



WOMEN'S LAND RIGHTS SCORECARD

The failure of land policy and legal reforms in
securing women's land rights in Africa

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ABOUT THE RESEARCH

The realization of women's land rights often tends to get no further than the level of action plans and policies that are rarely implemented, due to a lack of real political commitment and the patriarchal values that still predominate in Africa. To realize full gender equality (Goal 17), the implementation plan of the African Union (AU)'s Agenda 2063 recommends that 20% of rural women have access to and control of land by 2023. This paper documents how policy commitments are translated into national legislation. A consortium comprised of Oxfam, the Institute for Poverty, Land and Agrarian Studies (PLAAS),¹ and the Plateforme Régionale des Organisations Paysannes d'Afrique Centrale (PROPAC) has developed a women's land rights scorecard as a quantifiable tool to measure country performance on implementing the provisions of women's land rights instruments such as the AU's Framework and Guidelines on Land Policy in Africa. The study found that while statutory laws to protect women's land rights are in place, there are loopholes and gaps in adherence to these laws at the community level.

INTRODUCTION

In recent years, women's land rights have featured strongly in core agendas of the African Union (AU), United Nations organizations, governments, and non-state actors (e.g. AU, 2013²; FAO, 2012; Kilimanjaro Initiative, 2016³). As a result, virtually all African states have signed policy resolutions to establish more equal and less discriminatory land rights for women. The AU has embraced this aspiration and included it in frameworks and guidelines and other legally binding documents in relation to women's land rights (WLR). Examples include the Framework and Guidelines on Land Policy in Africa (the AU F&G), adopted by the AU in 2009; the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (the VGGTs), adopted at the World Committee on Food Security (CFS) in 2012; the AU Guiding Principles on Large Scale Land Based Investments (GP-LSLBI), endorsed by the heads of states and governments in June 2014; and the Maputo Protocol, adopted by the AU in July 2003.

This paper examines the extent to which these policy commitments are translated into national legislation and into practices on the ground. It uses a women's land rights scorecard⁴ as a quantifiable tool to measure the performance of selected countries (Cameroon, Ethiopia, Kenya, Malawi, Mozambique, South Africa, and Togo) in implementing the provisions of WLR instruments such as the AU F&G and the VGGTs, among others. Five themes were selected to measure the performance of these instruments in these countries, namely:

1. Provisions are made in the law to guarantee women's equal land rights;
2. Women's legislated land rights are protected and enforced;
3. Women make a meaningful contribution to land governance;
4. Women are able to assert their control over the land they use; and
5. Women's land rights are protected in the context of large-scale land-based investments.

These five themes were explored during a baseline study carried out in the seven countries, based on the presence of existing efforts to secure women's land rights by members of the consortium.

The research aimed to produce evidence to support civil society organizations (CSOs) to contribute to a better understanding and enforcement of women's land rights across the African continent. In each country, a country researcher and collaborating non-governmental organizations (NGOs) selected three heterogeneous locations that captured the range of situations under which rural women use land. Six semi-structured interviews were undertaken with purposely selected key informants in each country, as well as nine focus group discussions (FGDs) comprised of 10 women per country. Overall, 46 key informants and 630 women were engaged in the data collection processes of the baseline study.

Based on the findings from the field research complemented with an in-depth literature review, the paper finds that while statutory laws to protect women's land rights are in place in all the countries studied, loopholes still remain and adherence to these laws at the community level remains inadequate. Malawi represents a specific case, as most land holdings in the country are based on matrilineal systems but this is still not an automatic guarantee of women having more decision-making power on land (Berge, 2014). Countries such as Kenya and Malawi are implementing principles to improve gender parity in local land governance structures, but the principles are seldom practised at the community level and women's influence in decision-making positions is still weak.

METHODOLOGY

The baseline study was undertaken with the collaborative inputs of all members of the consortium, their partners, and rural women, under the coordination of a consultant. The methodology for the baseline study is detailed below. A defining consideration of the baseline study (in accordance with the design of the scorecard) was the use of two approaches for gathering the required data: a desk study or technical assessment and stakeholder surveys to capture the voices of rural women.

1. **Technical assessments:** A desk review was undertaken of legislation and policy documents (constitutions, laws, regulations) as well as academic and non-academic reports and analyses of implementation processes relating to land initiatives in the participating countries, including press and media reports and reports from CSOs. The desk exercise was guided by the generic scorecard template developed by the consortium.
2. **Stakeholder surveys:** Stakeholder surveys were conducted by researchers identified in each participating country under the coordination of the regional consultant. In each country, three study locations were selected with the support of consortium partners. The rationale was that these would also be the research locations in future efforts to update the national scorecards. A semi-structured questionnaire informed by the generic scorecard was used to facilitate key informant interviews (KIIs) and focus group discussions.

