

AFRICA RENEWAL

United Nations Department of Public Information

Women claim legal right to access land

Seek change in traditional land rights practices

By **Mary Kimani**

Felitus Kures is a widow living in Kapchorwa, northeastern Uganda. Until her husband's death she farmed the small piece of land she and her husband had together. But just months after his funeral, her in-laws sold the land without her knowledge. "We only realized this when the buyer came to evict us," Ms. Kures explains. She was able to regain use of the land after she got legal assistance but many women never regain land lost after divorce or the death of a spouse.

Experts report that women in Africa contribute 70 per cent of food production. They also account for nearly half of all farm labour, and 80–90 per cent of food processing, storage and transport. Yet women often lack rights to land, notes Joan Kagwanja, a food security and sustainable development officer at the UN Economic Commission for Africa (ECA). Land rights tend to be held by men or kinship groups controlled by men, and women have access mainly through a male relative, usually a father or husband.

Moreover, such limited access is very tenuous and can be quickly lost. One study showed that in Zambia more than one third of widows lost access to family land when their husbands died. In response, activists are fighting to introduce or strengthen laws intended to give women more secure access to land and are combating social norms and practices that stand in their way.

Some progress

Despite many obstacles, they are making headway here and there. In Swaziland, where women cannot own land because they are considered minors, some HIV-positive women successfully negotiated with a female chief for 13 collective farming plots in different areas. In Kenya, community watchdog organizations regularly intervene on behalf of those living with HIV/AIDS. When they encounter property grabbing, they negotiate with the family, for women and girls to retain access to the land.

In Rwanda, the government passed a law in 1999 giving women inheritance rights equal to those of men, overruling traditional norms by which only male children could inherit. This has enabled widows and female orphans of the 1994 genocide to secure land.

In Ghana, reports the International Food Policy Research Institute (IFPRI), cocoa production is changing land relations. Growing the plants is labour-intensive, and increasingly husbands

and wives are negotiating exchanges of labour for land. Under the process, which is called "gifting," the married woman is given a piece of land as payment for her work. The community recognizes the gift as an irrevocable exchange of land for labour, and the woman continues to own it even in the event of separation.

Different systems same problems

Before colonial rule, land ownership and access took diverse forms but were largely vested in lineages, clans and families, with male leaders exercising day-to-day control. Women rarely had full rights to land. Benjamin Cousins, a researcher for IFPRI, points out that although historically women did not have direct rights over land, they had traditional protections that ensured continued access even after separation, divorce or widowhood. There also were traditional means of arbitration to which women could appeal if access to land was contested.

The advent of colonial rule led to the introduction of Western systems of land tenure. In East and Southern Africa, for instance, the high number of white settlers encouraged the privatization and subdivision of land, held under individual freehold titles. At independence, some new governments, as in Tanzania, Mozambique and Benin, proclaimed state ownership over all land, adding another layer of complexity to land ownership issues.

Many African countries today recognize both "traditional" rules of land ownership and Western-type statutory laws. Such dual systems have often disadvantaged women. Kenya's Succession Act, for example, stipulates that both men and women have equal rights to inheritance. But it also states that if the man dies without a will, the customary inheritance law of his group will prevail. Since few men write wills and most Kenyan communities do not allow a woman to inherit property from her husband or father, the equality provisions of the Succession Act generally do not apply. In reality, one UN study argues, inheritance rights for women do not exist.

Multiple avenues of change

Land rights activists suggest that one way to give women guaranteed access to land is to separate formal ownership of land from the ability to use it. Thus, while the land may be registered in the name of a man, he would be barred from selling it without the consent of his wife or other heirs. Ghana has a "head of family accountability law" that is intended to ensure that family property

cannot be sold without others being informed, giving consent or benefiting from the proceeds.

“Another alternative would be for land to be put in the name of families or both men and women,” suggests Harvard University researcher Esther Mwangi. “Where resources such as water, sanitation and grazing land have to be shared communally, then whole communities could be identified as owners of the land, with everyone having equal access.”

Keeping women on their land, suggests Kaori Izumi of the UN Food and Agriculture Organization, requires pursuing multiple efforts simultaneously. “Laws and policies are important and we should continue trying to change them.... However, we also need to assist governments to improve their technical and financial capacity to implement the laws.” Judicial and traditional leaders also need training, she adds, to help the wider community accept women’s rights to land.

Mr. Cousins agrees. “To address land rights, you need to address the unequal power relations within families. Unless you change the power relations, the legal definition of who has rights may not make much of a difference,” he told *Africa Renewal*.

“We have seen a lot of resistance,” says Ms. Izumi. “Gender relations are the most difficult social relations to change.” ■

Africa Renewal is published in English and French by the Strategic Communications Division of the United Nations Department of Public Information, with support from UNDP, UNICEF and UNIFEM. Its contents do not necessarily reflect the views of the United Nations or the publication’s supporting organizations. Material from this magazine may be freely reproduced, with attribution to “United Nations Africa Renewal,” and a clipping would be appreciated.

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