customary land tenure system in South Sudan limits women access, control and ownership of land this for the consequences of most men and women not aware of the rights of women in accessing land as well as when both who were aware, they often claim that cultural and traditional norms should override any legal provision.

<sup>16</sup> Vulnerable groups in this research paper refers to the women, divorce women, widows and female child, they are considered vulnerable because they are dependent on others, institutions, or individuals in guaranteeing their access to land and property.

<sup>17</sup> The right to property is a human right that is laid down in the International covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all Discrimination Against women CEDAW 1979, Solemn Declaration on gender Equality in 2004, Beijing Declaration and Platform of Action BDP, and Protocol on African Charter and People Rights in 2003 together with the Universal Declaration on Human Rights, according to human rights laws all human rights to be applied equally to women and men and discrimination on the basis of sex is prohibited."

### 7.1 Statement of problem

South Sudan is one of the countries where women's rights discriminated happens daily<sup>18</sup>, despite the provision of articles (14, 16)<sup>19</sup> of the Transitional Constitution of South Sudan 2011 and efforts by the UN agencies to put an end to gender discrimination in South Sudan. There are still multiple violations of women's rights such as unequal inheritance access to land, which due to the stereotypic believes that female at the end will marry and transfer to the others family<sup>20</sup> as far must South Sudanese tribes look at women as property when the husband paid the dowry as long as she became belong to his husband property<sup>21</sup>.

The study is to examine how structural factors, customary law practices, and social- economic hardship shape women's status and hinder their effective participation in their rights to access land in South Sudan and to show its implications on women's access land right, as well as how gender biases are built in to the legal system, which result in to the lack of implementation, reform laws resources and justice for women in the country.

### 7.2 Objective of the research

This presents research is aims to achieving the following objectives:

#### Main Objective

- To examine the nature and extent access to land for women in South Sudan.
- Specific Objective
- To analyze the legal regime governing the rights of women to access land in South Sudan.
- To identify the challenges that limits women's rights to access land in South Sudan.

### 7.3 The Scope of the Study

The research aimed at assessing the rights of women to access land in South Sudan and to notify the effectiveness of the South Sudan legal system in addressing women rights and the discrimination against women, which are

caused by certain factors such as customs norms, social – economic, to enhance fair treatment of women and strict adherence to the international, regional, and national legal instruments pertaining to gender discrimination against women in South Sudan.

### 7.4 Research questions

#### Main Question:

What are the land administration shortcomings that affect access to land for women?

#### Sub-questions

- What are the problems?
- What are the root causes?
- What are the interventions?
- How does the intervention address the root cause of the problems?
- What are the key outcomes of your interventions?
- What are the key challenges you are facing during the implementation processes?
- As a result of the outcome, what next?

### 7.5 Research methodology

Basically, two main research techniques are using in this study namely documentary reviews and filed research.

#### 7.5.1 Documentary Review

A review of secondary sources of data relevant to the land access for women in South Sudan, and others traditional institutions jurisdiction's with regarding to the cases reports, newspapers, speeches, conferences papers, books and websites that be relevant data to the research study.

For secondary sources of data, the researcher using various published and unpublished materials related to the study to evaluate the principles, policies, legislations and the processes found in the child act, the constitution and the customary laws. The remit included regional and international conventions deal with women rights.

<sup>18</sup> Most of women in the country fall into the category of weak and vulnerable persons in the community, they are persons who have no capacity to approach a court on their own seeking, the reasons for their incapacity are poverty and social economically disadvantaged positions, although the law recognizes the rights of the women still women facing obstacles to access those rights in society.

<sup>19</sup> Transitional Constitution of South Sudan (2011), articles 14, 16.

<sup>20</sup> Ownership of land by women in Bari tribe in South Sudan temporarily hold the property, because women are expected to marry and leave their families to join their husbands therefore, the control of land at the level of the family is vested with men, while women have a usufruct or trust ownership.

<sup>21</sup> One of the ways in which South Sudanese society dealt with this fact was with the practice of 'wife inheritance', in which a wife was 'inherited' or remarried to the deceased's closest male relative. This practice, which dates from well before the outbreak of civil war in the country, had its origins as a means to guarantee support for widows and protect the property of the late husband not to be transfer to the family of women.

### 7.5.2 Field Research

The field research is conducted by visiting and interview and group discussion staff in the main public institutions deal with land and women issues, such as the researcher visited Ministry of Land Housing and physical infrastructure, Ministry of gender and social welfare, Customary courts chiefs, and National Land Commission, civil society organization and women lawyer's firms, Ministry of Judiciary in charge of land registration to answer research questions.

The researcher presented the topic in the peace seminar conducting by University of Juba –institution of peace development and security study in cooperation with Justice Africa organization the topic informed debate with various stakeholders that included staff from peace institution, professional in conflict and humanitarian study, PhD students at University of Juba and numbers of women who are work in university. As well as the researchers conducted training on access to land for women in South Sudan at University of Juba supported by EALAN in this training University of Juba invited land professional from Ministry of land housing and physical infrastructure, local government staff {Juba City Counsel}, lawyers, students and chief from customary B court.

### 7.6 Land administration system in South Sudan

Land Administration in South Sudan is managed and governed by the three levels of government, National Government that regulates the land policy and land related laws with incorporation of the South Sudan National land Commission SSNLC<sup>22</sup>, State Government that Regulation of land tenure, usage and exercise of rights in land and Local Government facilitate the registration and transfer of interest on land as well advice the local community on issues related to land tenure, usage, and exercise over land rights<sup>23</sup>.

### 7.7 Legal frame work and rights of women to access land in South Sudan

Despite being freshly established gender relation in

South Sudan are constructed socially, politically and economically where the South Sudanese women faced

obstacles in achieving their rights due to the dictates of customs and traditions, in other tribes these rights are institutionalized by customary laws behavior whereas in others they may be ignored, they differ from broader notions of human rights through claims of an inherent, historical and traditional bias against the exercise of rights by women in favor of men<sup>24</sup>, The Transitional Constitution of South Sudan, 2011 art (14, 16) mentioned the equity between men and women in time access to rights<sup>25</sup>. As far the child Act 2008 make it clear in Section 26 (2) (b) as every female child has the equal rights to succession and inheritance to property and reasonable provision out of the estate of a deceased parent without discrimination<sup>26</sup>.

As in the modern society has made clear, women have the ability to perform with equal rights and success in virtually endeavor engaged in by men. Yet women in South Sudan are still at the same place they were, that is trying to sensitize the world to the unwarranted and unacceptable marginalization of women, which deprives them of their human rights its lay to the major obstacles that led to the no progress and achievement of the women's rights to access land in South Sudan due to the dictates of customs and tradition norms, in most tribes these rights are institutionalized by custom laws behavior.

### 7.8 Key findings

This section present findings on access to land for women in South Sudan, its focus on the problem, root causes and intervention in the different levels of the governments and non-government institutions deal with land issues.

Its further includes an examination of such existing laws and how the laws have clear identified the issues of land and gender equity in access to land right in South Sudan

<sup>22</sup> The national land commission established in 2006 with responsibilities to enforce land law, resolve land disputes, assess compensation claims arising from government acquisition of land, study and record land use practices in areas where natural resources development occurs.

<sup>23</sup> South Sudan Land Act 2009.

<sup>24</sup> Hosken, Fran P., Towards a definition of women's rights' in human rights quarterly, vol.3, no.2. (May, 1981).

<sup>25</sup> Transitional constitution of South Sudan (2011), article 14 clearly said "All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, color, sex, language, religious creed, political opinion, birth, locality or social status", as well as Article 16 Women shall have the right to own property and share in the estates of their deceased husbands together with any surviving legal heir of the deceased".

<sup>26</sup> Gender discrimination, is discrimination based on sex or gender is a common civil rights violation that takes forms of discrimination against women in the access rights, justice system and unequal participation and enjoyment rights Which is provided in art 1 of the CEDAW, as defines discrimination that "any distinction, exclusion or restriction made on the basis of sex that impairs enjoyment by women of their rights and fundamental freedom in their political, economic, social, cultural or any other area".

### 7.8.1 Ministry of Lands Housing and physical infrastructure

This institution dealing with land on a State level responsible for the Land Registration and Town Use Planning, the institution is led by a Minister, Director

General and Technical staff, further includes surveyors and engineers. Regard to the women registration of land ownership, women having obstacles with regards to their ability to individually registrar land in the country, despite they have equal rights to own land under formal law. however, a small number of formal educate women who live in Town you can found their names registered in the list of land ownership in the Ministry and this is rare compared with others local areas in the country<sup>27</sup>.

This due to the traditional norms / beliefs that deny women rights to access land. Its needs to change the beliefs of people that considered women as no right to access land. As well as the land policy not yet approved that can address the issue related with women rights to access land.

According to land Act of South Sudan<sup>28</sup> right to property is clear addressed without discrimination everyone have right to property but when this right come for implementation it's still apply customary laws that different ,so still there is no implementation of laws in practices in side of land rights that deal with equal access to land, as far rule of law not there the customary law discriminate rights of women and it's still practices in the country. as it needs access to legal aid services from the Ministry to protect women rights.

### 7.8.2 Ministry of Judiciary

Under the Judiciary of the South Sudan the High Court according to the South Sudan Land Act 2009 is also where the Land Registry sits, some women in the town own land in their own rights, they buy land not belong

to their families or clan so they came to the court to complete the process of legal ownership, furthermore the control of land at the level of the family is vested with men, according to the custom beliefs that women they are expected to marry and leave their families to joint their husbands no need for them to Owen land in family .

If there is any dispute over land that related with inheritance rights, under non- Muslim people in Country, the formal courts in South Sudan has no jurisdiction to deal with this issues of the family /marriage, inheritance, divorce women, all cases related with family issues refer to customary courts<sup>29</sup> and this affected women rights to access land in time of inheritance within the family as most of this custom deny women rights to control land, also the law allow by the acceptance of the two parties to the land dispute before formal court to transfer their case to customary court, the question here is women may not protected by customary court if the land dispute transfer to the customary court, although its needs harmonization's of land rights, equity and justice to be address in formal and informal courts, and need to encourage formal courts to resolving land disputes in time of inheritance and transfer property right by reform property rights . For Muslim women the sharia law clear usually female took half of their partner male in time of inheritances and documented in Quran book no one can deny their rights as well as formal court in South Sudan implement what written an according to Sharia law.

