



Addressing Shrinking Civic Spaces in Communities in Kenya Project

Haki Talk Series



Women Communal Land Policy Dialogue

Christian Health Association of Kenya, Nairobi

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Report

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Abbreviations

AU: African Union

AG: Attorney General

CHAK: Christian Health Association of Kenya

CEDAW: Conventional on Elimination of Discrimination Against Women

CGHRDs: Coalition of Grassroots Human Rights Defenders

CEDAW: Convention on Elimination of All forms of Violence Against Women

FIDA: Federation of Women Lawyers-Kenya

GLTN: Global Land Tools Network

KPL: Kenyan Peasants League

MLHRA: Mathare Legal and Human Rights Advocacy

YILAA: Youth Initiative for Land in Africa

Women Policy Dialogue

Agenda 2063 of the African Union(AU) elaborates land governance broadly including under Goal 13 on Peace and Security and Goal 17 on full gender equality in all spheres of life. Land continues to be an emotive issue in Kenya. Legislations exist that protect the rights of women when it comes to land, these include the Constitution (2010) which outlaw's discrimination based on gender, Law of Succession Act and Matrimonial Property Act among other legislations. However, women often lose out when it comes to matters land because of a patriarchal system that promotes male preference. There are very few women who own title deeds in Kenya. In Kenya, the Federation of Women Lawyers (FIDA) says women head about 32% of households, but individually hold only 1% of land titles. In 2018, an analysis by the Kenya Land Alliance found that out of the one million title deeds issued by the Kenyan government between 2013-2017, only 103,043 were given to women

Kenyan Peasants League(KPL) -Women's Collective organised a dissemination workshop to share the outcome of the study on Women Communal Land Rights. The forum was held at the Christina Health Association of Kenya (CHAK) in Nairobi. The study focused on women's voices from Mathare, Migori, Siaya and young people's perspectives on land including voices of elderly who are normally custodians of culture in different Kenyan communities. The represented organisations were Haki Nawiri Afrika, Actionaid-Kenya/Youth Initiative for Land in Africa(YILAA), Mathare Legal Aid and Human Rights Advocacy(MLHRA), Kenyan Peasants League and Coalition of Grassroots Human Rights Defenders(CGHRDs).The forum brought together 25 participants.

Cross section of Participants



Experiences from Mathare Cluster

From Mathare informal settlements, the following was shared:

- Young people are not interested in discussing or in being involved on matters relating to land
- Some youth living in the city are not aware of their rural roots or do not have any rural affiliation
- Many young people currently in Nairobi have left huge tracts of land in the rural areas
- Many youths prefer riding *bodaboda*¹ to tilling land
- Many women have refused to have their husband's or the fathers of their children's names on children's birth certificates because the men are either irresponsible towards their parenting roles or are deadbeats
- Many women do not have identity cards and this is an important document when it comes to following up on property rights
- It is assumed that people in informal settlements do not have property while in reality they have structures and these structures are property
- Many women fear speaking about land rights because of fear of victimisation
- Many women are based in Mathare and other informal settlements because they have been denied land by in-laws after the demise of their spouses

Kangemi Cluster

Experiences from communities in Kangemi were shared as follows:

- Men do not want to be open on matters land ownership
- Some people say that when the title deed is in the name of the wife, the wife may sell off the land and disappear with the money
- Many people are unaware of where to report land related violations
- Many women suffer from GBV because of land
- Many young people born in Kangemi are unaware of their ancestral roots and when they ask to get more information, they are silenced and accused of being rude
- Many women have lost land to in-laws
- There are very many land related cases in the community

¹ Bodaboda is a motorcycle

Participants following realities on land rights in Kangemi-Nairobi County



Siaya Cluster

- Women commit suicide because of loans when they are unable to repay
- Women cannot access land, they take loans to lease land and sometimes end up losing these land because of inability to repay the loans
- There is an absence of women in the Land Boards, hence land related cases are in favour of men
- There is an assumption that women will get married hence no need to bequeath them land
- Patriarchy contributes to the denial of women's ownership to land
- Women stay in abusive relationships because of fear of losing access to land on behalf of their children
- Many young men leave land to lie idle and have taken up *bodaboda* business because they want quick money
- Women are the ones responsible for tilling the land and when harvesting time comes, it is men who make decisions about farm produce
- Farm based property is engendered, women control products of less value such as chicken and subsistence crops, men control crops that make money such as tobacco

"When women engage in farming, men are at the shopping centre exchanging stories and reading newspapers"-Susan Owiti, Coordinator, Kenyan Peasants League Women's Collective

