A REVIEW OF THE CURRENT STATE OF GENDER GAPS IN ACCESS TO LAND: IMPROVING AND STRENGTHENING WOMEN'S RIGHTS IN AFRICA

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Abstract

Every year, the United Nations celebrates the International Day of Rural Women. Women are recognised for their important role in improving agriculture and rural development across the globe. This is in commemoration of their joint efforts towards eradicating poverty where in so doing they shoulder the responsibilities of the farm in order to cater for their household needs as well as that of the community. International, regional and national laws in Africa recognise that women indeed have rights to own land however in reality, they have no land identity. This study aims at identifying and assessing some of the factors that continually affect women's access to land particularly in Africa. Adopting a doctrinal research methodology, the study finds that amongst several factors, the inheritance system and land law operative are major impediments. It therefore recommends a system that educates men and women, empowers them economically, ensures the enforcement of laws favourable to women's land rights, eradicates all forms of stigmatization and most importantly, reviews inheritance and land laws that affect women's access to land.

Keywords: Gender Gaps, Land, Access, Women's Right, Africa.

1. Introduction

In rural areas worldwide, women are predominantly farmers. They shoulder the responsibilities of the farm. They till the ground to plant, water, weed, harvest the crops and still sell the produce in order to cater for the household and the welfare of the community.[1]Reports show that about 60 percent of women engage in agriculture; despite this, women in Africa have no land rights.[2] Deo notes that women farmers have no identity.He laments that in farm fairs organized by the State Department of Agriculture, Universities and agri-input companies, majority of the visiting farmers are men. Representatives of the company are men, scientists are men, organizers and attendees of the meetings are men. Policy meetings organized by the state agriculture department are headed by men speaking to an audience full if men. He laments further that trainings requiring women to be participants focus on teaching the women how to dry vegetables and make pickles whereas trainings for men teach them how to operate modern farm equipment, multi-layer farming and drip irrigation technology. In his observation, even

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[1]Landesa, 'The Law of the Land: Women's Right to Land' <https://www.landesa.org/resources/property-not-poverty/> accessed 20th September 2020.

[2]*ibid*.

preschool text books teaching toddlers and other young minds about people who help us are often male figures.[3]

Indeed, the inability of women to lay claim to land rights compromises her identity as a farmer. In Deo's words, 'it makes them invisible within the entire agriculture value chain.'[4] Since the society relates men with farming, the key roles women play becomes overlooked. Their contribution to agriculture will then appear to be an extension of household chores. By this, they are unrecognized as farmers and are therefore excludedfrom trainings on agriculture. They are unable to benefit from support programmes like crop insurance, subsidies as well as credit which ordinarily they may have been entitled to. This denial hinders women from being able to make contributions in sustainable investments in agriculture.

1.1 Land: Assessing Women's Land Right's

Land in the most general sense comprehends any ground, soil, or earth whatsoever.The word "land" includes not only the soil but everything attached to it, whether attached by the course of nature, as trees, herbage and water or by the hand of man, as buildings and fences.Land by nature is of utmost importance to the well-being and survival of every human being. For manypeople, land means different things; however, in this context, it is an important source of self-worth, economic, political and social power. Such power has often ensured control over other resources and groups of people. The benefits of having access to land are a factor of welfare and precondition to have a house, to run economic activities and to create job opportunities.[5] Most families living in urban areas engaged in formal employment are not deeply concerned with access to land as those living in the rural areas where land is considered 'the most important household asset for supporting agricultural production and providing food and security and nutrition'.[6]

Several indicating factors used to access the gender gap in land rights in Africa show that women constitute less than 15 percent of landholders[7] worldwide and equally constitute a significantly lower number of land owners[8] than men.[9] The indicators- 'agricultural land

[3] S Deo, 'Why Women Farmers Deserve The Right to Identity' <https://www.landesa.org/why-women-farmers-deserve-the-right-to-identity/> accessed 20th September 2020.
[4] *ibid*.
[5] The Action Aids Report- *"Her Mile": Women's Rights and Access to Land. The Last Stretch of the Road to Eradicate Hunger* (Action Aid 2014) 2.
[6] Food and Agriculture Organization of the United Nations (FAO), 'The Gender Gap in Land Rights' <http://www.fao.org/family-farming/detail/en/c/1119178/> accessed 20th September 2020.
[7] A person who exercises major decisions on the land regarding management and use of resources. The holder is just the manager and not necessarily, the owner.
[8] The landowner is the person who has the right of reversionary interest. That person possesses thr right to alienate or transfer ownership, to manage and make improvements and enjoy all the proceeds of the land to the exclusion of all others.
[9] FAO (n 6).