### 7.8.3 South Sudan National Land Commission

However the National land commission in South Sudan regulates the land policy<sup>30</sup> and land related laws, in 2005 the South Sudan National Land Commission has worked on translating the Land Act into a Land Policy. However, The Land Policy was formally adopted by the Council of Ministers until February 2013<sup>31</sup>, since that time the land commission waiting review and approval of the National Legislative Assembly.

<sup>27</sup>

<sup>28</sup> The Land Act 2009 under Section 7 states that "all land in Southern Sudan is owned by the people of Southern Sudan and its usage shall be regulated by the Government," implying that all South Sudanese have access rights to land anywhere in the country. the Land Act divided land to three categories, land can be private, public or community land, and held either customarily, in freehold or in leasehold. In practice however, do not exist.

<sup>29</sup> It means that family dispute takes place according to custom and place where a man and a woman have performed such rites as deemed to constitute valid life by the custom of the community in which they live or by the custom of the community to which they belong or to which one of them belong.

<sup>30</sup> The South Sudan National Land Commission was established in 2006 to provide advice on land issues to the government of South Sudan GoSS; its independent institution without representation in the Council of Minister, the commission was developed land act 2009, and also develop the draft land policy that is not yet approved still under review of the government.

<sup>31</sup> however, the Land Policy includes the following legislation community land act, town and county planning act, land act, land survey act land valuation act, land registration act, land information act and mortgage act. It also proposes the creation of a new position of Deputy Minister of Lands in the Ministry of Lands, Housing and Physical Planning, who would be responsible for promoting the reforms called for in the Land Act and fostering greater coherence among land governance institutions.

Unfortunately, there has been no further political discussion on the Land Policy, the lack of a comprehensive land policy to guide the process of inheritance in property right and its implementation remain as a key challenges to the restitution of land and property rights in the country.

This has different impact for women in urban and rural areas to access land right. In rural areas, the presence of customary institutions and traditional mechanisms is the one dealing with transfer of land rights that mean directly they applied customary law that against women rights to access land, Land policies need to be develop and approved, that can be clear contributed in to the identify women rights to property, ownership and inheritance.

#### **7.8.4 Customary courts practices (conflict resolutions)**

South Sudan customary courts are center of dispute resolution as well as its filling gaps that the formal courts and other have left, the customary court has responsible for adjudicating for most of the family cases or that be transfer from formal court<sup>32</sup>, among this cases land dispute<sup>33</sup>.

This customary courts has both original and appellate jurisdiction, it acts as court of first instance in major customary disputes and minor public order cases<sup>34</sup>.

South Sudanese chief's beliefs that the origin source of their custom and traditions derives from the will of the people, so the recognition of it is the basis of binding force to their people. The must customary principles in property rights in South Sudan, is that property must remain in the family, the consequences of these principles are though a man may make a bequest to person or persons outside his family he may not dispose of all or even a major part of his estate to anyone outside the family, the justification for this is that the property belongs not to him but to the family.

Girls in the family cannot inherit any part of the estate as they are considered potentially part of another family when there married. If there is no marriage happen the

girl can use paces of land but can't controlled as its own. For divorced wives cannot inherit from a deceased ex-husband. Whilst this may be self-evident in that she is no longer part of the family, it also applies to widows who, in customary law remain married to the deceased. If a widow chooses to divorce her deceased husband she must give up any part of the estate she has inherited<sup>35</sup>, so every man in the family has a duty to ensure his property remains within the family, the role of the chief area in resolving any disputes that may arise in the community land to act according to the customary laws of the community.

Generally, in the case of the customary land tenure system in South Sudan, women in society beliefs that they don't have rights to access land according to their respect customary laws, although their rights are normally mediated through male relatives. Even where the formal laws are existing and addressed the gender equity, they are constrained by the fact that they don't have rights to own property, this is because most Southern Sudanese societies do not accord women complete entitled of human rights on equal basis as men their rights are always guaranteed through husband or male relatives.

#### **7.8.5 Civil Society**

According to the South Sudan non-governmental organizations Act of 2016 identifies civil society as a non-governmental and non-profit organization that has presence in public life, expressing the interests of their member or others. based on ethical, scientific, cultural and religions. However, one of the aims of the organization protection the rights of women and girls in cooperation with public institutions for main peace and stability in South Sudan.

<sup>32</sup> According to article (122) of local government act 2009, the judicial power is derived from the people and shall be exercised by the courts in accordance with the custom, values, norms and aspirations of the people and inconformity with this Constitution and the law, however the traditional authorities still apply customary laws within their jurisdictions.

<sup>33</sup> In resolving land disputes the 2009 land Act of South Sudan gives priority to traditional dispute mechanisms.

<sup>34</sup> The hierarchy of customary courts in South Sudan according to article 97 (4) of local government act 2009, C & B is a regional court, A court or executive chief's courts, and Town bench court. The A-court stablished under section 101 (1), provides that there shall be established in each boma it composed of the chief as a chairperson of the court and the sub –chiefs as members. The B courts or regional courts is the second highest customary court, the court consist of head chiefs and other chiefs as members, the head chiefs as chairperson of B court is responsible for the administrative of customary law courts of the payam. Designed of the customary courts in South Sudan, most of them share de same design, it's still underdeveloped, most of courts function under trees no offices or court rooms, no clerks to help in recording cases the case before the customary court orally taking even the judgment took place orally, end with result of kept in the mind of chiefs and its members in the court. This can affect delay of the procedure right of the person to appeal his/ her case.

<sup>35</sup> The Re-statement of the Bahr el Ghazal Customary Law Act [Dinka Customary Law] 1984, Sections 51 and 52.

The one of the problem facing women in access to land is related with lack of awareness about women rights to access land in the country, most of women at informal education level, women themselves belief that they don't have right, as well as Customary courts based women on their rights to access to land.

Increasing focus research and advocacy for many women organizations on legal frame work can contributing significantly to the effective protection women rights to access land in the country, most of the organizations facing problem of non-funding to practice they roles effectively to protect women rights.

#### 7.8.6 Private Law Firms

As lawyers the problem facing women access to land is lack of education in side of women brings lack of awareness about the legal rights provided to women in the country, women across the country are cheating on their rights very few women such as those have got formal education as lawyers we aware what the law actually Saied, the other challenges facing womencustomary laws that deal with family issues deny women right to access land the issues of land dispute between the families when came to the formal court its transfer to the customary courts, its need to reform family law to be formal and protect women rights to access land also it need more awareness for women about the formal law that addressed women right to property. Furthermore, there is no women lawyers defence active as organization to support and protect women rights in the country that can play role in time of legal awareness and protection.

#### 7.8.7 Ministry of Gender, Child and Social Welfare

The institution mandate is covers gender and women empowerment, child and social welfare function. Prevailing custom norms in the country marginalize women in South Sudan from participation in any level decision-making however, Culture and tradition practices that effect women rights such as right to access land legally, therefore culture and traditions are part of the legal framework within which women rights are

enforced, and this culture acts as one of the obstacles to the enforcement of women rights, however this traditional practices can enforce women to kept silent not too asked about her right fair from violation of society to her and also in order to keep her family together"<sup>36</sup> Although after the independence, there were real some changes in national policy and legal frame on gender equality in the Transitional Constitution<sup>37</sup>, provides guarantees for the equality of men and women by recognises the impact of historic inequalities between women and men in country and sets out a 25% Affirmative Action to redress imbalances created by history for women in different public sectors such as legislative, executive bodies, however in practice this rarely translated into reality, women still facing obstacle in implementation of the affirmative action due to less number of formal educate women and most local government levels the present of women less or rarely<sup>38</sup>, as the Ministry need to encourage women by more awareness about their rights.

#### 7.9 Conclusion

South Sudan is one of the countries where the land authority belong to communities that where women's rights to access land violated by customary laws, despite the provision of articles (14, 16) of the Transitional Constitution of South Sudan 2011 and efforts by the UN agencies to put an end to gender discrimination in South Sudan<sup>39</sup>. There are still multiple violations of women's rights such as unequal representation before legal institutions to defense her rights to property, due to the stereotypic believes that women do not have any voice to complain about rights related such as land. The researcher found that, custom norms practices and economic hardship shape women's status and hinder their effective participation in their rights to access land in South Sudan and to show how its implications on women's access to the legal system, as well as how gender biases are built in to the legal system in the country, which as a result lack of legal resources and justice that protected women rights.

<sup>36</sup> there are several cultural and traditional practices in South Sudan which could be also classified as harmful social and cultural practices such as, women seen as second class, denied from her basic rights such as education, inheritance property within the family and force marriage, harmful domestic work that affected the welfare, dignity and development of a women up to date the issue of violence against women in South Sudan still been exercised by a number of people in the country. Our government is not showing any willingness to solve this issue plus culture and tradition which is hindering the enforcement of all the laws and international conventions that ratified by South Sudan and protected women rights against violence. Further it's clear that the constitution is the supreme law of the South Sudan and any law, practice, custom or conduct inconsistent with its provisions is invalid.

<sup>37</sup> Transitional Constitution of South Sudan 2011, part one bill of right.

<sup>38</sup> [www.genderconcern.org/images/gal/women/20in20South%20Sudan](http://www.genderconcern.org/images/gal/women/20in20South%20Sudan) accessed on 25/01/2019.

<sup>39</sup> Transitional Constitution of South Sudan 2011, articles 14, 16.

However, it is argued that custom practices is not static<sup>40</sup> and these custom practices can be overcome by understanding the reasons for the practice, providing solutions in consultation with the practicing communities and by ensuring that adequate social support is to be given by individuals who choose to abandon these practices.

### 7.10 Recommendations

- Government need to build the culture of rule of law and implement the necessary reforms in the laws by harmonization of legal frame and clarify roles and responsibilities of the formal and informal court institutions when rights overlap and provided guidance on how to bridge the obstacles in customary practices that restrict women's rights by putting policies in place that identify the roles of institutions in protection the rights to access land for women in the country.
- Sensitization /Awareness creation programs to the community leaders, chiefs about women rights to access land, through organizing dialogues among traditional authorities, elders of communities.
- Researches, more facilities study about the causes of women inequality on the right to access land by develop curriculum on gender responsive tools to stablish women centers on land rights and protection.
- The parliamentarians, community's leader's and stakeholders should be involved during workshop, conference and seminar that address issues of women rights to access land.
- South Sudan National Land Commission need to develop laws and policy that involves and focuses on women rights to access land.
- Ministry of gender child and Social welfare need to support development of land rights paying attention to the gender into account and Vulnerable groups such as households headed by women in the country.
- Need efficiency and effectiveness of women legal aid institutions in the country to address legal support to women to resolve land cases in the courts.
- To protect women rights to accesses land we must hold ourselves, our policy makers and our governments accountable by great equality, change customs norms and invest in research and programming deal with access to land rights at national level.