Experiences sharing on realities of women land rights in Siaya County



Experiences from Utawala Cluster

- The realities of Utawala in Embakasi Constituency were as follows:
- Children born out of wedlock are discriminated by being denied a place to stay
- Lack of housing makes many young women and girls to abuse drugs
- Women do not participate in decision making when it comes to land and property matters
- In many households, it is the men who have information about property
- Many women run away or are chased away as a result of GBV and end up with nothing

“There is an assumption that there is no land in informal settlements, in reality the structures that exist in the informal settlements is property -Ann Wanjiru, Coordinator, Mathare Legal Aid and Human Rights Advocacy (MLHRA)

Experiences from Utawala-Nairobi County



Policy Documents and Land ownership by Cidi Otieno

It was mentioned that patriarchy makes women exist without a foundation, because of exclusion from land related matters. It was emphasized that the best time to get a marriage certificate (an important tool when following up property and land rights) is early in marriage because after living for long, many men refuse to get marriage certificates. An example was given of wives being told “Who does not know you are my wife” when they demand the husbands accompany them to get marriage certificates at the Attorney General’s (AG) office.

It was emphasized that it is important for community members to understand the constitution and other legislations related to land and property to prepare themselves in case of land related injustice. It was emphasized that women should fight to be in land boards and have their voices heard when decisions on land are being made. It was said that as a result of the dialogues, some men and community elders were changing their attitude towards women’s property ownership. It was explained that more similar dialogues are important in order to nurture a cadre of males who are supportive of women’s land rights. It was discussed that peasant feminism challenges the capitalism and that with land dialogues at the homestead level, inequality is reduced. It was emphasized that parents/ guardians should start allocating small portions of land to their children as they practice farming as this helps instill a sense of ownership and interest on property and land matters.

It was said that there are discriminatory clauses within land related legislations and it is therefore important to interrogate these clauses and put for their repeal. It was also mentioned that there are vague statements within policy documents for example those touching on culture which are not clearly defined. It was emphasized that peasant feminism is about tackling power which exists within a capitalist system that prefers

the few and allows the majority to suffer.

Community Education on Land Rights by Leonida Odongo-Haki Nawiri Afrika

It was said that very few women own title deeds and very few families have joint titles when it comes to land between a man and the wife. It was pointed out that the lack of information on how to go about land processes is one of the contributory factors to loss of land. It was said that awareness about land rights is protection from disinheritance because it provides women and girls with the knowledge they require to pursue cases of land. It was said that women should be part of land boards so that they can make fair judgement when it comes to land issues.

Community Education on Land Rights session



Land and Property in Informal Settlements by Ann Wanjiru-Mathare Legal Aid and Human Rights Advocacy

It was mentioned that the general assumption is that within informal settlements there is no property but the reality is that the existing structures are property. It was said that women who end up in informal settlements are the ones who have been chased away from rural areas. It was mentioned that many young women do not wish to put the names of their husbands on the birth certificates of their children and this brings about challenges relating to denial of inheritance. It was said that there are many women who transact *mpesa*² using their husband's identity card whereas the identity card is one of the most important documents when it comes to following up on property issues.

² Mpesa is a mobile money transfer service offered by Safaricom Company

Experience sharing on Land in Informal Settlements



It was explained that data is very important when it comes to land ownership in informal settlements and that organisations such as Global Land Tools Network (GLTN) in collaboration with Pamoja Trust have been helping informal settlement communities gather data and documentation. It was mentioned that informal settlements are vulnerable to fires, flooding and other calamities including forced evictions and that is why it is important to have data on ownership so that in case of relocation, genuine owners will be able to be compensated. It was emphasizing that parents/guardians should often seek important documents such as birth certificates to ensure children do not lose out when it comes to property rights.

Youth, women, Culture and Land by Grace Ananda ActionAid-Kenya and YILAA

It was said that young people should make deliberate efforts and get interested on land. It was explained that there is a lot of profit to be made from farming and that instead of looking for jobs in the city and suffering, youth should till land and make a living out of farming. It was said that there are various international and regional documents that provide protection for women on matters land including gender based violence .These documents were cited as Maputo Protocol, Convention on Elimination of Discrimination Against Women(CEDAW) among others .It was explained that culture contributes to denial of young people land especially when youth are expected to wait until their parents die to inherit land .It was said that women suffer disinheritance because of community cultural practices. It was emphasized that some cultures deprive of women dignity even in death for example cultures that prescribe that unmarried women should be buried outside the homestead's fence.

Experience sharing on Youth, Land and Culture



The forum further provided an opportunity for networking and sharing amongst the present organisations including possible collaborative activities to be explored for women and youth in relation to land and property rights.

