

Women and Land

in_focus

CASE STUDY

KENYA

TANZANIA

UGANDA

Local solutions gain ground in East Africa

In Uganda, Tanzania, and Kenya, a decentralized approach to land administration promises more accessible dispute resolution and a better deal for women. But the new systems face significant challenges. Among them are old social attitudes that pre-empt any real discussion about women's right to control land.

In the Mukono district of Uganda, a recently separated couple had a serious dispute over the family's land. The woman had taken out a loan to buy the land, and the husband had built a house on it. When the husband tried to sell the property after the separation, the woman appealed to a local court for the right to remain with the couple's three children on the family plot. The court was sympathetic. Arguing that the children's welfare was of primary concern, it ruled that the man could not sell the property and uproot his family.

Meanwhile, in Uganda's Lira district, an 86-year-old woman lost her case before a local court. She had reported that while she was sick, a 65-year-old man built a house on her land without her consent, claiming the property as his own. The first local court ruled in the man's favour. But the woman appealed to the higher-level local court. It found that she had not been able to present her witnesses at the first trial. It also pointed out that the defendant doubled as the chair of the first court that heard the case — a clear conflict of interest.

To Josephine Ahikire, a researcher with the Centre for Basic Research in Kampala, Uganda, these cases illustrate both the promise and the problems of a new system of "decentralized" local council courts that deal with land issues.



Karen Robinson/Panos

Women in Kenya stand to reap benefits from the new Constitution, which emphasizes gender rights.

Less intimidating forum

Ahikire's investigations were part of a series of comparative IDRC-funded studies on whether decentralization initiatives in Kenya, Tanzania, and Uganda have made land-related justice more accessible and user-friendly for women. They examined how the different countries' unique forms of decentralization worked, and how differing social contexts affected the local tribunals' effectiveness. More broadly, they looked at how women were organizing around land issues.

In the case of Uganda, the need for effective legal protections is clear. In Lira district, for example, in-laws and land-grabbers routinely chase widows off land. Women here are especially vulnerable because of the breakdown of the local clan system that once protected widowed women, as well as the lingering effects of the conflict between the government and the Lord's Resistance Army. The situation is similar in Buganda district, where researchers found that "a viciously vibrant land market" often means that women are swindled or driven from their land.

Ahikire found that many women increasingly turn to the local court system. Those women typically find that court members, being local people, are more likely to understand their circumstances. They are also more likely to be held to account for their decisions by the local community. Perhaps more importantly, these local tribunals are less intimidating to poor women since they are less formal and less legalistic.

“The people who serve on those courts are part of the community, and their procedures are different from what’s expected at magistrate’s court,” Ahikire explains. “The women are allowed to use their local language so you don’t need an interpreter, and you don’t need a lawyer. You don’t need to submit written documents. The women can produce witnesses, and the courts themselves are supposed to visit the places and talk to local people as witnesses. So there is a sense of inclusiveness.”

Lack of power and resources

Despite this, Ahikire notes that the local courts “are handicapped because they lack an adequate mandate and the resources to be as effective as they should be. The most important point is that there is no clear mechanism of accountability. A local council can summon somebody to be a witness, but if that somebody refuses to show up, they don’t have the authority to reprimand that person.”

Corruption, she adds, is also a problem. This is clear from the case in Lira district, noted above. That case also shows that while the close proximity of these courts often makes legal redress more accessible for women, women’s access to justice can be



Scott Wallace/World Bank

Researchers in Kenya found that women are now buying, selling, and inheriting land.

compromised if the courts are *too* close to home. When a woman’s case is heard in her own small community, for example, court members may be involved or have a special interest in the outcome. One woman told Ahikire: “These men have closely knit networks. If he is not a relative, he is a friend or he often buys for him a drink in the trading centre. You cannot win at that level.”

Although local courts provide hope for rural women who lack the means to appear at magistrates’ court, they need the tools to be more effective.

This points to the need to “address the loopholes in the decentralization of land strategies,” says Ahikire. Although local courts provide hope for rural women who lack the means to appear at magistrates’ court, they need the tools to be more effective.