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<sup>40</sup> Custom in Order to be applicable and ruled as custom it must meet certain or describe conditions, as well as the custom must be valid as a part of domestic law of the country which seek to apply it domestically ,that derives from the state constitution or other laws, the custom should be prevail over colliding norms of national laws its mean that in the case of conflict of the custom with domestic laws ,the custom must be in a position in the normative hierarchy that enables it to prevail over conflicting national laws; however the custom must be sufficiently clear and concrete to be applied. Generally, the rule of custom must not be repugnant to the natural justices, equity, and good conscience. The natural justices are the inherent rights of the person to have fair and just treatment by the government or other person that mean to hear parties or various sides in dispute before giving judgment or decision; no persons should be a judge in matter in which he or she is party or has an interest or stake, simply put it means fair hearing in all its ramification. Equity is fairness; just; right; justices, a custom must be equitable and must result in fair and just decisions. Good conscience is a conscience that is pure; just; and good to everyone, as custom should be fair; just; for the good of all should not be motivated by an arbitrary, retrogressive conscience or mid, justifying the clause and the court, however customary land right in South Sudan not much the conditions that to be practices as the rule.



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# CHAPTER 8

## ACCESS TO LAND BY VULNERABLE GROUPS IN TANZANIA: THE CASE OF WOMEN

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### Executive Summary

Access to land by women is important because of the pivotal role that women play in household's survival. However, access to land by women in most Eastern African countries is generally limited by existing legal frameworks, policies and customary practices hence inhibiting women's contribution to production. In Tanzania, both the constitution and the legal framework provides for equal access to land for both men and women but customs and traditions continue to discriminate against women and hence impeding their access to land. There have been considerable efforts from both the government and non-governmental organization to support women in redressing this situation.

Using interventions by three organizations this research sought to examine the land administration system in Tanzania and identify shortcomings that affect access to land by women through tracing the pathways that women follow to pursue their rights. Data for this research were collected from these organizations using semi structured interviews and content analysis of legal documents, organizations and published material such as annual reports and project documents.

It was evident from the study, that in Tanzania, despite the constitution as well as the legal framework upholding women land rights, the land administration and justice has failed to secure fully these rights. It was noted that, there is a lacuna in the Constitution and legal framework as well as an overlap between the statutory and customary laws which results into discrimination against women in accessing land. For example, the Constitution is silent on which one between law and customs, takes precedent when there is a conflict creating a loophole used in this very patriarchal society. Inheritance laws and practices were further noted to be discriminatory. As such women continue to face discrimination and intimidation from family members on land ownership.

Intervention to address land administration shortcomings are undertaken by different organizations in form of land registration and housing projects, facilitating access to

credit for women, support women to acquire ownership documents and training workshops on awareness of women's land rights. These interventions were noted to have positive impacts in promoting women land rights such as enhanced awareness on women land rights and LA procedures, increased number parcels of land registered in women names as well as number of land parcels acquired by women.

It is therefore recommended that, the legal framework be revisited to address the loopholes that allow the application of repressive customary law in the country. Further, awareness campaigns are recommended to empower communities to appreciate and respect women's land rights.

### 8.0 Introduction

#### 8.0.1 Background to Women Access to Land in Tanzania

Access to land by women is important because of the pivotal role that women play in household's survival. Women who undertakes more than half of the agricultural labour are key for ensuring food security hence addressing poverty, hunger, and malnutrition at family level. With insecure rights on the land used for agriculture, women are likely to have less incentives to improve produce. Despite the observed importance of land to women, access to land by women in most Eastern African countries is generally observed to be limited by either one or a combination of existing legal frameworks, policies and customary practices hence inhibiting women's contribution to production. In Tanzania, women land rights regime is to a large extent shaped by the constitution, statutory written laws, customary norms and practices and to a lesser degree religious practices (Dancer, 2017; Duncan, 2014; OCED, 2014). Generally, with the exception of customary and religious practices the other instruments recognize women equal rights to property.

#### 8.0.2 Legal framework governing women land rights

The Constitution of the United Republic of Tanzania (1977) (Article 24) guarantees every person the equal right to own property (Duncan, 2014); henceforth women are guaranteed equal rights to men in the ownership, use and control of land. However, in practice this is not the case. Whereas, the Constitution guarantees equal right to property, it fails to put in place mechanisms for ensuring every citizen gets equal rights to own property, for example, the Constitution is silent on which one between statutory law and customs, takes precedent when there is a conflict creating a loophole used to discriminate women in this very patriarchal society. Interestingly, the Constitution is also mum on customary

and religious practices which do not accord women equal right to property. *As such women who tend to be economically and socially disadvantaged end up being denied access to land.*

The National Land Policy of 1995 which preceded the drafting of the new land laws also provides for women land rights allowing them the right to acquire and own land. It provides that *“In order to enhance and guarantee women’s access to land and security of tenure, women will be entitled to acquire land in their own right not only through purchase but also through allocation”*. Astonishingly, the policy introduced a contradictory provision allowing matters on inheritance of clan and family land to be governed by customs and traditions as long as they are in line with the Constitution and principles of natural justice.

The legal framework in Tanzania also recognize and upholds women rights to property (Ref). Section 3 (2) The Land Act of 1999 recognize the right of every woman to *“acquire, hold, use and deal with land . . . to the same extent and subject to the same restriction . . . as the right of any man”*. The Village Land Act on the other hand has a provision that nullifies rules of customary law which deny women lawful access to ownership, occupation and use (section 20(2)). This act further provides for equal treatment of women in resolving disputes relating to customary land; consideration of women rights when allocating land and when granting a derivative right to Village land. Equally, women’s rights to acquire hold, and dispose property are recognized by Section 56 of The Law of Marriage Act of 1971.

### 8.0.3 Access to Land by Women in Tanzania

In Tanzania, both the constitution and the legal framework provides for equal access to land for both men and women. As is the case elsewhere, despite this legal position there is evidence that women continue to be discriminated against when it comes to accessing, owning, using and controlling land. It is estimated that women who accounts for 50% of the population own and occupy only 20% of the total arable land. At household level, women are noted to occupy and own between 15 -20% of land (URT 2013). A study by USAID noted that by 2015 only 20% of women in Tanzania had land registered in their names.

Evidence from the literature suggests that women access to land is mainly inhibited by customary law and practices, discriminatory provisions in the Law of Marriage Act, 1971, religious practices and the contradictory provisions in the National Land Policy (Ref). It is noted that, customary laws and practices

especially those relating to marriage and inheritance often discriminate against women when it comes to access, owning, use and control over land (Daley et al., 2017; Moyo, 2017; Massoi, 2015; Manji, 1996). Many tribes in Tanzania follow the patrilineal system in which male heirs are overtly favored at the family level because inheritance follows the father’s lineage. Massoi (2015, 2019) and Daley et al. (2017) notes that pastoral Maasai women are denied the right to own or inherit land on account of customs and tradition which among others view these women as also being men’s property. However, these women can access communal pastoral land but only through their male relations. In the patrilineal system, customary law also prevents daughters from inheriting land as they are considered temporary members of the family. More evidence of disregard of women land rights occasioned by discriminatory customary practices have been noted on various other groups such as those affected by HIV/AIDS (Moyo, 2017; Manji 1996); widows (Manji, 1996); women in polygamous marriages (Kisambu, 2014). On the other hand, the Local Customary Law Declaration Order No.4 of 1963 discriminate against women inheriting movable property. Whereas males can inherit both movable and immovable properties, the law allows women to only inherit immovable properties for use in their life time but prohibits sale of such properties (OECD, 2014).

Further discrimination is occasioned by contradictions in the National Land Policy and the Law of Marriage Act, 1971. Both instruments uphold equal rights to property for both gender, but also provides for consideration of customary law. Section 114, (2) (a) of the Law of Marriage Act, 1971, provides for courts of law to consider customs of the community in deciding matters pertaining to division of marital properties on the occasion of divorce. As noted earlier on customs discriminates against women hence such a provision further exacerbates the precarious position of women land rights.

Given this status of women land rights, it is clear that the Land administration system which is founded on the existing legal framework and customary law is less likely to treat women land rights differently.

### 8.1 Objective

The main objective of this research was to examine the land administration system in Tanzania and identify shortcomings that affect access to land by women.

### 8.2 Research Question

The key research question that facilitated exploration of women access to land in Tanzania was *“What are the*

*land administration shortcomings that affect access to land for women?"*

### 8.3 Actors

Both the Land Administration and the justice systems have failed to secure fully women land rights. Women continue to face discrimination and intimidation from family members on land. To fill the gap, a number of Civil Society Organizations such as Land Rights Research Resources Institute (Haki Ardhi), WAT- Human Settlement Trust (WAT –HST), Land Tenure Assistance (LTA) and others are undertaking various interventions geared towards promotion and protection of women land rights and in some instances to support women in pursuing and protecting their rights on land. These interventions include awareness campaign, training program, land registration program, issuance of ownership documents etc. The issue of women land rights is both complex and context specific hence drawing attention of many actors. For the purpose of this research the identified actors in the three interventions selected can be grouped into four main categories: women, civil society organizations, government institutions and development partners.

Women as a vulnerable group are key actors in all the interventions studies. Despite women being vulnerable and hence subjected to discrimination and hence marginalization as far as land rights are concerned, it was noted that women are strongly coming up as key actors in promoting and advocating for their land rights. Women participation was noted to be either initiated by women themselves in circumstances where these were threatened such as in inheritance or by other institutions advocating on their behalf. It is important to note that interventions by other actors such as civil society organizations can only succeed in instances where among others, women are committed to pursuing their rights.

Government institutions responsible for land in Tanzania includes the Ministry of Lands Housing and Human Settlements (MLHHS) and Local authorities are the major actors in Land Administration as key overseers of the land administration system in the country. These institutions are in charge of supervising the implementation of the land laws and hence have a big role to play in securing women land rights. Whereas the MLHHS focus is in policy matters, local authorities are charged with service delivery of land services to include valuation, land surveying, urban planning etc. In this study, actors from within government institutions included MLHHS, Local Authorities, District Land Offices, Registrar of Titles and Local Authorities.

Development partners is another category of actors that appear to be involved in various interventions. It was

interesting to note that all the organizations studied had partnerships of various forms with development partners either as financiers or implementing partners.