holders' indicates that upon a total population of agricultural holders, men constitute 85 percent of agricultural landholders. On the other hand, an assessment of 'agricultural land owners' as well indicates that men also own more land than women.[10]Indeed, women in Africa have little or no right of ownership or security over lands and this issue is one of the key setbacks in the development of any country let alone, Africa as a whole. Owing to the fact that Africa is the world's second largest continent with about 54 countries, it will only be fair if selections of member States are used as case study for the purposes of thiswork. The objective of this work is to:

1. Identify factors affecting women's right of access to land in Africa;
2. Identify existing laws or legal documents that recognise women's land rights in Africa;
3. Identify the need or importance of giving women in Africa right of access to land;
4. Identify measures for improving access to land and strengthening women's rightsin Africa and thereby, achieving gender equality.

2. Factors Affecting Women's Right of Access to Land in Africa[11]

There are evidences that political reforms and legislation have increased women's access to land in many African countries. However, there are still several factors that constrain these rights.

a. ***Cultural and Social Norms*:** These customary practices work against legislation on property matters. Basically, in Africa, about 75 percent of the land operates under customary law[12] which makes it subject to unwritten law and therefore administered in accordance with traditional and cultural norms operative in an area. While Africa consists of numerous tribes and customs, women may only acquire land under two main regimes: The Patrilineal and Matrilineal systems. Under the patrilineal system, it is the male lineage that is required to hold and inherit property whereas under the matrilineal system, the female lineage may inherit land. Under these regimes, land is allocated to the male folk upon demand. However, while it may also be allocated to the female folk, this must be done by the male members of the family and such act is merely temporary because upon marriage, such allocated land is withdrawn. Women are expected to have access to land in their husband's house and are therefore never given permanent ownership of land.

[10]*ibid*.
[11]H Partio and T Kuhmonen, Factors Affecting Women's Land Tenure in Namibia in A Hatakka and J Vehmas (eds), in Sustainable Futures in a Changing Climate: Proceedings of the Conference 'Sustainable Futures in a Changing Climate' [2015] (2) *FFRC e-book*; 211 - 220
[12] M Odeny, *Improving Access to Land and Strenghtening Women's Land Rights in Africa* (Jet Set Consultants 2013) 9.

b. ***Widowhood:*** Difficulties often arise upon death of the women's spouses. Widows find it very difficult to hold on to their supposed property because they often experience socio-cultural pressures and lack of support from the late husband's relatives in inheritance issues.The phenomenon of 'property grabbing' has been a never-ending issue. The term refers to a situation where the deceased husband's family members take all of the property from the widow. Property may include land, moveable or other non-moveable property.Traditional rulers in the rural areas having control to allocate land typically allocate it only to the men. This discriminatory attitude of men is the biggest obstacle to achieving gender equality.

c. ***Women's economic situation:*** A lot of women in Africa have little or no financial stability. This is because most of them are unemployed. In familiar language, women are mainly 'full time housewives.' The men go to work while the women stay back to take care of the home. Stable economic situation allows women topurchase land and gain access *via* ownership which in turn allows a more stable income. This is challenging for poor rural women.[13]

d. ***Gap in knowledge and information.*** A lot of rural women have no knowledge on legal and administrative policies on land for them to know their rights whether under state or customary system of ownership. Most of them do not know that ensuring you have ownership to land requires registering it in your name. They lack the legal implications of ownership of land and property. Continually being without knowledge leaves them unable to demand for their rights and as such, this denial may cost them a lot. Ownership to land assures the individual's rights.In times of financial difficulties, it may be used as collateral or for business. It enhances ones social status; it provides socioeconomic security; it even minimizes domestic violence; it assures responsibilities and acts to minimize difficulties in the future.[14]

e. ***Lack of trust*****:** Women are generally presumed to be unable to shoulder responsibilities like men. Land as a source of economic power means a source of finance. Women are not trusted to be able to handle financial responsibilities. Men are presumed be capable of understanding and dealing with land related issues more than women who are presumed to be capable only in child-bearing and rearing as well as handling the household chores.[15]

f. ***Health stigmatization*****:** Other challenging factors include "HIV/AIDS epidemic." The epidemic makes women weaker to defend or demand their rights. According to the

[13]Odeny (n 12).
[14] D S Rawal and K Agrawal (eds), *Barrier's to Women's Land and Property Access Ownership in Nepal* (International Organization for Migration 2016) 25.
[15]*ibid.*

Economic Commission of Africa (2004), "there is a tendency for those living with HIV/AIDS to be excluded from land programs or loose already acquired land due to the illness."In some regions in Namibia, once the husband dies from AIDS or HIV related illnesses, his relatives may force the widow to leave the homestead.[16]

The above factors are not close ended.Cultural and social normsare basically the most significant factors restricting land access.