But providing Ugandan women with greater security of tenure will require more than just fixing the legal system. Ahikire points to a broader need to address the oppressive social attitudes that prevent women from collectively dealing with the land issue. Women have only confronted their lack of access to land on an individual basis, she says, as a response to a particular case of land-grabbing or some other move to drive a woman from her land. Proactive efforts to address land rights as a social issue — to deal with the root of the problem — are virtually non-existent in Uganda.



Curt Camemark/World Bank

Despite land reforms passed in 1999, women in Tanzania still face constraints around inheriting ancestral land.

Ignoring the broader context

"Land is a very, very volatile political issue," Ahikire says, "and women have not really organized around it. Women say you cannot dare form even a small group around land rights." This is largely because attempts to deal with Ugandan women's insecure access to land is invariably perceived as an attack on custom, a reaction that Ahikire says is based on a misreading of the country's traditional values.

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The traditional clan system, she explains, was "inclusive" in that it allowed women to benefit from collective ownership of the land while assigning management responsibilities to men. But in a context where collective lands have been placed in private hands, preserving men's privileged position has led to an "exclusionary system, where they say land actually *belongs* to men. This is very different from the old way where men were a conduit for preserving the interests of the whole group."

This exclusion will end only when women's land rights are discussed openly, Ahikire believes. "Land has to become an issue on the public agenda," she says.

Mixed picture in Tanzania

Researchers found a similar lack of public debate of women's land rights in Tanzania. There, land laws passed in 1999 devolved significant responsibility for land to village councils. This included responsibility for managing land, settling land-related disputes, and establishing property boundaries through adjudication committees. Additionally, the new decentralized system aimed to expand women's access to land through mechanisms such as reserving 25% of the seats on those local structures for women.

Despite such ambitious intentions, results have been mixed. Women have come to control more land as properties previously owned by the village have been allotted to individuals or sold off, says researcher Sherbanu Kassim of the Women's Research

and Documentation Project Association in Dar es Salaam. Yet women receiving land through allotment seem to be the exception. Women are still excluded from ownership of ancestral lands passed down through inheritance.

That's because of the continuing acceptance of the belief that for a woman to inherit land "would be against the rules of natural justice, that it would be repugnant," Kassim says. She recalls that while interviewing villagers in Morogoro district, "a woman stood up and said, 'For me to go and register my own name in the process of land allocation would be disrespectful. Another respondent, who was male, said categorically: 'Customary land, I am the one who inherited. My sisters can use the land but they cannot inherit. I am like a king.'"



Mariantonietta Peru/USAID/Kenya/flickr

For women in Uganda involved in land disputes, new local courts are more accessible than higher-level ones.

Signs of change in Kenya

Researchers working in Kenya also noted old social attitudes that undermine the egalitarian intent of decentralized land structures. But they also found evidence that women can make significant advances when institutional reform coincides with a shift in attitudes.

Kenya's 2010 Constitution emphasizes gender rights, which the government has attempted to "mainstream" by creating a ministry for gender-related and children's issues. Government policy setting quotas for women's participation in public institutions has had a direct impact on the land issue since women now play a much larger role in Kenya's decentralized Land Control Boards and Land Disputes Tribunals.

Researchers Karuti Kanyinga and Winnie Mitullah, both from the University of Nairobi's Institute for Development Studies, acknowledge that the roadblocks found in Uganda and Tanzania also exist in Kenya. These include lingering support for the old patrilineal land-inheritance customs and cases of women being cheated out of their land.

Overall, the picture is encouraging. The researchers found that many more Kenyan women are becoming landowners, both through inheritance and by buying property. In the Kitui district, women often purchase land secretly, for fear of offending

husbands who embrace more traditional beliefs. In Nyeri district, however, women acquire land openly and have considerable influence in local land-related agencies. Kanyinga and Mitullah believe this shift is the result of a whole set of social and economic changes. As Nyeri's coffee sector has collapsed, women have become more entrepreneurial and have taken on a more important economic role.

The researchers don't see change as limited to this one area. Across the three districts they studied, they discovered that "women are inheriting land, a phenomenon that was anathema a decade ago.... A woman no longer belongs in the kitchen — this is no longer the widely accepted norm. Women are buying their own land, selling land, inheriting land, sitting with men in making key community decisions."

This case study was written by Stephen Dale.

The views expressed in this case study are those of IDRC-funded researchers and experts in the field.

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