Civil society organizations is another key group of actors. It is evident that there are numerous civil society organization which are undertaking various interventions in pursuit of women's land rights. The Tanzania Land Rights CSO's database (2013) which guided sampling of the organizations for this study, lists 54 civil society organizations which are members of Tanzania Land Alliance (TALA). The main objective of the alliance is to advocate for citizen's secure access to, ownership and control over land. In this study three (3) CSO's were studied, two of which are directly involved in land governance whereas one deal with promoting and protecting women rights. The entities that provided information are: Haki Ardhi, Land Tenure Assistance Project (LTA) and WAT HST. All entities are based in Dar es Salaam except for the LTA which is implementing a land regularization project in Iringa District.

### 8.4 Research Methodology

#### 8.4.1 Research Methodology Adopted

The methodology adopted for this research was developed jointly by members of the Vulnerable Interest Group within the SEALAN Project. Accordingly, research questions, data collection instruments and conceptual framework were developed jointly to ensure consistency in methodology for the eight (8) country studies.

Purposive sampling technique was used to select the four institutions. The Tanzania Land Rights CSO's database (2013) was the starting point for identifying and selecting CSO's. Experience in carrying out intervention promoting or enhancing women access to land was the basis for selecting an institution. Hence, institutions which have undertaken any form of intervention whether as a one-time activity or as part of the day to day activities were considered for selection. Preliminary contacts were initiated on 10 entities but some were dropped either due to not fitting into the purpose identified or for not being responsive in follow up contacts/communication. Eventually, data analyzed in this research were collected from three (3) civil society organizations noted above. One key informant from each participating organization took part in the interview. Since the key informants were recommended by the management, their views are considered to represent the organization's position. The interviews were guided by a semi structured interview guide which was developed jointly by the Vulnerable Interest Group for the eight country studies which are taking part in this research. The Guide had questions which sought to inquire from institutions undertaking interventions to address women land rights issues,

various aspects the land administration. In particular, the guide addressed shortcomings and problems in land administration, root causes, interventions instituted by various actors, outcomes and what need to be done. Probe questions were used as appropriate, mainly as follow up questions or where clarity on the matter was sought. The face to face semi –structured interviews lasted between 1 and 2 hours. In one case the interview was carried out over the telephone.

In addition, content analysis of legal documents, published material such as annual and progress reports and other project documents was carried out to supplement information collected from interviews.

#### 8.4.2 Conceptual Framework

In designing this research on Access to Land by Vulnerable Groups in Eastern Africa it was agreed that each Country Research team adopt a conceptual framework guided by “the Chain of Justice” analytical framework which focusses on gender and rights as they govern access to justice (Quintero, 2012). The framework supports understanding of individual’s path in pursuits of claims on their rights. This study was modeled on the study by Quintero et al. (2014) on *Pathways of Justice and Equity in land administration and Dispute resolution in Uganda* which adopted the chain of justice framework and the gender and rights approach. In this study, this framework was adopted and sought to explore women path to accessing land rights as enshrined in the Constitution of the United Republic of Tanzania 1977 and other land laws in the country. However, unlike the study in Uganda, the chain of justice was assumed to be a single system that comprises key actors promoting and supporting women land rights to include government departments, CSO’s, development partners and other actors within Tanzania. Women’s paths were traced through the interventions undertaken by the three chosen Civil Society Organizations exploring on the rights failure and their causes. In analyzing equality in accessing land from a gender and rights perspective, the analytical framework started from the premise that women are marginalized.

#### 8.4.3 Data analysis method

Data from the semi structured interviews and content analysis of various documents were analyzed by coding the text using preselected coding pattern. The pattern was developed from the sub research questions to allow uniform treatment of the three intervention. From the codes a thematic analysis was done to identify key themes that emerged with focus on gender and rights. The themes that emerged and forms the basis of the discussion of the findings in the following section.

## 8.5 Findings and Analysis

### 8.5.1 The organizations

Despite robust land laws being in place the land administration systems in Tanzania has not been able to promote security of tenure for all as expounded by the National Land Policy. There are contradictions in the provisions of the Law of Marriage Act and the NLP particularly on recognition of customary law creating a gap in the operation of the land administration system. Henceforth, customary law ends up taking precedence over statutory law, particularly on matters related to women land rights. The result is marginalization of women in land ownership due to discriminatory nature of customary law. The civil society has stepped in to address this anomaly. There are more than 45 civil society organizations which advocates for land rights under the Tanzania Land Rights CSO’s. In this study three CSO’s which are engaged in various aspects of promoting women land rights shared their experience in interventions undertaken to address women land rights failures and the corresponding outcomes. These organizations and the issue they addressed are:

#### 1. Helping Women Secure land and Housing: WAT Human Settlements Trust

This is a non-government organization with focus on promoting advancement of women and low income communities through provision of shelter mainly affordable housing with secure tenure. It supports them to access affordable housing and the necessary facilities by providing access to microfinance and housing support services. This organization operates in Kinondoni and Temeke districts in Dar es Salaam.

Two rights failure were noted during the interview with the Manager responsible for Projects. First, the need for intervention to provide land and housing by WAT HST was motivated by failure of the land administration system to provide strategies that ensures that women and other individuals in the low income group are able to access affordable land and eventually housing. With the majority of women having low income their access to land is limited. Secondly, in the course of implementation of the project, WAT-HST efforts were inhibited by bureaucracy in accessing land survey and title registration. It was apparent that the Land Offices had limited capacity to provide these services. In one project, it took more than three years to survey plots. Lastly, the limited income of the target group was also seen to be a rights failure. Women and low income communities were noted to lack the capacity to acquire land and build affordable housing.

Hence relied on intervention from the government which were not forthcoming.

## **2. Promoting Women Land Rights: Land Tenure Assistance Program (LTA)**

The Land Tenure Assistance (LTA) is a USAID funded project which is being implemented in Iringa and Mbeya Rural Districts. The project focused on promoting land ownership, village land use planning and empowerment of communities on land rights in support of sustainable agriculture in the SAGCOT corridor. The project was implemented in 36 villages in Iringa

From the perspective of gender and rights, the project identified a number of rights failures to include discriminative cultural norms and practices as well as customary law among the Hehe and Bena that do not grant or protect the rights of women. In these two tribes, customs are such that women are not entitled to own or inherit land. Women can only inherit or own land through their male relatives such as children, husbands or brothers which means they only end up having use rights all their life. Indeed, this results to unfair distribution of land among men and women. Alongside these customs and traditions, land is owned on patriarchal lineage and therefore resistance to allow a woman to own land can come from the clan and not immediate family members. The existence of robust clan system with strong attachment to customs and traditions with individual's rights being linked to clans only worsens women land rights.

It was further observed that women in the project area lack of information and awareness about their rights, and bureaucratic procedures of acquiring land title as failures that hinder the ability of women to access and own land.

Another failure relates the bureaucracy in the land administration system, particularly the District land office. It was noted that the land office set up does not support efficiency making the process of acquiring services including survey of land and title registration to be very tedious and time consuming. Lastly, it came out clearly that the majority of women in the project area lack information and awareness of their rights hence are not able to pursue their rights.

## **3. Advocating for Women Land Rights: Land Rights Research Institute (LRRRI) Haki Ardhi**

The Land Right Research Institute (LRRRI) or Haki Ardhi is a non-government Land Research and Resource Institute which advocates for land rights of small peasants and pastoralists. It offers advice on land matters and counselling and assistance on land tenure issues,

undertakes research in land governance, knowledge sharing and promotes social and education.

Rights failure observed by Haki Ardhi includes women low participation in various developmental activities, Women lack awareness of their rights and procedures for securing their land rights, customs and traditions which discriminate against women, customary practices that conflict with statutory laws and persistence discrimination of women in rural areas.

In view of the above observed rights failures, these three organizations undertook various intervention geared towards addressing the specific problems they had identified. Details on these interventions are presented in the following section.

## **8.6 Intervention and outcomes**

WAT-HST main concern was to address the enable women and low income communities acquire affordable housing with secure tenure. Access to affordable housing was addressed through conceived land and construction projects where individuals had an option of buying land or land and development in form of incremental structures in 10 project sites. With funding from Homeless International, CLIFF, Rooftops, Shelter Norway and other organizations, WAT - HST acquired land parcels measuring 202 acres in various parts of Dar es Salaam and developed 598 core units of various sizes which were sold to individuals on loan basis. WAT HST supported those acquiring land and housing by facilitating access to credit from WAT-HST housing microfinance products (WAT-HST land loan, the WAT-HST house loan and the WAT-HST land & house loan) with the acquired land being used as collateral. The project was implemented in two phases. Phase 1 of the project was a success as approximately 95% of the plots were acquired. Phase II of the project took off at the time the organization was going through transformation and not much has been done in the project.

The intervention had a component of support to women and others to acquire Certificate of Right of Occupancy for land acquired through the project. Preparation of Certificates of Titles for projects in Kigamboni has started following completion of survey of plots. However, at the time of interview the titles were still being processed at the Municipal Council. Survey of plots located in Kinondoni District is not yet completed. It has been more than 3 years since the process started.

WAT -HST further developed a pilot sanitation system at Mabwepande Alute, one of the project site as part of the Housing Support scheme. The system was tested and proved to be too expensive for low income communities

and such it will not be replicated in other sites. Rather, the weaknesses identified in the pilot system will be addressed in an attempt to come up with a more affordable system for the low income communities.

Community mobilization to facilitate empowerment of the low income communities and especially women to participate fully and effectively in all aspects of human settlements development was undertaken by the Community Services Department. It entailed conducting workshops and training on lobbying and advocacy, leadership capacity and good governance, financial management, Youth enterprises, environmental sustainability, HIV and AIDS awareness, urban agriculture and gender.

The outcome of the intervention by WAT HST from a gender and rights perspective is the increased access to land and housing by women in peri-urban area of Dar es Salaam. More than 50% of those who acquired land and housing were women. The packaging of the products of the project were friendly to the women socio economic status hence participation was possible. The second major outcome was improved security of tenure of the plots acquired. in number of women who acquired land.

The LTA project on the other hand had the interventions embedded as components of the project. The intervention relating to gender and rights by this project took the form of land tenure regularization in which the project facilitated the land use planning process and issuance of Customary Certificates of Right of Occupancy (CCRO) in the project area. The project had special activities which supported vulnerable groups including women to claim their land rights through registration of their land.

As a starting point, Village Land Use Plans (VLUP) were prepared in a participatory manner drawing professionals from Iringa District Council, trained para surveyors, village leadership facilitated by project staff. A total of VLUP had been prepared and submitted to the National Land Use Planning Commission for approval. CCRO's were issued and registered. By the time of conducting interviews a total of 31,029 CCRO's were issued with in which 50% were issued to women. In ensuring that the CCRO's and documentation of the whole process are well secured, Village Land Registries were established for each village.