3. The Legal Framework for Women's Land Rights in Africa

For obvious reasons that society in one way or the other discriminates against women in Africa and in order to meet with the injustices practiced, the Convention on the Elimination of Discrimination Against Women, 1979 (CEDAW) set forth that '… discrimination against women violates the principles of equality of rights and respect for human dignity…' It defines the term discrimination against women as:

> 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural,civil or any other field'.[17]

Article 5(a) went further to provide that:

> States parties shall take appropriate measures '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 of men and women'.[18]

Consequently, CEDAW recognises that women are equal with men on the basis of their rights as human beings and as such women should not be discriminated against in all spheres of life including ownership of land. State parties are therefore enjoined to ensure that within their national boundaries, they implement laws that reflect the provisions of the convention. In line with the provisions of CEDAW, the Beijing Declaration and Platform of Action (BDPA), the Protocol to the African Charter on Human and Peoples Rights 2003, and the Solemn Declaration on Gender Equality in 2004 are other

[16]Odeny (n 12).
[17] CEDAW 1979, art 1.
[18]*ibid.*

international and regional instruments which have provided for the protection, respect and promotion of women's property rights in Africa, including land rights.[19]

Against this background, many countries in Africa have given recognition to women's right of access to land by promulgating legislations in line with the principle of gender equality. For instance, in Nigeria, the constitution provides that 'no Nigerian citizen shall be discriminated against on the basis of sex…'.*[20]* In neighbouring Liberia, President Ellen Johnson Sir Leaf established a Land Commission in August 2009 that amongst its duties, should suggest modalities and tools to remove existing barriers to women's land ownership.[21]Consequently, the Liberian Constitution currently deals with property ownership under sections 22, 23 and 24. More particularly, sections 22 and 23 guarantee that 'every person shall have the right to own property alone as well as in association with others…' Also, in Kenya, 95% of land was titled to male individuals but in 2005, in the case of *RONO v RONO,*[22] the appeal court asserted the gender equality principlegranted by the National Constitution, the African Charter and CEDAW. The court decided to apply statutory rather than customary law[23]. The following are a list of countries that have made effort in providing for equal rights[24]:

On the face of it, it appears that women and men alike are guaranteed equal rights on property ownership, prompting the assumption that opportunities and spaces for women to acquire and own property are the same as men all over Africa.[25]In Tanzania,the current legislation guarantees equal rights for both women and men to buy, own, use and transact in land. The 1999 Land Laws of Tanzania push for equal treatment between men and women and aim at safe guarding women's land rights by ensuring female representation in land administration bodies.In Ghana**,** Article 35 (1) of the 1992 Constitution enjoins the state to promote the integration of all peoples and prohibit discrimination and prejudice on grounds of origin, circumstance of birth, ethnicity, gender and other beliefs.South Sudan has one of the most progressive Constitutions and a Land Act which recognises equal rights of access of men and women to land. Angola's Constitution in Article 18, establishes a right of non-discrimination on the basis of sex. Article 29 further provides for the equality of men and women within the family.Botswana's Constitution in Section 15 states that there shall be no discrimination on the basis of sex.In Malawi, the provisions of Article 24 (1) of the Constitution accords women the right to full and

[19]'Women's Rights to Own, Access and Control Land in Africa' <http://www.fao.org/docrp/xo250E/x0250> accessed 21st September 2020.
[20] CFRN 1999, s42.
[21]CEDAW, 'Liberia is Writing New History for its Women and Girls' <http://wwwun.org/news/press/docs/2009/wom1748.doc.html> accessed 21st September 2020.
[22] [2005] AHRLR 107 (Ke CA 2005).
[23]*Ibid* 6.
[24]*Ibid* 7.
[25]Odeny (n 12) 10-11.

equal protection by the law including the right not to be discriminated against on the basis of their gender or marital status. Article 24 (2) of the same constitutionfurther provides that any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women.Article 67 of the Constitution of Mozambique recognises equality between men and women.

