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Securing women's land rights in Eastern Africa: Time for a paradigm shift

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Introduction

This Policy brief provides a summary into women's land tenure issues in East Africa. The brief aims to highlight the gap between women's land tenure security and the policy provisions to secure women's access to land. The brief is aimed at policymakers, administrators, women in the community, intermediary institutions and non-governmental institutions who work to improve women's access to land. The brief highlights the limits of state-led approaches to securing women's access to land in East Africa and makes suggestions on how the governments in the region could do things differently to strengthen women's land rights.

Why women need secure land access

Land is a basic livelihood resource providing the means on which people secure shelter, generate livelihoods and negotiate access to communities. Land provides a basis upon which people negotiate access to employment, support and other livelihood assets. Women are more reliant on land for their survival and yet they have limited access to the resource. This is because of uneven power balance, traditional practices and norms that discriminate against women, ineffective policies and failure by society to uphold policy provisions that have been made to secure women's access to land. Women in East Africa are generally viewed as inferior to men and as a result enjoy unequal access to land. As a result, women continue to negotiate land mediated by men and/or male dominated institutions. The dominance of traditional institutions and attitudes which view women as inferior to and dependent on men also inform much of the thinking and practices around women's land access. This leads to a perpetuation of poverty and increased marginalization of women.

Current situation

Indications from East Africa point to the simultaneous strengthening and erosion of women's land rights. The global food crisis, HIV and AIDs and pressures caused by climate change have increased the pressure on land and led to an increase in competition over land and violation of women's land rights. In East Africa, violence has induced mass displacement, forcing people to abandon their land. There is an increasing body of literature which has produced tangible evidence highlighting the insecure position of women's land rights. To their credit, governments in East Africa have responded to the growing evidence of women's vulnerable land status by passing laws in support of increased women's access to land and in some cases according women and men equal land rights.

In 1999, The Government of Rwanda passed the Inheritance and Succession Law that grants equal inheritance rights to male and female children²

The international community has increased funding towards skills building and strengthening of institutions that work in the arena of women's land and property rights.³ There has also been investment in literacy campaigns to increase awareness among the women and their host communities. The literature and activism has led to increased knowledge of the links between societal well being and women's land rights. However, women continue to face challenges in securing and maintaining access to land in East Africa. Current state led initiatives have to be revised.

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2 Rwanda Women's Network (2011): Experiences of Women in Asserting their Land Rights. The Case of Bugesera District. SWAL Research Report. International Land Coalition, Rome.

3 UNIFEM, and the Canadian International Development Agency, launched a Fund for Women's Property and Inheritance Rights in the Context of HIV/AIDS. The Fund assists grassroots and community-based organizations or networks in sub-Saharan Africa working to improve women's access to property and inheritance rights within the context of HIV/AIDS.



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Implications of women's insecure land rights

The failure by women to secure land has several implications for them in East Africa. The women and their families struggle to produce subsistence food. The welfare of their families remains poor and women are marginalised from participation in the economy. The weak land rights that women gain mostly through inheritance and marriage are vulnerable to the end of the marriage. This is increasingly the case as women lose their husband to HIV and AIDs and the displacement that results from conflicts over natural resources. The traditional inheritance and succession practices which favour males frequently lead to women being dispossessed of their land when they lose their spouse. When women have weak land rights, their limited capacity to cater for the families reduce the chances of those women's children escaping poverty and improving the community welfare. The people who lose their land rights are forced into risky activities to secure their livelihoods and/or migrate to cities. The cities' capacity to provide employment has been undermined by the global financial crisis on 2009. Although women are generally disadvantaged, they experience different threats to their land tenure, for example, young widows are more vulnerable than elderly ones as they lack resources to either fight for their land entitlement and /or reconstruct their livelihoods after dispossession. The marginalised populations become more dependent on the state and this places a greater burden on economies in East Africa which already struggle to support large populations. Unless some strategic interventions are made to increase women's land tenure status, they will remain vulnerable, dependent and an increasing strain on the resources of the governments.

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- Without land, women are unable to provide subsistence, secure credit or generate income
 - The 2007 electoral violence in Kenya displaced more than 800 000 people. The Kenyan government later closed the holding camps and gave displaced peoples money to return to their homes. The men collected the money and abandoned women in the camps.⁴
 - In Rwanda where women are involved in land disputes faced an average of at least one year to get their case resolved, usually abandoned the cases⁵
 - HIV deaths result in more African women becoming widows at a younger age which raises the issue of women's property rights to a new level⁶
 - 'I am afraid to go to my house in case I bump into my deceased husband's brother and he discovers that I am claiming husband's land'⁷
 - Widows are considered unclean and remain secluded until they are cleansed. Those who refuse to be cleansed are sure to lose their land⁸
 - The local councils in most cases not bothered to respond to cases unless one pays a bribe....even then, they may take your money and end up not helping you or helping the side with the most money⁹
 - It is against some cultural practices to write a will. In the absence of a will, land reverts to the husband's family
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4 Kenya Land Alliance's statement in a panel discussion.