Another component of the intervention was in the form of capacity building of the District Land Officials and village level land governance institutions and villagers to undertake the land use planning process, issuance of CCRO and respecting land rights for all groups. In

the year 2017/18 alone a total of 307 training sessions were held and benefited about 28,000 individuals. Out of these 60% were women. Likewise, sensitization workshops in secondary schools saw 6,700 students taking part of whom 60% were of the female gender. LTA was also able to engage with pastoralist communities in two villages in which the issue of women land rights was top of the agenda.

The intervention undertaken by LTA has been able to achieve a number of planned outcomes. One key outcome of the intervention was enhanced awareness and knowledge of women's land rights in the project area, making it possible for women to be in position to claim them. It was noted that school children were very instrumental in convincing their fathers on the importance of including women in the land titles. The project increased number of men who were willing to include their wives in the land title, and more women have land registered in their names. A total of 6,463 titles were issued and collected by women against 6554 for men. This is an important development in changing customs and tradition and a sign that with more awareness campaigns, communities can get riddance of practices that prohibits women from accessing their land rights.

The third organization studied was the Land Right Research Institute (LRRRI) or Haki Ardhi, a non-government Land Research and Resource Institute which advocates for land rights of small peasants and pastoralists. In the spirit of gender and land rights, three interventions were undertaken by Haki Ardhi to include: development a training manual on women land rights, offering training workshops on women land rights, organizing campaigns such as women land rights defenders.

The training manual prepared by Haki Ardhi is in Swahili language and is titled "Kijarida cha kuelimisha Jamii juu ya masuala muhimu ya Haki za Ardhi kwa Wanawake nchini Tanzania" which simply translates into a "Teaching Manual on Women Land Rights in Tanzania". The manual details women rights to acquire and own land, women land rights at divorce, death of her husband; women rights to take part in various meetings on land matters etc. As such through this manual, communities throughout the country, including women themselves are made aware of women's rights. This is important given the observation in the literature that women are not aware of their rights and therefore are not able to initiate claims for them. The manual is very informative and it was indicated that it is used by many other organizations in offering training on women land rights.

Haki Ardhi in collaboration with Action Aid Tanzania, and Lawyers Action Team (LEAT) as women land rights defenders organized a training workshop in Rukwa and Katavi on Natural Resources. The workshop covered gender equality, land rights and land use planning to selected villages. The expected outcome was increased awareness of the importance of women land rights so that more women will be given land or supported to claim their land rights.

### 8.7 Discussion of Major Findings

Findings outlined in the previous section indicated the presence of a number of gaps in the land administration system. One key gap relates to weak procedures in the Land Administration system particularly those related to land registration. The interview with a staff from WAT HST revealed that the process of registering land which was overseen by the organization took considerable time to accomplish and to-date very few titles have been secured. The procedure is not transparent and there are multiple technocrats such as a land surveyor, planner and land officer who are involved clear hence follow up of matters take considerable time. This was noted to be a hindrance to providing secure land rights to women. The LTA project was observed to be addressing this shortcoming by having a component on capacity building of village and district level land management institutions on land use planning and processing of CCRO's.

It was further noted that the Land Administration System lacks mechanism to ensure that the provisions of the Land Acts and Constitution with regard to women land rights are adhered to. Further, the land administration system has failed to institute modalities for addressing the incoherence of the statutory provisions on application of customary law in matters related to women land rights. Henceforth, customary law is being applied with overriding statutory law. Findings from this study confirmed the argument advanced in the literature that despite the presence of a legal framework and a constitution that protects the rights of women, customs and traditions which operates alongside the statutory framework, customs and traditions continue to be a hindrance to women's access to land. In all interventions by the CSO's studied, women were noted to be disadvantaged on account of repressive customs and traditions.

It is clear therefore that, the legal framework alone cannot safeguard and guarantee women, rights to own, inherit, access, control and use land hence there is a need to harmonize the enforcement of the provisions in the constitution and the two land laws with customary law and religious practice and succession laws to effectively protect women land rights. Awareness creation on the importance of women's land rights is also likely to address the use of customary law in granting women their land rights. It was noted that awareness workshops conducted in LTA project were able to stir change in the mindset of men in the project area to appreciate and respect the rights of women.

### 8.8 Conclusion and Recommendations

Despite having a legal framework that supports women's land rights, it is clear from the findings of this study, that the issue of women's land rights is still challenging and calls for immediate attention by all stakeholders. It was evident that the civil society organizations are doing a tremendous work in addressing observed rights failures. However, for these to be effective and impact the Land Administration System, interventions ought to cover a wider area, be coordinated and supported by the government. This calls for development of partnerships with various stakeholders including government institutions to address the failures.

Move to amend provisions in the Law of Marriage Act 1971 and the National Land Policy which provides for use of repressive customs and traditions should be initiated. As the amendments could provide a long lasting solution. Since changes in the laws take time, other interventions such as empowerment of communities through awareness campaigns could be adopted particularly following observed success these showed in the LTA project. The awareness could focus on Secondary School Students as a way of ensuring the youths starts appreciating and respecting women land rights at an early age. If possible a subject on human rights could be streamlined into Secondary School curriculum as this is likely to result into change of mind set to a generation.



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# CHAPTER 9

## ACCESS TO LAND FOR WOMEN IN UGANDA

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### Executive Summary

Land is considered the most fundamental resource to women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality. It is a primary source and crucial asset for households, especially women who primarily depend on agriculture for their livelihoods. More than 80% percent of women in Uganda are dependent on land for their livelihoods. This is derived from the fact that over 80% of the land in Uganda is under customary ownership. Despite the importance of land to women in the country, their land rights are still largely discriminated against. A combination of statutory and customary laws favouring male ownership of property disadvantage women's rights to own land. The traditional exclusion of women from property and land ownership on gender grounds is the most damaging global human rights violation experienced in many developing countries. Without rights to land, women's economic and physical security is compromised.

Using evidence from selected government institutions and Civil Society Organisations (CSO) in Uganda, this study uses a descriptive approach to show the challenges faced by women towards accessing land and offers recommendations on the strategies that can be adopted to enable women to equitably access, own and control land.

### 9.0 Introduction

#### 9.0.1 Background

Throughout history, land has been recognized as a primary source of wealth, social status, and power (FAO, 2002). Its role in economic development has dominated political, social and economic discussions at continental, regional and national levels in Africa. Land is the basis for shelter, food, and economic activities and a source of livelihood to human kind. It is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas. Especially in agriculture-based economies, where a large part of the population depends on farming-related activities, land is not only a fundamental asset and a main source of food production and food security, but for many rural communities worldwide it also constitutes

a secure place to live and a base for social and cultural identity and belonging.

In Uganda, protection of women's land rights in the formal law currently has limited impact. This is simply because traditional norms and practices commonly work to impede women from realizing their formal rights to property. Though there have been many advances in formal protections for women's land rights through the different land laws, implementation of these provisions is still very low and many challenges remain for women's land rights under the formal laws to be realized in practice. This is synonymous to most of the African countries. Women produce more than 80% of the food in Africa, yet they own only 1% of the land (SOFA, 2011). Therefore, improving women's access to and control over land is crucial to socio-economic development of Africa.

Women's access to own and have control over land can potentially lead to gender equality alongside addressing material deprivation. Land is not just a productive asset and a source of material wealth, but equally a source of security, status and recognition. Women's access to land and property is also highly proportional to women's economic empowerment, as land can serve as a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Land is also a social asset that is crucial for cultural identity, political power and participation in decision making. It is pragmatic that giving women equal access to land is a human rights issue and has generated benefits such as reducing domestic violence since women who own land are more capable of exiting violent relationships.

Agricultural production and food security also increase when women are granted tenure security. If rural women had the same access to productive inputs as men, they could increase yields on their farms by 20 to 30 percent, raising total agricultural output in developing countries by 2.5 to 4 percent and, in turn, reducing the number of hungry people in the world by 12 to 17 percent (FAO 2011). Therefore once women have control over land, productivity on land increases hence economic development.

#### 9.0.2 Objectives

The overall objective of this study was to examine the land administration shortcomings that affect access to land for women in Uganda. This is to contribute to the comparative research of the Eastern Africa Land Administration Network (EALAN), which is examining access to land by women within the Eastern Africa region. The study was guided by the following questions:

1. What problems do women face while accessing land?
2. What are the root causes of those problems?
3. What interventions have been undertaken to address the problems?
4. How do the interventions address the root causes of the problems?
5. What are the key outcomes of the interventions?
6. What are the key challenges you are facing during the implementation processes?
7. As a result of the outcome, what next?

These questions were meant to elicit the practice and perception of access to land by women and land rights.

### 9.0.3 Justification/Scope/Limitation

Land rights may be defined as complete when the following three conditions are met: they are legally recognizable, socially recognizable, and enforceable by external authorities (Duncan and Ping 2001). This simply means that all the three elements should be satisfied in order to have complete land rights otherwise they are incomplete.

The common challenge affecting women's land rights are the overlapping formal and informal rights on land i.e. the statutory and the customary land rights. While Uganda has policies that are well crafted to address women's land tenure security, they have not been backed up by social and cultural acceptance. For example, the 1995 Constitution of Uganda and the 1998 Land Act protect women against discrimination in regards to access, ownership and control over land but most of the cultural norms and practice all over the country do not allow women to own and have control over land.

## 9.1 Equity & Control

Rights to land are diverse and, in practice, multiple rights to an object can be held by several persons or groups. This has given rise to the concept of the bundle of rights (FAO, 2002). Different rights to the same parcel of land, such as rights to sell the land, rights to use the land through a lease, or rights to travel across the land, may be pictured as "sticks in the bundle", each of which may be held by a different party (FAO, 2002). Although a large and varied number of rights may exist, it is sometimes useful to illustrate that rights of access to land can take the form of:

1. Use rights: the right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.
2. Control rights: the right to make decisions on how the land should be used and to benefit financially from the sale of crops, etc.

3. Transfer rights: the right to sell or mortgage the land, to convey the land to others through intra-community reallocations or to heirs, and to reallocate use and control rights.

In most cases, the poor in a community have only use rights. A woman, for example, may have the right to use to land to grow crops to feed the family, while the husband has the control rights including selling off the land or leasing it out. While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

### 9.1.1 Access to land

Land has great cultural, religious, and legal significance (National Land Policy, 2013). There is a strong correlation in many societies between the decision-making powers that a person enjoys and the quantity and quality of land rights held by that person. In rural areas social inclusion or exclusion often depends solely on a person's land holding status. Even in urban areas, the right to participate in municipal planning, in community decisions, and sometimes elections, can depend on the status of an individual as a resident or home owner. Access to land then is an important aspect of household, community, and national decision-making powers.