In each country, the researcher also conducted three FGDs per location (a total of nine FGDs, each with 10 women, involving 90 rural women per country). An effort was made to ensure homogeneity in the participants of each FGD, with some groups consisting only of single women or women in marital unions.

COLLATION, ANALYSIS, AND COMPILATION OF COUNTRY REPORTS

Overall, eight technical assessments were carried out. A total of 46 key informants and 630 women were engaged in the baseline study's data collection process. All data emerging from the technical assessments and stakeholder surveys were collated and analysed centrally by PLAAS to produce seven country baseline scorecards on the status of implementation of AU WLR instruments. The intention of the consortium is for CSOs and rural women to strengthen their advocacy on WLR through use of the baseline scorecards. A second output was a narrative report based on the data emerging from the seven baseline studies. The intention of the consortium is that this synthesis report will be used as an advocacy tool to deepen CSO advocacy with the AU on the implementation of WLR commitments.

RESEARCH FINDINGS AND DISCUSSION ON WOMEN'S LAND RIGHTS IN AFRICA

Women's land rights remain a high priority for academic (e.g. Quan, 1997; Whitehead and Tsikata, 2003; Tsikata, 2003) and non-governmental organizations (ActionAid, 2009; LANDac, 2018) in Africa. The key question is why existing land policies and legislation with provisions and safeguards for women's land rights are not implemented in practice. To address this question, we examine the selected five themes and elaborate our findings based on these themes below.

Laws on women's land rights exist but knowledge at the grassroots level is limited

Technical assessments from all seven countries demonstrate that laws guaranteeing WLR exist. This is in line with declarations, including the Maputo Protocol, in which governments have committed to promote women's access to and control over productive resources such as land and to guarantee their right to property. However, the baseline study shows that laws at country level may not be well understood by women at the grassroots level. There is a general failure to have policies, laws, and procedures clearly expressed in applicable languages and for them to be widely publicized, as recommended in the VGGTs. For example in Ethiopia, where the Revised Family Code (2000) gives equal rights to women and men in terms of marriage, inheritance, and property under the country's prevalent tenure regimes, there is limited awareness of this law among grassroots women. Evidence from Kenya's Muranga and Narok communities highlights that the majority of women do not know of the land provisions supporting their rights to land in the new constitution, land laws, and the national land policy.

This is also the case in Malawi and Mozambique, where key informants reported that even some literate women are not aware of their land rights. This lack of access to information and knowledge about land laws has serious implications for women's ability to exercise control over land. A good example of this is seen in Malawi's Phalombe community, where community-based organizations (CBOs) are taking steps to improve women's land rights awareness from current levels of about 50% by establishing local land committees.

Enforcement and protection of women's land rights is limited with regard to inheritance

The AU F&G call for enactment of legislation that provides equal rights for women to inherit land, as well as for co-ownership of registered land by spouses. Under the Maputo Protocol, African countries recognize that women and men have the right to an equitable sharing of joint property deriving from a marriage. However, results from the baseline study show that women and girls still have weaker rights to inherited land than their male siblings or uncles. In Lamu, Kenya, women and girls inherit a third of their father's land while men are bequeathed half of the same property, yet the country's constitution provides guarantees for equitable access to land for all.

Women are poorly represented in decision-making spheres

Gender inequality is a major factor in the determination of women's meaningful contribution to land governance (e.g. Osorio and Galina, 2018). This is despite calls in the AU F&G for country governments to promote women's participation in land administration structures, as well as commitments under the Maputo Protocol for states to ensure increased and effective representation and participation of women at all levels of decision making. In this way governments are also failing to realize participatory and gender-sensitive approaches in land governance in line with the VGGTs.

The study noted the promulgation of regulations to increase women's participation in decision-making mechanisms and processes. Kenya is implementing the two-thirds gender principle, which makes it possible for women to sit on county land control boards. Similarly, Malawi encourages gender parity in decision making and requires 50% participation by women in Village Development Committees. This is in line with calls contained in the AU F&G to ensure that land governance structures include sufficient representation by women, including customary land governance structures, and with the Maputo Protocol commitment to ensure the

participation of women at all levels. However, the study observed that this is seldom practised at the community level. In Ethiopia's Gambella region, women make up only 25% of decision makers at the local council level compared with the anticipated level of 50%. In Mozambique, there is a strong female presence in local decision-making structures, but when it comes to land issues it is men who still make the pertinent decisions by excluding or limiting women in these discussions. The study therefore concludes that women's influence in decision-making positions is still weak.

