



WOMEN LAND RIGHTS IN TANZANIA

A paper prepared for presentation at
the workshop organized by Mzumbe
University DSM Campus on 10th
Jan.2009



Content

1. Background- Tanzania land tenure system a historical context
2. Factors and forces for land reforms in Tanzania
3. Policy and legal framework governing land use and adjudication of rights in Tanzania
4. Women land rights in Tanzania a situational and practical analysis
5. Challenges for realization of women rights
6. What can be done to ensure security of tenure for women's land rights
7. Conclusions



1. 0Background

- Land is a basic resource from which human beings and almost all other living creatures depend on for their living
- In Tanzania, (though statistics vary depending on use, and user) more than 80% rural based communities depend entirely on land through farming, livestock keeping, mining, fishing, hunting and gathering, or doing varieties of related activities like tourism etc.



1.1 Pre colonial ..

- Principles of equality and justice were defined and applied within the limits of tribal/clan jurisdiction.
- Most customary tenure systems were patriarchy thus disregarded women rights in both administration and adjudication of rights



...background

There are three main phases in the development of the Tanzania land tenure system that are pre- colonial, colonial and post independence.

During pre colonial era, land use and ownership was under the respective tribes and clans with varied ways of accessing, using, owning and controlling basing on their own customs and traditions



1.2 Colonial phase

- Tanganyika was colonized by Germans and British the former from 1885 to 1918 and the later from 1919 to independence in 1961
- Germans ruled through decrees one of which was issued in 1895 promulgating that all land in Tanganyika whether occupied or not was to be treated as un owned Crown land and vested in the Empire under king Kaizer of German.
- The British came over as trustee under the league of Nations but went further to enact the **land ordinance No.31 of 1923** that declared the land public but vested the ultimate ownership and control to the Governor



...Colonial

The colonial law recognized **deemed rights** of occupancy but also introduced **grated rights** of occupancy to facilitate foreigners access to and ownership of land through granted title deeds

In practice, deemed right of occupancy was accorded with lower status than the granted rights of occupancy or title deed as reflected during disposition



1.2.1 Implications of colonial rule on land rights

- During colonial rule, natives lost their rights to occupy and use lands save for exempted claims to ownership or other claims which private persons, chiefs or native communities could prove. It was however difficult prove even if this proviso was made
- Indigenous or native lands were treated as un owned which meant they were due for grabbing and re allocation to new foreign owners
- The radical title or ultimate ownership and control over land that was previously vested in the land holder and administered by their clan heads and chiefs shifted to the political sovereign
- Small producers had to turn into casual labourers in settlers farms sometimes on the land they used to own



1.3 Post independence era

- No fundamental changes took place in the law save for replacement of the governor with president
- Declarations, policies, laws and development plans within the framework of ujamaa and self reliance doctrine were enacted and implemented. They included: Arusha Declaration (1967), Land acquisition Act no 47 of 1967, village and Ujamaa villages act of 1975, Local government district Authorities act no 7 of 1982 etc



...Post independence

- Most developments in the social economic and political realms of the state were in the first place influenced by the colonial legacy (oppressive and exploitative) on one hand and patriarchy on the other.
- A good example in the village and ujamaa villages act of 1975 which vested administration of land in the head of households (kaya) who are traditionally men



1.4 The new land reforms in the 90's

- Began with the presidential Commission in 1991 to 1992 which recommended for a new land regime
- The National land policy established in 1995 and amended in 1997
- The new land laws enacted as act no 4 and village land act no 5 in 1999
- The LA no 4 has been amended in 2004



2.0 Factors that necessitated land reforms

- Internal contradictions due to failure of the previous land regime (1923 ordinance) leading to **conflicts, evictions, alienations, double** allocations, trespassing, corruption etc
- Collapsed judicial system that failed to handle land conflicts promptly
- Opening up of democratic space in mid 1980's to early 1990's giving rise to women and human rights movements e.g NALAF, GLTF etc
- External forces – the role of World Bank, IMF and donor community
- Compliance to regional and international agreement and treaties for women rights e.g CEDAW



2.1 Content of the new land laws

- Common section 2 of the LA and VLA **define land** as comprising of all matters on earth na underneath including buildings, natural resources and all structures permanently affixed to it to the exclusion of oil, minerals and gas
- Land divides into three categories namely **general land, village land** and **reserved land**
- Recognizes both **customary** and **statutory** tenure systems
- Puts much emphasis on the **value** and sustainable use of land
- Vests the **radical title** on the presidency and administration powers on the central government
- Recognizes gender balance in land ownership and dealings



3.0 The legal foundation of land rights in Tanzania.

3.1 The 1977 constitution

- Women's social economic and political rights are provided for and secured within the URT constitution which is the basis of all the citizens rights
- The URT constitution of 1977, thus clearly spells out women rights by first prohibiting discrimination on whatsoever ground and emphasizes equality of all persons.
- For example, Article 12 states that; all human beings are born free and are all equal
- Article 13(i), all people are equal before the law and are entitled without discrimination to protection and equality before the law




...Legal foundation

- Article 24(1), is explicit that every person is entitled to own property. The article further states that any deprivation of a person's property is unlawful unless declared by law which makes provision for fair and adequate compensation.
- Land is a property that every citizen is entitled and therefore women as citizens are entitled to this right
- Article 29(3) ensures that no citizen shall have a right, status or special position on basis of lineage, tradition or descent



3.2 The National Land policy 1995

- NLP covers a wide range of issues relating to women's equal right to own land. One of its objectives is to promote *an equitable distribution* of, and *access* by all citizens to land.
- **Para 4:2:5** recognize the existing problems relating to land. It states '*Under customary law, women generally have inferior land rights relative to men and their access to land is indirect and insecure...*'
- **Para 4:2:6** continues to state further 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*'.