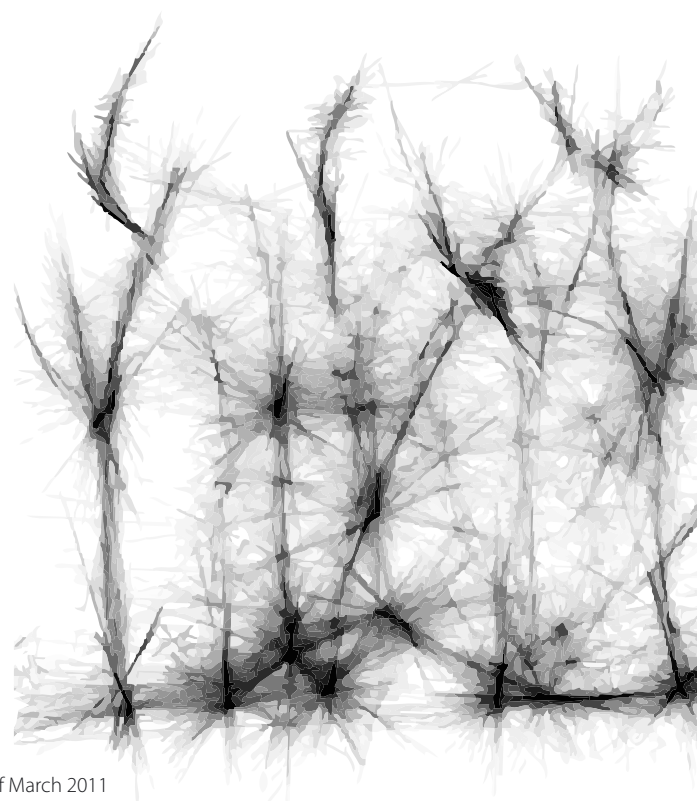
5 Rwanda Women's Network (2011): Experiences of Women in Asserting their Land Rights. The Case of Bugesera District. SWAL Research Report. International Land Coalition. Rome.

6 Young Widows Advancement Programme (2011): Assisting Widows to Gain Control of Family Land in Rachuonyo and Nyanza, Kenya. SWAL Research Report. International Land Coalition. Rome.

7 Ibid.

8 Ibid.

9 Uganda Rural Development and Training Programme (2011) Women's Aspirations over Land and Land Matters. The case of Kibaale District in Uganda. International Land Coalition. Rome.



The practices that increase women's land tenure security

- Uganda, Kenya and Rwanda have ratified international agreements like CEDAW which outlaws all forms of discrimination against women and national constitutions that outlaw discriminatory practices and accord equal rights to men and women
- Multi level awareness campaigns that have led to increased community awareness of women's plight and progressive attitudes towards women's access to land
- HIV and AIDS interventions aimed at protecting widows' property rights that transform societal attitudes towards women's land ownership
- Decentralization of land administration institutions and investment in local level legal literacy which increase women's access to institutions of law
- Informal land dispute mechanisms that increase women's access to institutions of justice where they can claim their land entitlements
- The self-help initiatives taking place in communities by women and women's associations to claim and defend land rights are positively influencing societal attitude towards women's land rights.
- Increased representation of women in land administration structures. Uganda and Rwanda have quotas for women in public administration structures
- Rigorous research that is producing credible information which can be used to inform policy and monitor impact on women's land rights
- Vibrant and active civil society that highlights the plight of landless women and expose the inadequacies of current policies to protect women's land rights
- The increased availability of funding and capacity building to support local level initiatives aimed at increasing women's access to land.
- Section 29 of the Land Law of Uganda, is the Spousal Consent clause which prohibits the disposal of family land without the written consent of both parties. This protects women from spouses who may want to take advantage to dispose of the family land without the wife's knowledge¹⁰