Access to water and other resources, as well as to basic services such as sanitation and electricity, is often conditioned by access to rights in land. The willingness and ability to make long term investments in arable land and in housing is directly dependent on the protection that society affords the holders of rights. Thus, any concept of sustainable development relies heavily on both access to property rights in land and the security of those rights. Access to land is governed through land tenure systems. Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land Rules of tenure define how property rights in land are to be distributed within societies, along with associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources, for how long, and under what conditions.

The majority of poor women who depend on land for their livelihood are either landless or have limited and insecure rights to land. In addition, they access land mostly as customary land but lack decision making rights on how the land should be utilised. It is observed that most women access land through a male relation such as father, husband, sons and brothers. For example in Buganda Bazaara (2002) justifies women's ownership of land by focusing on Buganda's history

in land distribution. In the 1900 Buganda agreement, land was redistributed but the peasant women were not allocated any piece and whatever they managed to access was because they were associated to particular clan or chief. But today, some women own the land but these are rather small areas. Adoko and Levine (2008) went ahead to analyse the contradictions between the statutory laws and the customary laws and these affect women's land rights. It is eminent that access to land is a key factor affecting women's emancipation.

## 9.2 Methodology

### 9.2.1 Conceptual framework

Rights to use and control land is central to the lives of rural women in Uganda where the main sources of income and livelihood are derived from these natural resources. The lack of land rights by women and girls indicates that they are victims of discrimination since land is considered to be the most fundamental resource to women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality within a patriarchal society. Without rights to land, women's economic and physical security is compromised. They are deprived with a reliable source of food and are further curtailed access to other inputs, especially credit, necessary for carrying out productive activities. Women play a vital role in Uganda's rural agricultural sector and contribute a higher than average share of crop labour in the region. They also make up more than half of Uganda's agricultural workforce, and a higher proportion of women than men work in farming.

The land rights of women can be seen as elements in the "social bases of self-respect," which Rawls (1971, 2001) defines as perhaps the most important "primary rights". Sen (2000) argues that it is important for governments through institutions like political parties, legislatures, the judiciary and the media to contribute to development by enhancing individual freedom. The ultimate point is that countries and the international community should protect the land rights of women. This is because they are so crucial for their sustained livelihood. The human rights argument emphasizes women's right to equality, human dignity, non-discrimination, autonomy, and economic well-being (Walker, 2002). This research requires an analysis of why women still experience various challenges including discrimination in obtaining land rights and how the land rights of women can be observed and protected and an analysis of what initiatives have been undertaken to ensure that the land rights of women are fully acknowledged and protected. The analytical framework of this study was based the

'chain of justice' framework (Quintero, et al., (eds), 2014), which is informed by a gender and rights approach that puts the women at the centre of the process and aims at not only highlighting the problems that women face but includes the identification of what interventions have been implemented and the possible outcomes of the interventions. For a country like Uganda this approach is important as it recognises the fact that under statutory law i.e. the constitution and the Land Act, any norms and customs that are discriminatory to women 's access to land are prohibited and yet these statutory protections have not improved access to land for women hence leaving many women vulnerable.

This research therefore seeks to explore the actors where women report their grievances, the nature of the problems being reported and progress towards addressing those problems by the various actors that are supporting women's land rights.

### 9.2.2 Actors

Four major institutions were interviewed for this study. Two CSOs i.e. UCOBAC and FIDA and two government institutions i.e. MLHUD and Ministry of Gender, Labour and Social Development.

- i) The Ministry of Lands, Housing and Urban Development (MLHUD), is a Government Ministry of Uganda, which is responsible for policy direction, national standards and coordination of all matters concerning lands, housing and urban development. It is the lead agency in the implementation of the National Land Policy, 2013, which includes a Gender Strategy that is specifically targeting the implementation of actions and strategies that protect and enhance the land rights of vulnerable groups especially women and children.
- ii) Ministry of Gender, Labour and Social Development is a Government Ministry of Uganda with a responsibility to empower communities in diverse areas including the promotion of cultural growth, skills development and labour productivity while promoting gender equality, labour administration, social protection and transformation of communities. The ministry is comprised of the Social Development Sector that promotes issues of social protection, gender equality, equity, human rights, culture, decent work conditions and empowerment for different groups such as women, children, the unemployed youth, internally displaced persons, the older persons and persons with disabilities.
- iii) Uganda Community Based Association for Women

and Children Welfare (UCOBAC) is a non-partisan, non-government organization dedicated to promoting and improving socio-economic welfare of vulnerable women and children in Uganda. The organization was founded in 1990 to serve about one million orphans and vulnerable children (OVCs) in Uganda at the time. Its overall mission is to improve the welfare of women and children using community based initiatives. Currently, UCOBAC is implementing the Women's Land and Property Rights (WLPR) project which seeks to increase women's ability to exercise their land and property rights through increasing access to, ownership of and control over land and property.

- iv) The Uganda Association of Women Lawyers (FIDA-Uganda) is one of the leading women's rights organizations in Uganda and the pioneer of legal aid and public legal education in sub-Saharan Africa. Formed in 1974, FIDA-Uganda has an established track record of promoting and defending human rights, with a focus on the rights of women with children as beneficiaries of this of this work

### 9.2.3 Structured interviews

A qualitative research design was employed for this study. With an interview guide designed, interviews were conducted for selected officials from the four institutions identified above. The study took a descriptive approach but also employed a comparative analysis across the four institutions.

### 9.2.4 Data

Data for the study were obtained from both primary and secondary sources. The primary data were collected using a set of structured questions and which were administered through interviews to the key information from the identified institutions. The technique of data collection involved one on one interviews with the respondents. The researcher was assisted by a research assistant to collect the data. The secondary data was got through desk reviews based on materials sourced from internet and documents. The secondary sources included reviewing of reports from land reform programs, Land Laws and the National Land Policy of Uganda, with emphasis on access to land by women. Secondary information will provide data for making conclusions but will also be used to triangulate primary data obtained from countries and communities.

### 9.2.5 Analysis method

A qualitative approach was conducted for this study. Under this, different respondents selected from the institutions were interviewed. Each respondent presented the grievances that the women report to them related

to access and control of land, what they think are the root causes of the problems, the interventions they have implemented so far and any major outcomes as a result of their interventions. The study predominantly took a descriptive approach in which the major challenges/problems of access to land by women in Uganda were identified for each of the respondents and thereafter a comparative approach was undertaken to assess the differences and similarities from the different sampled respondents

## 9.3 Results

### 9.3.1 Status of access to land by women

Overall the problems faced by women as regards access to land were the same and include women being kicked out of their land by the males in the family, women being denied the right of inheritance of land after the death of either their fathers or husbands, women having little or no control over returns on investments on land (e.g. agricultural harvest, rental returns, etc.) even if they are the ones who started/financed the investments, husbands selling family homes without the consent of their wives and the girl child generally having less rights to land than the boy child. It was noted that even though all women generally face the same problems while accessing land, the magnitude slightly differs based on income and education levels. It was clear that most women in Uganda are still discriminated against independent ownership and control of land in both customary and statutory land tenure systems. The contribution of each of the actors interviewed is summarised below:

#### 9.3.1.1 UCOBAC

This has exhibited their work to the community through working with various partners to intensively sensitise the local community and women about their rights in accessing, owning and controlling land. They also train para-legals who help the local communities in resolving land disputes through using Alternative Dispute Resolution (ADR) mechanisms. Their current projects inclined towards securing tenure rights are based in Pader, Mityana, Mubende and Butalejja districts.

#### 9.3.1.2 FIDA-Uganda

This organisation supports the women through a thorough sensitization on the existing land laws, land rights and the process of acquiring land documents. This empowers women hence reducing the rate at which they are exploited in the community. FIDA goes ahead to show their initiatives through supporting women to access real justice by giving the legal advice concerning particular land challenges and also offering probonal services to those women whose right to land have

been abused and they cannot afford the cost of hiring an advocate. The media is the main way of information dissemination to the public to a wider area.

#### **9.3.1.3 Ministry of Lands, Housing and Urban Development**

The ministry is mandated to oversee the surveying, registration and administration of land in the country. In order to attain their goals, the Ministry has worked closely with development partners and NGOs dealing in land related matters to give Certificates of Customary (CCO) land and emphasizing that women are included on these CCOs in order to ensure that the rights of women towards access and ownership to land are protected.

#### **9.3.1.4 Ministry of Gender, Labour and Social Development**

This ministry ensures that in every Ministry, Department and Agency (MDA) of the government, the gender issues are handled and incorporated in the financial plan and budget and if they are not included, their financial budget is not approved by the Ministry of Finance, Planning and Economic Development (MoFPED).

As noted earlier, the major obstacles women are facing in owning and controlling land include customary law, ignorance and the patriarchal society. In situations where women can own and control land such as where one can buy the land from the land market, women are constrained by several socioeconomic factors. Some of these constraints include illiteracy, lack of capital and implements.

The summary of results from the above research are showed in Table 1 evaluating the different problems faced by women while accessing and owning land, the interventions by the different organisations and the outcomes of the interventions.

