



Women's rights to access to natural resources

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Main HR concerning land

- No explicit general right to land or property!
 - SF Moore: “The right to life in an agrarian society can be conceived as the right to access to land and all the inputs, such as water, necessary to make it minimally productive”
- Livelihood rights: “adequate living standard”, CESCR Art 11,12
 - Right to housing (incl. secure tenure)
 - Right to food
 - Right to health
 - Right to water
- Participation in decision-making and resource management
- Non-discrimination



CEDAW on non-discrimination and property

Art 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women (...) a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give **women equal rights to conclude contracts and to administer property** (...)

Art 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in **all matters relating to marriage and family relations** and in particular shall ensure, on a basis of equality of men and women:
 - (c) The same rights and responsibilities during marriage and at its dissolution;
 - (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property(...)



CEDAW on rural women

Article 14

1. States Parties shall take into account **the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families**, including their work in the non-monetized sectors of the economy (...)

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

(a) To **participate** in the elaboration and implementation of development planning at all levels;

(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.



HR framework for land reform

- Non-discriminatory access to land and protection of rights to land
 - De jure and de facto
 - Legislation and practice
 - Private and public sphere
- Equal participation and empowerment
 - Meaningful participation
 - In legislation and resource management
- Monitoring and accountability: Due process and the rule of law
 - Due process at initial stages
 - Access to effective legal remedy



Formalisation, titling & women's land rights



Why register land rights? - economist

- Increased security for land-holders
 - Secure tenure, not loose their land
 - More likely to invest and plan long-term
 - Better access to credit
- Macro-economic advantages
 - Increased **credit** → increased investment → increased productivity of the land
 - **Market**: Land goes to the most effective users
 - Recognising existing/customary rights: cheaper, simpler and easier than creating new system



To title or not to title? - HR

- 2 different arguments put forth by HR institutions:
- Titling can secure continued use of land:
 - Secure tenure as aspect of “adequate housing”, CESCR Art 11:
“(a) Legal security of tenure. Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of **security of tenure which guarantees legal protection against forced eviction, harassment and other threats**. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups”
 - » CESCR GC 4 para. 8



To title or not to title? HR (ctd)

- Concern about negative effects of titling on realisation of other rights
- CESCR comments to Solomon Islands (1999, para. 203):

“Concern is expressed about the plans to privatize communal land with a view to making it accessible for commercial use and urban development. Approximately 90 per cent of the land in the State party is held under customary land tenure, meaning that the land belongs to the community as such rather than to individuals. Attention is drawn to the fact that **the envisaged privatization of land under customary tenure may undermine the foundations of the State party’s society and could lead to the dispossession of the majority of people, thereby depriving them of their basic source of income.** With regard to the Government’s plans to **privatize housing completely, concern is expressed that the number of homeless people in the urban areas will increase considerably.**”



Land registration and women

- Will women be registered as owners?
 - Experiences from Kenya: 5%
- Why are men registered?
 - Stereotyped gender roles: male head of household
 - Men's economic contributions are frequently higher
 - Men inherit land more often than women
- Registration and simplification
 - Complex and overlapping rights → simplifications
 - Consequences of simplification:
 - Rights of use and access become invisible?
 - Individualisation can weaken community support network?



Land registration and women (ctd)

- Facilitating transfer and mortgage of land rights: how will this affect women?
 - The owner decides and benefits, not the one with right to access
 - Suggestion: joint titling or spousal consent requirement
- Generally: women, especially poor women, are unlikely to benefit equally from registration. Rather: they become more vulnerable.
 - How can such gendered impacts be cushioned?
 - Typical suggested measures: joint titling, spousal consent



Tanzania's 1999 land legislation

- Background: plural normative systems
 - Land law
 - Family law (inheritance)
- Background for 1990s land reform: internal and external pressure
- Main objectives of reform:
 - securing existing rights
 - facilitating a market in land rights
- How?
 - Titling, registration, “formalisation”
 - Rules regulating transferral of land rights in a market