In Namibia, Article 10 (1) of its constitution stipulates that all persons are equal before the law. Article 14 (1) explicitly recognises women's equal rights before, during and upon dissolution of marriage.In South Africa**,** the 1999 Constitution upholds the principle of gender equality. The Bill of Rights of the Constitution states that everyone is equal before the law and has the right to equal protection and benefit of the law.Zambia's Article 11 (1) recognises and declares every person in Zambia to be entitled to the fundamental rights and freedoms of the individual, whatever 'his sex'.In Zimbabwe, the Constitution amended in 1996 prohibits discrimination based on gender.Again, in Nigeria, apart from the constitutional provisions, the Land Use Act 1978 was enacted amongst many reasons one of which is to make land easily accessible to every Nigerian irrespective of gender.

Regardless of the efforts made by States to provide for equality of both men and women in all respects including access to land, in reality, women in majority of communities in Africa are still being denied access to land. The challenge of enforcement has dug deep into strongholds of the African States/communities. Thus, the legal frameworks are mere skeletal frameworks without an enforcing body as customs and traditions have taken their place.In most communities in Nigeria for instance, women are denied right to land and the provisions of the Land Use Act 1978 does not guarantee equal access of men and women to land as was envisaged. This is because, the Act vested ownership of land and its rights in the governor of the state to ensure equal access but this has not helped much[26] because it is basically only married women that may benefit from its provision. In other words, the challenge of ownership or inheritance rights was not necessarily improved upon. Vesting of land ownership by transfer 'is still largely guided by customary practices that discriminate against women, especially because the average citizen has poor knowledge of the statutory laws with respect to land.[27]The patrilineal sytem and

[26]*ibid*, 7.
[27] I Oriaghan, 'A Quick Look at Women's Land and Inheritance Rights in Nigeria' <https://www.landesa.org/a-quick-look-at-womens-land-and-inheritance-rights-in-nigeria> accessed 21st September 2020.

inheritance regimes exist in Nigeria and here, when compared with men, only 2 percent of women own land by themselves.[28]

4. Why Give Women in Africa Access to Land?

The need to give women in Africa access to land rights is very important to her well-being. It gives the woman a recognition of self-worth and the effect is a positive impact in her home as a starting point and then in society at large. It is not only on the basis of gender equality but also a means to eradicate or minimise poverty to the barest minimum.Where land is more equally distributed and managed between men and women, virtuous circles are fostered in terms of local economic development, child maternity, health and education. On the contrary, where those existing rights are denied, negative spirals of poverty are registered and several socio-economic indicators get worse. Thus, a report prepared for the World Bank reads that:

> Women provide a large proportion of the labour agriculture production, even though official statistics based on census and survey instruments often under estimate women's work and its contribution to national wealth. Women produce more than 80% of the food in Africa, yet they own 1% of land.[29]

One out of seven people in Africa is suffering from hunger.[30] It is believed that hunger and malnutrition are not an inescapable natural fact, but the result of the precise choices and the consequences of inequalities between rich and poor, men and women. In effect, women play a major role in the development of every society. They contribute immensely to the sustainable management of natural resourcesand socio-economic development of society. Land being an important source of security against poverty across the continent and developing world, unequal rights to land puts women at a disadvantage; perpetuates poverty and entrenches gender inequality in Africa.[31]

Securing land rights for women enables greater investment and productivity in agriculture resulting in higher incomes and improved economic well-being. Improving women's access to land creates better living standards for themselves and their families. It improves child nutrition and invariably, lowers gender-based violence. Appreciating the disparities in land rights between men and women monitors the progress made towards achieving gender equality in agriculture and land tenure. It as well acts as aid towards improving policy formation.

[28] *ibid*.
[29] Executive Summary: The Action Aids Report (n5) 2.
[30] *ibid.*
[31] *ibid*

5. Improving Access to Land and Strengthening Women's Rights in Africa- The Way Forward

Having examined various legal frameworks in Africa*vis-à-vis* the prevalent circumstances in respect of women's rights of access to land in Africa, there is no gain saying the fact that it is no longer news that the situation is very disturbing. Hence, for a problem to be solved, it must first be recognised for what it is – a problem. Women in Africa are beginning to accept that their rights have been denied of them over time; that they are equal to men by virtue of their being human. This after all is in line with the biblical provision in Genesis 1:26-28.[32] Evidently, God made man in his own image; man includes both male and female. There is no separate provision where He made woman and gave her separate rights. He made male and female and termed them man, giving them equal right of dominion. To meet the needs of the prevailing circumstance therefore, that is, a situation of denial on women's inherent right the factors affecting the right haveto be addressed. At least, the only thing that is constant is change. How can it then be said that we have given in and subjected ourselves to barbaric customs? If these practices were acceptable in the past, as human rights advocates, it is expected that there must be change. Therefore, the first thing that needs to be done is:

(a) Educating men and women in Africa. In the first place, men need to be educated on the importance of women to society. They need to appreciate the fact that women are not only useful in the bedroom and in the kitchen. They need to understand that it is owing to the effort of women that society is still alive and empowering her would only be a stepping stone to a rosy bed. Men should be made aware the importance of making a Will. If men are educated to do so, there will hardly be any issue of who will administer his property upon his demise. His widow will secure his properties and his children if any will be sure of a home and will be catered for.