**Table 1: Showing a summary the problems faced by women while accessing land, interventions by different organisations and the challenges.**

Organization	Problems/ root causes	Interventions	Outcomes	Challenges
UCOBAC	<ul style="list-style-type: none"> <li>The patriarchal society and the land administration systems designed to serve men.</li> <li>Judicial processes are complex and women cannot easily access them because most of the women are not educated and hence denied justice.</li> <li>Complex land administration systems: e.g. the process of acquiring a land title is very tedious.</li> <li>Ignorance among most women about the existence and operation of the land administration systems</li> </ul>	<ul style="list-style-type: none"> <li>Women's land rights program; this focuses on awareness raising in Kiboga, Mityana and Mubende, on women's land rights training para-legal to handle disputes on land and land administration processes</li> <li>Socio norm transformation: short course of 6 weeks designed for both men and women focusing gender equality.</li> <li>Supporting women to have registered land rights especially customary tenure. This is being done in Pader district with support from UN-Habitat/ GLTN</li> <li>Community mobilization and awareness raising; done in partnership with GIZ on Mailo land in Mityana and Mubende.</li> <li>Participate in the Advocacy Initiative: this is a grass root initiative that involves other Civil Society Organisations such as LANDNet Uganda. This initiative is at the national level.</li> <li>Urban land and housing; this project focuses on land in urban areas being managed efficiently to benefit both man and women. It involves engagement of municipalities, has been done in Jinja, Wakiso and Kampala. Also done in partnership with Ministry of Lands, Housing and Urban Development.</li> </ul>	<ul style="list-style-type: none"> <li>Solve ignorance as the community and women in particular are more informed about various land administration systems and access to justice.</li> <li>Increased access to justice by women</li> <li>Reduction of discrimination of women in the society</li> </ul>	<ul style="list-style-type: none"> <li>Hostile societies, deeply entrenched in the cultural norms that oppress women</li> <li>The land administration system is very rigid and therefore making it hard to push for alternatives</li> <li>Limited capacity by the land administration systems</li> </ul>

Organization	Problems/ root causes	Interventions	Outcomes	Challenges
<b>Ministry of Lands, Housing and Urban Development</b>	<ul style="list-style-type: none"> <li>• Cultural barriers</li> <li>• Institutional barriers (1/3 of women on committees)</li> <li>• Patriarchal society; Inheritance and distribution of land is patrilineal.</li> </ul>	<ul style="list-style-type: none"> <li>• CCO issuance with emphasis put on women for example Open Tenure used in Nwoya and Kasese districts and SLAAC in Kabale district</li> <li>• Training and capacity building of the traditional leaders on Gender.</li> <li>• Linking women to international fora e.g. traditional leaders In West Nile linked to the African Forum for Cultural Leaders</li> <li>• Creating land platforms with Civil Society Organisations dealing with land matters e.g. the Norther Uganda Land Platform (NLUP)</li> <li>• Reviewing the Land Act to bring back the lost clause and to have clauses addressing the issues of women.</li> <li>• Participation in dispute settlements and training the locals about Alternative Dispute Resolution mechanisms</li> <li>• Public awareness about gender through radio and TV talk shows and public exhibitions for example the land rights awareness week.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased accessibility to land by women</li> <li>• Inclusion of women on land titles and certificates of Customary Ownership hence promoting their tenure security.</li> <li>• Disputes resolved between men and women over land</li> <li>• Increased productivity on land since it's secure</li> <li>• The standards of living for both women and men are improved</li> <li>• Equal opportunities are created for both men and women; this has been enforced through the Commission of Gender Compliance where all budgets of the various MDAs need to be compliant in order to be approved.</li> <li>• A regime of champions for change has been built</li> </ul>	<ul style="list-style-type: none"> <li>• Limited finances</li> <li>• Negative attitude from the community due to the male dominance in the society.</li> <li>• Low levels of education for both women and men</li> <li>• High ignorance levels among the communities hence they do not know their rights concerning the access and control over land.</li> <li>• High population density that exerts more pressure on land.</li> </ul>



Organization	Problems/ root causes	Interventions	Outcomes	Challenges
FIDA Uganda	<ul style="list-style-type: none"> <li>• Ignorance of women of their rights and procedures of securing their land rights.</li> <li>• Loop holes in the law that do not protect women for example cohabiting women do not have a right over the property of their husbands and the Succession Act is more focused on men than women</li> <li>• Cultural norms and practices that do not protect the rights of women such as the widows, girl children are not allowed to own land in some societies.</li> <li>• High poverty levels; this makes women vulnerable and therefore cannot be able to fight for justice and protect their rights</li> </ul>	<ul style="list-style-type: none"> <li>• Court representations of the affected women. FIDA gives probonal services to these women.</li> <li>• Awareness raising about the rights of women to own land and property in all areas of operation such as Kampala, Mbale, Kamuli among other districts in Uganda.</li> <li>• Research, documentation and dissemination of materials on the rights of women.</li> <li>• Providing wholistic legal aid services such economic empowerment to women. This is through encouraging women to form SACCOs and connecting them to institutions that give financial support such as loans.</li> <li>• Engaging duty bearers in the FIDA activities such as the area Local Councils, District leaders among others as these act as agents of change.</li> </ul>	<ul style="list-style-type: none"> <li>• Enhanced the knowledge of women regarding their rights land and property and therefore they can fight for them</li> <li>• Women have been able to get justice in the courts of law as they are represented by the FIDA lawyers.</li> <li>• FIDA has been able to push for policy change.</li> </ul>	<ul style="list-style-type: none"> <li>• Negative attitude and discrimination against women in the society.</li> <li>• Limited funding</li> <li>• Too much demand for FIDA services from the public and yet the resources are limited.</li> <li>• Intensive and rigid laws and the administration system that do not address all the issues that women encounter.</li> </ul>

Organization	Problems/ root causes	Interventions	Outcomes	Challenges
<b>Ministry of Gender, Labour and Social Development</b>	<ul style="list-style-type: none"> <li>Resistance from family members and clan members</li> <li>Cultural bias</li> </ul>	<ul style="list-style-type: none"> <li>Gender Based Violence project: this reduced fights among men and women over land.</li> <li>Women’s land rights program</li> <li>Sensitising the community about being gender sensitive</li> <li>Carrying out gender analysis and planning to ensure that women are included in decision making on access and control to land.</li> <li>Sensitising religious leaders and cultural leaders about gender</li> </ul>	<ul style="list-style-type: none"> <li>Change of attitude about women in the society: women are given 12wxequal opportunities towards accessing and using land</li> <li>Women are allowed to take on some responsibilities in the society and they can easily access land.</li> </ul>	<ul style="list-style-type: none"> <li>Lack of technical staff to handle land issues</li> <li>Resistance from the society</li> <li>Lack of gender units in other MDAs,</li> <li>this makes implementation of gender programs very hard.</li> </ul>

#### 9.4 Discussion of findings

From the foregoing analysis, some elements of discrimination against women in land ownership and control presented by all the respondents from the different organizations is still evident. The main sources of discrimination are the customary laws and failure to implement the statutory laws that protect women’s access and ownership of land. It was realised that in some parts of the country women are not allowed to inherit land.

The most important factor is analysing whether the root causes preventing women from accessing land are being handled. The analysis shows that although the initiatives being undertaken by various CSOs and the government are very progressive, they still fall short of addressing all the major root causes of the problems women face while accessing land and the challenges faced as summarized in Table 2. Some organisations have made progress in some areas but other areas that are not reached still slow down the progress in promoting women’s land rights. This section discusses the cross initiatives and interventions towards ensuring that women have access and control over land in Uganda.

**Table 2: Showing the crossing cutting interventions and challenges faced by different actors.**

Root Causes	Interventions	Target groups	Challenges
<ul style="list-style-type: none"> <li>Patriarchal society</li> <li>High levels of ignorance among women on the land laws, rights.</li> <li>Cultural barriers and bias</li> </ul>	<ul style="list-style-type: none"> <li>Awareness raising to the public</li> <li>Educating women on their land rights</li> <li>Lobbying for funds to carryout women empowerment projects</li> <li>Forming platforms that are gender sensitive.</li> </ul>	<ul style="list-style-type: none"> <li>Women and men</li> <li>Political leaders</li> <li>Duty bearers such as district leaders and area local councils</li> </ul>	<ul style="list-style-type: none"> <li>Rigid cultural norms and practices.</li> <li>Limited funding</li> <li>Resistance from the communities</li> <li>Rigidity of legal and land administration systems.</li> <li>Limited capacity by the land administration systems</li> <li>Negative attitude from the community due to the male dominance in the society.</li> <li>Negative attitude and discrimination against women in the society.</li> </ul>

From Table 2 it is clear that all women encounter the same problems and challenges while accessing land. The most predominate ones being the patriarchal society that puts up inequality between men and women when it comes to land rights. The high levels of illiteracy and ignorance among most women in Uganda as well contributes to their land rights being violated by men. A woman who is ignorant cannot be able to stand out and defend her rights on instead they are convinced themselves they do not have rights to own and control land leaving it for the men.

Notwithstanding the cultural barriers and bias that puts all control and ownership rights into the hands of men in the society.

The Government of Uganda together with other CSOs and Development Partners have carried out various initiative to ensure that women can easily and equitably access and control land. The most common intervention that cuts across all the institutions is awareness raising made for both men and women. This helps to educate the community about the land rights of women and the advantaged of allowing women to own and control and as men. Among others include lobbying for funds to support women because it is believed that once a woman is financially empowered, she can stand for her rights.

## 9.5 Conclusion and Recommendation

### 9.5.1 Conclusion

Women's access to land in Uganda is still highly limited by the poor land administration systems and the cultural norms. Addressing inequalities and disadvantages women face in land ownership is essential to the realization of the fundamental human right to equality and basic well-being of women. When women own and control land, there will be more food in each household and more crops production hence increase in the national Gross Domestic Product thus economic development. This is from the fact that it is mainly women who mainly participate in agricultural activities.

Establishing and implementing women's land rights will protect them from evictions even when they are widowed or divorced. The study shows that the country through different government bodies and the Civil Society Organisations is making some progress towards improving the land rights of women. However, there are still outstanding gaps and actions that need strengthening.

### 9.5.2 Recommendation

Based on the findings of this research, the following recommendations should be considered in order to reduce the challenges faced by women while accessing and owning land. This will help to reduce the pattern of discrimination against women in land ownership and control:

1. Training and sensitizing women their rights on access to land and property. This puts them in a better position to stand out and fight for their rights
2. The review and repeal of all statutory and customary laws, including provisions on inheritance, which discriminate against women and which prevent women from owning land. Once supportive new laws have been formulated, there is need to disseminate them so that they are widely known among Government officials, CSOs, media, traditional leaders, and all land administration institutions.
3. There is need to document and review the customary laws that discriminate against women towards accessing land. For example, the inheritance of land which does not allow women and children who are girls to inherit land from their fathers. The pattern is patrilineal.
4. Active sensitization and education campaigns to change the patriarchal attitudes. Establishing new laws alone is not enough; existing gendered social relations and cultural norms may quickly shape these laws. There is need for measures to counter pre-existing social forces through education and training of both men and women.
5. Empower women socially and economically. This may involve legal literacy campaigns, provision of credit, waive transaction costs for land registration, and provide market access.
6. Equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land.

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# CHAPTER 10

## COMPARATIVE DISCUSSIONS

### 10.0 Results and discussions

#### 10.0.1 Social and economic problems

In this category, socio-cultural problems manifest in the form of domestic violence, ignorance and patriarchal society.