The practices that undermine women's land tenure security

- The dominance of patriarchal customary practices that deny women access to land over the statutory laws that outlaws discrimination. As a result, women lose out to these customary processes.
- Lack of political will to mobilize resources and communities towards gender sensitive land policy making and administration.
- Statutory and practical barriers in state-led land policy making that marginalize the participation of non-governmental organizations, communities and women to inform land policy making
- The marginalization of women's issues in policy debates mean that women's land issues remain in the domestic arena and individual women have to fight for their land rights.
- Centralized land administration systems which keep the land administration institutions in urban areas at the expense of the majority of poor women who live in the rural areas
- Policies that treat all women the same marginalize women as women differ by age, marital status, life cycle stage and local situation. All these influence the type of land rights a woman has and the extent to which she can mobilize existing legal provisions to secure her land
- Weak implementation capacity of government institutions manifest in failure by governments to educate the administrators and populace, train administrators on changes in the law or provide them with resources to carry out the work.
- The statutory framework and some customary practices that only recognize some forms of marriage and not others marginalizes the land rights of women whose marital union is not sanctioned by law and render them vulnerable to dispossession on the end of their marriage
- The failure and/or or reluctance by governments to capture gender disaggregated data for use in monitoring of policy impact and effectiveness.

“In Uganda, the state law provides protection of matrimonial property for women in a registered civil marriage yet there are customary marriages, Christian marriages, cohabitation and a local variant known as the Faith of Unity.”

¹⁰ Makerere Institute of Social Research (2010): Synthesis Report on Securing Women's Access to Land. Rights East African Region. (unpublished report).

¹¹ Uganda Rural Development and Training Programme (2011): Women's Aspirations over Land and Land Matters. The case of Kibaale District in Uganda. SWAL Research Report. International Land Coalition. Rome.

Actions for Governments to increase Women's Access to land in East Africa

- **Mobilise political will** as a powerful tool to change attitudes and change societal attitudes. In Rwanda, the President made pronouncements in support of women's land entitlements and the whole cabinet received gender awareness training. This mobilised support from the traditional gate-keeping institutions like bureaucrats, men and traditional leadership.
 - **Invest** in proactive initiatives aimed at reforming traditional practices and attitudes that undermine women's access to land. This includes community awareness campaigns, harnessing women's agency, adult literacy, succession planning and mainstreaming gender into educational curriculum in places of learning.
 - **Increase** women's capacity to access land through the market and government allocation to reduce their dependence on succession and marriage as inheritance and marital practices undermine women's access to land and perpetuate their dependence on male dominated structures. **Revise** the laws governing the division of matrimonial property to protect property rights of women in the diverse marriages that exist in East Africa.
 - **Monitor** customary institutions to ensure they uphold constitutional provisions regarding women's equal rights to men and strengthen customary practices that protect women's land rights. Outlaw practices that deny women their constitutional rights.
 - **Reduce** barriers to civil society engagement in policy formulation and implementation. This could be done through a multi stakeholder approach to land policy making that embrace the various several institutions working on women's land issues.
- **Capture** gender disaggregated data in land policy implementation to evaluate impact of policies on women and to identify gaps.
 - **Facilitate** top down and bottom up learning to improve women's access to land. Bottom-up policy making by communities results in policies that are more specific to the situation of women and informed by women's lived experiences.
 - **Reduce** the costs that women incur to access the courts, by providing information and simple forms to explain procedures and allow paralegals to represent women in land courts to make the justice system more accessible to women. Alternative land dispute mediation forums should be encouraged as they provide women with accessible alternative mediation forums.
 - **Acknowledge** differentiation among women and devise policies that are flexible and responsive to various categories of women and their experiences of threats to their land tenure.
 - **Recognise** and support the role played by non governmental agents in advocacy, monitoring of public policy and building local communities' capacities to protect women's access to land.
 - Invest more resources in **capacity building** of government and traditional male dominated institutions to make them more gender sensitive and increase their awareness and appreciation of gender sensitive legislation. This is through training, peer exchanges and facilitating horizontal and vertical policy dialogues with non governmental organization and grassroots organizations working to secure women's access to land.
 - **Monitor** women's land rights protection and hold institutions accountable through watchdog groups, gender disaggregated data and putting in place mechanisms to ensure effective policy implementation at all levels.

About the Policy Brief

This policy brief draws from research work was carried out as part of a 3-year collaborative project entitled 'Securing Women's Access to Land: Linking Research and Action', coordinated by the International Land Coalition (ILC - www.landcoalition.org), the Makerere Institute for Social Research (MISR) of Makerere University in Uganda and the Institute for Poverty, Land and Agrarian Studies (PLAAS) of the University of the Western Cape in South Africa. It was funded by IDRC. Its overarching aim was to learn from women and respond to their needs through applied research. The purpose of research carried out under this project was not only to provide evidence but also to build a platform to advocate for a transformative agenda that supports rural poor women to improve their access to and control over land and other natural resources, including through building linkages with the wider advocacy relationships and programmes of ILC.

About the Initiative

This policy brief is part of a wider initiative on Women's Land Rights (WLR). If you would like further information on the initiative and on the collaborating partners, please contact the Secretariat of the International Land Coalition or visit www.landcoalition.org.

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