3.3 Women land rights in Land Act no.4 of 1999

- The 1999 legislation adequately provides for a bunch of rights for women to *access, own, and control* land as equal as men
- It also provides for the right to *participate* in decision making organs regarding land matters
- They also provide for women right to *dispose* land and properties therein



3.3.1 Equal land rights for Women and men

- Section 3(2) of both LA and VLA states that '*The right of every woman to acquire, hold, use and deal with land shall, to the same extent and subject to the same restrictions be treated as a right of any man*'

Women rights with regard to lease


- *Section 108(1) (h) (iii)* of the Land Act protects women by requiring the court to have regard to women in considering whether to grant an order for determination of a lease or relief against such order.



3.3.2 Right to mortgage property

Protection of women in relation to mortgage transactions

- *Section 112* of the land Act provides for the power of an occupier of land in creating mortgages. Sub-section 3 requires the consent of all the spouses before a matrimonial home is subjected to mortgage.
- *Section 113(3)* empowers the dependant of a borrower whose land is likely to be permanently deprived to apply to court on the ground that its terms were of disadvantageous to him or her . And in considering that the court is obliged to have regard to gender as well. Ref. also part X



Right to co-occupancy

- Part xvii of the LA allows women to own or occupy land jointly or in common with other persons.
- Under joint occupancy, the law protects women as it provides that where the land as whole is occupied jointly under a right of occupancy, no occupier is entitled to any separate share in land, not even a transfer to an outsider unless there is a consent between the two occupiers. It is important to note that this is created mostly between spouses as per section 159(1),(8)



... co occupancy

- Under the occupation in common, women are protected in that each occupier is entitled to an undivided share in the whole. Any disposal of land here requires consent as well. Spouses may be presumed to occupy land in common as per Section 160(1) of the Land Act.



Protection upon disposition

- Section 161(3) (b) of the Act the law requires that before any transfer or assignment is effected it is the duty of the assignee or the transferee to make inquiries as to the consent of the spouses as per Section 59 of the law of marriage Act



2.3 Women land rights as per VLA No. 5 of 1999

- Section 3(1&2) of the village land act clearly states and recognizes equal rights for men and women to access, own, control and disposition of land under the same terms and conditions
- Section 20(2) protects women against discriminatory customs and traditions which restrict their lawful access to ownership, occupation and use of land.



Right to access adjudication bodies

- Section 23(2)(c) of the VLA and section 57(3) accords equal treatment of women in the application of customary right of occupancy by both the village land council and the adjudication committee.
- Section 22(1) of VLA grants women to acquire land after divorce.



3.3.3 Right to participate in decision making

- VLA establishes organs for dispute resolution that run from the village level to appellate court level. Women participation in village and ward level machineries is made mandatory.
- Section 60 of the VLA and the land disputes (courts) act of 2002 require that out of 7 members of the VLC women should not be less than 3 and out of 5 to 8 members of WT women should not be less than 3 as well



3.3.4 Participation rights...

- Here there is an affirmative requirement of women's representation in bodies that make decisions on land, including resolution of disputes, adjudication committees and village council committees.
- In Village Council (VC) which consists of 25 members at least a quarter of the members must be women. The VC is in charge of village land administration



4.0 Women land rights situation in Tanzania

- Despite all those legal provisions that guarantee women access to, ownership and protection of their rights to land, the situation on the ground is proving otherwise as many women are still discriminated upon and denied their rights to land . For instance
- Most women have access to land through their spouses or male relatives but do not own on their own,
- unmarried daughters, widows and divorced women have been a subject of stigmatization, discrimination and harassment by their male relatives in different ways.



...Land rights situation

- In some cases, husbands have been using title deeds to secure loans without first consulting their wives causing evictions and or loss of their land and properties
- In matters of inheritance there have been unequal distribution of wealth as between men and women where women are always considered second.
- As customary marriages are not a subject of registration, women are disadvantaged in that upon divorce or death of their husband they find themselves losing almost everything, key among them being land



5.0 Challenges to realization of women rights

- **Dualism** in land tenure system. Tanzania has a dual system where customary tenure operate along with statutory tenure. statutory tenure is regarded as more superior to customary tenure
- Most Customary tenures are still **discriminatory** to women
- **Legal technical gaps**; the policy allows for women inheritance of clan or family land to be governed by customs and traditions provided they are not contrary to the constitution and principles of natural justice. Such loop holes are sometimes used against women rights as those who apply also define the provisions discretionally



...Challenges

- Lack of **knowledge** on women rights for women and the public at large (legal knowledge, civic awareness etc)
- Male **dominance** in society (patriarchy system)
- **Stereo-types** and negative attitude against women's power, competence, potential, status etc
- Archaic **traditions**, customs and religious beliefs



6.0 What to do?

- Broad based public awareness to women to enhance their **knowledge** and understanding of their rights to land and other resources
- **Advocacy** for **policy**, **practice** and attitude **change**
- Decentralizing land administration to allow grassroots communities where most women are based to **participate** in decisions
- Economic **empowerment** for women to enable them compete in land dealings
- Steer up formation of women social movements to campaign and fight against discriminatory customs, beliefs and attitudes



7.0 Conclusion

- Despite the changes in the land order that have at least improved the land rights situation for women as a group, the fundamental principles governing land rights in Tanzania are still in favor of the more powerful and well connected groups in society most likely, elites, local and foreign investors and their counterparts. Women can only sustain the little scores they secured in the legal provisions by joining hands with other marginalized groups to advocate for a more socially just and equitable land tenure system, that gives them power and space to participate in practical decisions from a family to national level



The end

Thank you for listening

Yefred Myenzi

HAKIARDHI

Jan 10, 2009