Networking spaces during the Policy Dialogue



“Culture makes it difficult for young people to own land” -Grace Ananda
-Gender and Policy Specialist-Actionaid-Kenya, YILAA

Personal Experience sharing on Disinheritance

Disinheritance

A KPL member shared her experience of land disinheritance where having bought two parcels of land jointly with the husband and living in Molo, the husband started a relationship with another woman and evicted X from her matrimonial home. X contributed more money during the purchase of land but the two do not have a marriage certificate. When X went to the local area chief in Molo to complain, X's husband bribed the chief. X has since then been struggling with her children in Kangemi and does not have a stable source of income. When securing birth certificates, X did not include the names of the children's father because the children were angry at what their father did to their mother.

Youth and ancestral roots

Whenever Q asks her grandmother about their roots and says she wants to go to go to their ancestral home, she is always told to stop asking questions and accused of being rude and a know it all. Youth Q is curious about her lineage. She is often told she comes from Chavakali in Kakamega, but not given any additional information.

Title Deed and ownership

Y a female living in Kangemi was married in a family. They are in the process of being evicted from the land. Y and her husband do not know who has the title deed, sometimes they are told it is the mother in law, other times they are told it is with a lawyer.

Males, land and patriarchy

One male participant shared that when they go out with their friends and bring out the issue of land, many men say that when women have titles it is easier for them to sell land. Additionally, when a man does not have male children, they are not allowed to speak before village elders

On the above cases, it was said that KPL can work with legal rights organisations such as Kituo cha Sheria, Legal Resources Foundation and FIDA-Kenya to push for justice in the individual cases. It was emphasized that legal rights awareness is important through community dialogues as these are spaces where women and girls can come and speak about what they are going through. It was said that in the second phase of the project, KPL would be following up on individual cases and carrying out more dialogues to bring change in the target communities.

It was said that for males who have a change of attitude towards women property and inheritance rights, it is worth celebrating them and utilising land rights dialogues as avenues for nurturing more males to support women

"The struggle for feminism is not a war between men and women"-Cidi Otieno, Kenyan Peasants League

Celebrating a male who supports women-Mc-Vslim of Coalition of Grassroots Human Rights Defenders



Questions and Plenary Comments

Q. What can women do, because there are many challenges to do with land?

It is important to attend land rights dialogues and also involve the local administration during these dialogues. KPL will provide legal support to the identified cases to ensure justice prevails for the affected women.

Q. What can be done about a woman who does not have legal marriage documents but has children but is disinherited?

The affected can first approach the local children's department and report and then follow it up with organisations providing free legal aid.

Responding to Questions



Comments

- Women must enjoy their land rights
- Women till the land but during harvest time, it is the men who make decisions on farm produce
- There should be more women in land related spaces such as Land Boards
- Societal pressures oppress women
- Sometimes women are the ones that oppress fellow women for example sisters in law when contributing ideas on how to evict a widow
- Men feel threatened when women are empowerment on issues to do with land
- Men do not want women to be empowered
- It is important to take participate in community forums e.g. chief's *baraza*³ because these are where important decisions are made
- Tribalism and class affects women on issues of land, for example if the wife is not from the same community, she tends to suffer more and women who do not have money to follow up land cases end up losing



Outcome of the Women Communal Land Rights Study

The analysis of the study found out that:

- There are high cases of GBV in Kenyan communities and these are linked to land. These include economic violence (where women are not allowed to till land) and physical violence
- Land and debts are interlinked. Women take loans to lease land to be able to grow food
- Some women, denied access to land, borrow money from financial institutions of which failure to pay become suicidal
- Many women do not have an identity card and some carry out transactions using their husband's identity card
- When husbands die, widows tend to be confused as to where to start in following up on land left behind by the deceased

³ A baraza is a Kiswahili word for public forum

Conclusion

The forum achieved the set objective of disseminating information on land rights as impacting on women and men. The dialogue helped bring to the fore various gaps and challenges that women and girls go through on matters land and property. The forum was an eye opener on the need to create more dialogues for community education and the role men play in perpetuating land related discrimination. The forum further helped emphasise the role of young people when it comes to land and the importance of youth cultivating interest on land. Through the forum, it was observed that it is possible to change the mindset of men and community elders towards involving women in land matters and decision making on property rights.

It was agreed that Haki Nawiri Afrika, together with university students part of the organization to work together with KPL in interrogating policy documents relating to property rights and highlight problematic clauses. This is expected to result into policy advocacy for amendment of these sections. It was concluded that more dialogues will be held in 2022 including providing legal aid to the identified cases, that came out of the study.