1999 Acts and the HR framework (1)

1. Equal participation and empowerment
 - Participation in drafting
 - Quotas for women’s participation

2. Due process and rule of law
 - Procedures demand that women’s interests be considered
 - in adjudication/registration & before sanctioning transactions
 - Ex: “While determining an application for approval of a grant of a derivative right, the Village Council shall have regard to the need to ensure that **the special needs of women for land within the village** is and will continue to be adequately met.”
 - Complaint procedures. Separate branch of land courts
 - However:
 - disseminating information about the Acts
 - very complex system: forms, procedures etc



1999 Acts and the HR framework (2)

3. Equal access to and protection of rights to land:

- Explicit equality principle
 - Recognises customary law – but shall not to be applied if discriminatory
 - Remaining tensions with codified customary law, e.g. inheritance
- Spousal consent for mortgage of matrimonial home
- Joint titling an option/ presumption
- Success story of HRBA to women and land?



Spousal consent:

Protecting the non-owning
wife against sales and
mortgages



SPOUSAL CONSENT

- The spousal consent requirement:
 - a husband cannot sell/mortgage the matrimonial home without the wife's consent
 - Wife's perspective: security for continued use of her home
 - Third party's perspective: creates a risk – if a wife appears and protests
 - Buyers
 - Banks
- Frequently recommended by human rights and women's rights activists



Spousal consent in Tanzania

- LA art 112(3):
 - A mortgage of a matrimonial home (...) shall be valid only if:
 - (a) any document or form used in applying for such a mortgage is signed by or there is evidence from the document that it has been assented to by the borrower and any spouse of the borrower living in that matrimonial home



Legislative debate in Tanzania

- 2001: Tanzania Bankers Association complained
 - Other actors in the debate: World Bank, Tanzania Women's Lawyers Association
- Tensions: macro-economic considerations and a HR perspective
 - Banks argues that the spousal consent requirement is an obstacle to an **efficient** market in land rights
 - HR support the wife's right to **equality**, including equal protection of her right to housing and her access to the land she lives on



Lessons:

- Two types of arguments for formalisation:
 - Protective: secure tenure of individuals
 - Economic: markets and credit
- Why is this distinction important?
 - Reminds us that choices, values and politics
 - The role of human rights



Joint titling:

Promoting gender equality in the registration of land rights

Joint titling:

- Land should be registered in the name of both/ all spouses cultivating/living on it
- Popular measure:
 - HR: ensuring equal rights for spouses in relation to property
 - Land tenure policy
- Tanzania's 1999 land acts:
 - option and presumption



Implementation of joint titling in Tanzania:

- Dar es Salaam:
 - 4 mill inhabitants
 - 80% informal land rights
- Statistics:
 - USP: 30% women, 65% men, 5% JT
 - 20'000 plots: 32% women, 45% men, 5 % JT, 18% corporate owners
 - Hanna Nassif community programme: 30% women, 70% men



Implementing joint titling presumption

- Problems encountered at all levels...
- Residential licences programme:
 - Documents with space for only one picture
 - Procedure for registering owners: “invisible wives”
 - Difficult to include the name of the wife after initial registration: “Go home and clear the conflict”
- Hanna Nassif local titling programme:
 - women are not aware of joint titling option
 - women’s NGO involved showed limited interest in joint titling:
 - “it is not relevant here, men are already the owners”



State obligations to address discrimination by non-state actors

- CEDAW art 2.e: “To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;”
- art 2.f: “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;”
- art 5: “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”



The transformative potential of law

- “Mind the gap”
- What constitutes “appropriate measures” depends on f.ex:
 - the competence and commitment of the political and bureaucratic actors involved
 - the procedures and documents used
 - the relationship to gender roles and stereotypes, social norms and expectations
- Pragmatic: close engagement with the local, analysis of context, actors, norms etc...