On the other hand, women too need to be educated particularly, those in the rural areas. They should be thought on the importance of registering their titles. They should be educated on their inalienable and sacrosanct rights that accrue to them by virtue of their humanity and this includes their right as equals to men and therefore right to have access to land. The legal frameworks that have recognised this right need to be laid down in simple terms. The process of educating can be achieved through workshops, campaigns, entertainment and media houses, the internet, books etc.One challenge however in this area is funding. Availability of funds would go a long way in aiding the education of men and women in Africa. It is proposed that women in high ranking positions in the society should be of assistance.

[32] King James Version (KJV)

(b) There should be enforcement of existing legislation on the area and promulgation of same where there is none. In a bid to strengthen women's right of access to land, it has already been noted that many African countries have made effort to provide in their Constitution, equality of gender and non-discrimination against women. The challenge here remains that of enforcement. It is proposed that existing legislations should be made to have the force of law failure of which should become an offence against the state punishable under its Criminal laws. When such bold steps are made, it is presumed that customary practices will begin to wear off. It is safe to say that these customary practices are perpetrated out of selfish greed that can only be curtailed with threat of criminal penalty.

(c) Women should be empowered economically. This can be achieved by giving them gainful employment. The days of employing women only as cleaners, maids are over. Women having received sound and equal education as men should be gainfully employed as this would enable her become financially stable. As earlier stated,[33]stable economic situation allows women to purchase land and gain access *via* ownership which in turn allows for a more stable income. Economic empowerment also comes from giving her equal trainings in agricultural manpower as the men. The lack of trust on women to handle financial issues comes from her inadequate bargaining power. So, just as men are informed on the up-to-date machinery, its uses and importance, women too should be well informed.

(d) All forms of stigmatisation like the HIV/AIDS epidemic should be addressed. It is uncalled for that a person who has been diagnosed with the virus should be excluded from land programs or made to lose already acquired land due to the illness or that a widow is made to leave the household simply because her husband may have died from the virus. These practices are barbaric and uncalled for in the twenty-first century hence the need for an update on HIV/AIDS awareness programmes.

(e) Government should begin to see women in a new light- equals as men and address them as such. This should not only be in the statute books but also in practice. If the government in African countries would put women in the front burner of topical issues, over time it would become an acceptable practice and society would follow suit. This is likely to have a positive effect on the mindset of the society which would in turn be favourable to women in Africa as regards their equal right to men even in land matters. Any such proposed statute must put women in consideration irrespective of her civil and/or marital status.In Nigeria for instance, women are beginning to occupy various political sits as men, it is hoped that this leverage would be extended to matters of land.

[33]*ibid*, 4

(f) There is need to determine the statistics of gap between men and women's access to land. This will paint a clear picture of the situation and will be of assistance to policy makers who foster the advancement of women's rights.

(g) Importantly, there is need for a review of inheritance and land laws that affect women's access to land.

6. Conclusion

Notwithstanding the previous customary practices, in contemporary times, women in Africa have come to realise[34] that they have been stolen from, under the auspices of various terms including, 'the weaker sex'. In truth, women are an addition to men in the biological sense meant for purposes of companionship, procreation and many other reasons. It is not to be that as a result of their biological differences, they are discriminated against. It is hoped that with the issues raised and discussed, the skeletal legal frameworks will be given flesh and made a top priority in the affected African States. Effort has been made at recognising the existence of the laws and their enshrinement in black and white, what remains is their enforcement so that they may be fully realised and enjoyed. If every law in the Constitutions of States is deemed sacrosanct, why then should the proviso in respect of equality not be treated as such? Ideally, these are all political schemes played between sexes. However, there is need for change so that women may enjoy land rights in accordance with their right on the basis of humanity. In attempt to define the concept of human rights, Cranston defined it as, 'something of which no one may be deprived without a great affront to justice'.[35]A denial of land rights to women is indeed an affront to justice. There is need to address the factors affecting women's access to land in Africa and improving same so that her land right is strengthened.

[34] Note that Feminists movement is more prevalent than before.
[35] M Cranston, 'Human Rights: Real and Supposed' in Raphael (ed), *Political Theory and the Rights of a Man* (Blooming 1967) 52.