Women's ability to assert control over land is limited by social and religious norms and traditions

Our findings show that governments have been slow to realize commitments made in the AU F&G and the VGGTs. The F&G highlight the fact that the system of patriarchy which dominates social organization has tended to discriminate against women when it comes to ownership and control of land resources in both urban and rural contexts. The VGGTs call for states to ensure that women and men enjoy the same rights.

More frequently across the region, traditional leadership and customary laws remain rooted in patriarchy, which elevates men as landowners and heads of household and subordinates women to their male counterparts. For example, in Kenya and Ethiopia women in traditional contexts are still not allowed to own land or to make decisions on land within the household structure.

National-level policy guiding large-scale land-based investment (LSLBI) is insufficient or absent

The study observed that African states have been slow to implement policy guidance relating to LSLBI. Principle 10 of good governance in the GP-LSLBI states that such investments must respect the land rights of women, recognize their voice, generate meaningful opportunities for women alongside men, and not exacerbate the marginalization of women. In Cameroon, Ethiopia, South Africa, and Togo, the state has not yet provided national policy guidance on LSLBI. This leaves women exposed to the dispossession of their land and with poor access to land and related natural resources such as water and forest products, thereby compromising their rights and livelihoods (Odeny, 2013). In this regard, governments are failing to ensure that LSLBI observes and respects women's equal rights to own, access, control, and use land under different tenure regimes. Where legislation does exist, lack of awareness of it among rural women can be attributed to high levels of illiteracy and poor dissemination of information on land rights at the community level. As a result, women in rural areas are not benefiting from the gender-progressive laws that are in place.

Based on the findings from the countries studied, we argue that the broader and key solution to improving women's land rights in Africa and effective implementation of related policies lies in building *active citizenship*.⁵ Green (2008) emphasizes that effective states and active citizens embrace the reality that both states and their citizens have responsibilities and rights that they need to fulfil to achieve peace, rule of law, and development, among other things.

CONCLUSION

This paper confirms that while impressive steps to address WLR issues have been taken in recent African policies, implementation is yet to receive sufficient political backing, due to widespread patriarchal values and deep-rooted traditions, practices, and certain religious norms within diverse African communities, along with limited financial and human resources. Women's land and property rights could be greatly improved if all AU member countries implemented the existing commitments in law and in practice. These findings are corroborated by ongoing claims not only among government bureaucrats, but more importantly by policy makers in Africa. Members of parliament argue that African leaders and their citizens need to design and implement policies on issues they value in their own contexts, and they must commit their energy, skills, and resources to get these policies fully implemented on the ground (Sulle, 2019).

Moreover, as African states and governments continue to commit to work towards equal societies where women and men can equitably access, use, and control land, the key ingredient that is lacking, and where the focus to fight corruption in land is needed, is in building active citizens. As documented mostly in developed countries, and recently in developing countries like Tanzania, enabling people to be active citizens increases their participation in governance issues, particularly women's participation, including taking up the demand for leadership positions at the community, local, and national levels in both the private and public sectors (Oxfam GB, 2013).

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NOTES

- 1 Corresponding author: Research Associate, Institute for Poverty, Land and Agrarian Studies (PLAAS), University of the Western Cape, South Africa and Program Officer for Women's Land Rights Project in Africa.² Agenda 2063 is Africa's blueprint and master plan for transforming the continent into a global powerhouse of the future. See: <https://au.int/en/agenda2063/overview>
- 3 The Kilimanjaro initiative aims to create space for women to be able to participate in decision-making processes about land and natural resources. See: <https://actionaid.org/publications/2017/charter-demands-actualizing-womens-land-rights-africa>
- 4 The scorecard was developed as a first output of a consortium comprising Oxfam, the Institute for Poverty, Land and Agrarian Studies (PLAAS), and Plateforme Régionale des Organisations Paysannes d'Afrique (PROPAC), which are implementing the Women's Land Rights Project in Africa. It can be downloaded at: <https://www.plaas.org.za/sue-mbaya-womens-land-rights-in-africa-2019-scorecard/>
- 5 In this paper we state that the active citizenship concept is broad, and it originates from philosophy, political science, and sociology, and it varies in many different contexts (Taskforce on Active Citizenship, 2007). Hickey and Mohan (2005) argue that active citizenship links action, politics, culture, and place.

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