Domestic violence manifests in the form of women being kicked off the family land in case of marital conflict. Root causes are customs, the traditional norms and beliefs that deny women rights to access land. These particular root causes are found throughout the study area mainly due to the fact that many traditional customs regard women as inferior to men particularly when it comes to access to land. In a number of instances widows are evicted from their land by the husband's relatives so that they can be dispossessed of the family land. This problem has been demonstrated in instances where HIV positive widows are dispossessed of their land by their relatives.<sup>1</sup> Such experiences instill fear in women: those who aggressively fight for their land rights occasionally face hostility and may be subjected to physical or sexual violence. Many women in that predicament may opt to acquiesce about property rights abuses to avoid physical injury to themselves or their offspring.

Ignorance has been cited as a major challenge with regard to women's access to land particularly in rural areas. Many of these women are generally at a lower educational level than their male counterparts and in many other instances women do not believe that they have the same rights as men. It is also noted that community "gate keepers" are not adequately informed and involved about women's rights.

Due to the patriarchal nature of the society within the region, inheritance and distribution of land is patrilineal leading to the dominance of men in the decision-making process and in turn affecting inheritance issues. Based on this, women are deprived of their rights to land. Those who want to fight for their rights are afraid of being disowned by the society for going against the traditions. In addition, males are defacto family heads in many countries in the region, which places women at a disadvantage in decision making processes.

Whereas many countries in the region have natural resources that contribute to the national economies of the countries, women's access to the resources is either still limited or generally non-existent. This disadvantages women and leads to high levels of poverty among women, which eventually results in inequitable access and control to rights in land.

#### 10.0.2 Interventions to the social and economic problems

All the countries in the region are addressing these problems and their root causes mainly through raising awareness to empower women<sup>2</sup>. This intervention includes making the society more aware of women's rights through a number of methods. Some of the methods include the use of media such as local radio stations, public meetings with local administrators, through religious organizations such as churches and mosques and through community leaders and "opinion shapers". Furthermore, women have been encouraged to set up women groups<sup>3</sup> through which they are given managerial and financial support to empower them economically. This gives them higher bargaining powers to be self-supporting and fight better for their land rights. Government agencies within the region have programs<sup>4</sup> and projects that give women preferential access to funding and projects. These include providing incentives such as low-interest loans and forming Savings and Credit Cooperative Societies (SACCOs) that empower women and train them to demand their rights to access land. In some societies, awareness and women empowerment has led to elimination of some of the discriminatory practices against women's land rights.

Additionally, by translating the legal documents into local languages, and their communication through media such as local radios, women have access to information about their land rights<sup>5</sup>. It is also noted that many organizations are using Alternative Dispute Resolution (ADR) mechanisms to resolve the issues of women's problems to access land. These involve mediation, arbitration and negotiation and serve to save on time, financial resources and are more readily embraced by contesting parties, as compared to court cases.

<sup>1</sup> See article of W. Kenya

<sup>2</sup> This is done by Government departments and agencies while others are done by Civil Society Organizations as described in the study area

<sup>3</sup> Examples include Women Self Help Groups and SACCOs

<sup>4</sup> Examples include WAT Human Settlements Trust in Tanzania

<sup>5</sup> In many countries in the region, but minimally in South Sudan and DRC

### 10.0.3 Legal and land administration problems

Within this category, legal pluralism and access to land administration offices, land certification processes, inadequate policies and lack of political will were identified to be the key problems.

It is noted that some of the countries in the region either do not have any law that supports access to land for women<sup>6</sup>, while other countries do not have laws that deal with succession<sup>7</sup> especially as it affects women. Additionally, there is difficulty in dealing with land rights for women in cases where written law and customary practice conflict – and where the law exists, it is often not implemented, which is a major issue across the region. In some countries, women are not sufficiently represented in boards and institutions that deal with land<sup>8</sup>, leading to insufficient advocacy for the protection of their rights.

Some existing family laws are not gender sensitive and have contributed towards entrenching discrimination against women as far as their land and property rights are concerned<sup>9</sup>. The legal process to claim the rights is expensive both in terms of time and money thus, becoming a hindrance in accessing justice. Court cases take too long to be heard and determined and other attendant costs are prohibitive to most women. Even in instances where the judgment that is delivered is favorable to women, enforcement is difficult and challenging particularly in communities which are hostile to the idea of equal rights for women in land.

It is observed that in most countries in the region there is a problem of access to land offices due to long distances to these facilities plus a lack of information on the land processes. This is complicated further by lack of adequate number of experts and the high cost of land titling procedures. These factors have a negative impact on access of women to land.

Whereas most countries within the region have clear national land policies, some countries lack these policies hence having no clear definition of women's land rights<sup>10</sup>. Additionally, there is a gap with regard to women's rights to land and property, particularly with reference to the real situation and provisions in the existing laws in the region. Governments also do not

adequately support non-governmental organizations that deal with women's land rights. Many institutions have not overcome barriers regarding representation of women (at least 1/3 members to be women). Sufficient mechanisms for adjudication of land disputes do not exist and there is bias in dispute resolution that reflects patriarchal discrimination. Grabbing of public land affects women rights.

In some countries within the region women find it difficult to pursue remedies for property rights violations. Some leaders and governmental authorities often ignore women's property claims and sometimes exacerbate the problems. A woman seeking the intervention of a local chief or other government official who is influenced by prevailing cultural beliefs, may find that the dispute is not taken seriously. Many chiefs and government officers are men, who tend to identify with the men, and therefore make decisions that tend to favor men, while silencing women when their rights are infringed upon. This has a disempowering effect on women who seek protection of their property rights.

### 10.0.4 Interventions for legal and land administration problems

The major interventions to these problems are advocacy, proposition of new pro-gender laws, research and studies, which can inform the policy making processes. Additionally, women have been facilitated to access land administration services, which have resulted in improved access to land offices and land certification processes. It is also noted that in many of the countries in the region, non-state actors often offer legal aid in land related matters including financial facilitation to women during the process of obtaining land certificates, pro-bono legal representation in courts of law, mediation and arbitration services.

### 10.1 Key outcomes of interventions

The interventions implemented by both the government and non-state actors have improved significantly women's access to land across the region. Some of the key outcomes are discussed below:

- i) Increased awareness of women about their rights  
Within the region, more and more women have become aware of their rights to own land and property<sup>11</sup>. In addition, the awareness programs

<sup>6</sup> Such as in South Sudan

<sup>7</sup> Such as in South Sudan, Burundi, and DRC

<sup>8</sup> With exception of Uganda, Rwanda and Ethiopia

<sup>9</sup> E.g. the Kenya's Matrimonial Property Act No49 of 2013

<sup>10</sup> Such as in DRC, South Sudan

<sup>11</sup> For example, in Tanzania, a three-level women land rights awareness program starting at Village Assemblies, Only Women workshops and Women Strengthening meetings have increased awareness of women about land rights in Iringa district and as a

have also targeted women leaders who have then become advocates for women rights and are now willing to fight for other women's rights to land and property. This has led to a reduction in cases of domestic violence against women and made it difficult for land grabbers to operate with impunity<sup>12</sup>.

- ii) Land certificates have been issued to women. There are many projects that have increased the number of title deeds held either jointly by men and women or by women only. Statistics from the Rwanda Land Management and Use Authority (RLMUA) show that about 49% of the 11,446,570 million parcels of land that were registered under the Systematic Land Registration Program were jointly owned by married couples with an additional 19% solely registered in women alone (RLMUA, 2017). Other examples in the region, include the case of Uganda where certificates of customary occupancy have been issued in Kasese, Nwoya, Pader and Kabale with particular emphasis on women, as well as Ethiopia especially in Amhara and Oromia.
- iii) Resolution of conflicts and increased women's access to justice. Through awareness and the provision of pro bono services especially by the women lawyers' associations more women are now able to fight for their land rights through the formal legal system. In Burundi, a study conducted in 2009 by RCN, Justice et Démocratie (Justice and Democracy), showed that 38% of complainants on land disputes are women. By 2015 evidence from 10 residence courts showed that 49% of land related court cases were instituted by women (APDH, 2015). In Kenya and Uganda, FIDA has reported an increase in the number of women contacting them to offer pro-bono services in land related court cases<sup>13</sup>.
- iv) Increased partnerships between local and international civil society organizations. Within the region there is an increase in the cooperation between local and international CSOs noted, especially those addressing women's right to land and property. This has led to marked increase in a number of projects in all the 8 countries that are addressing access to land for women. Many of these projects include awareness raising for women, training of leaders from national to local authorities and certification programs aimed at ensuring that

women are not discriminated against in the issuance of certificates/title deeds.

## 10.2 Major challenges in the implementation process

It was noted that the success of the interventions identified in this study is still dependent on a resolution of a number of challenges including:

- i) In all the eight countries, there are still entrenched cultural practices that discriminate women still persist. Majorly this is a result of the patriarchal nature of most communities, which means that men still control the relaxation or abolition of the discriminatory practices. In the end women are left with either the option of fighting for their rights or oblige to cultural norms.
- ii) Whereas some countries in the region like Rwanda, Ethiopia, Kenya, Tanzania and Uganda have enacted gender sensitive legislation, the pace of implementation with the exception of Rwanda is lagging behind. Countries like DRC, Burundi, South Sudan are yet to work on pro-gender land laws.
- iii) Overall it is noted that in many countries, the land sector is not adequately funded and therefore operates with limited resources. Subsequently, although this affects access to land administration services by both men and women, this exacerbates the vulnerability of women under current circumstances.
- iv) Most women in rural areas have low literacy levels and cannot read and write. This requires greater awareness for example by tailoring the methods of communicating the land rights in the way they can understand.
- v) Most of the non-state actors depend on donor support to operate effectively. Reduction in donor funding negatively impacts any progress towards supporting women's land rights.

## 10.3 Conclusion

Women's access to land in the Eastern Africa region is still limited by poverty, entrenched cultural norms and land administration shortcomings. Addressing inequalities and disadvantages women face in access to land is essential for the realization of the fundamental human right of equality and basic well-being of women.

result women have been able to take on some responsibilities in the villages and through this they have been able to easily access land.

<sup>12</sup> Groots Kenya (Year-----)

<sup>13</sup> As in the case of Uganda and Kenya

The study shows that government and non-state actors are using a number of interventions to improve women's access to land. These include; raising awareness from the local level to national and international levels, empowering women financially through women groups, running pro-gender land certification projects with emphasis on women and ensuring that pro-gender land laws are enacted and implemented. Whereas countries like Rwanda have made significant progress towards improving access to the land for women, most countries within the region are lagging behind because of entrenched customary practices that are discriminative against women, limited funding to the land sector for both the government and non-state actors, slow pace of the implementation of the pro-gender laws and low literacy levels of women especially in rural areas.



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