



RIGHTS AND REALITY



Are women's equal rights to land, housing and property implemented in East Africa?

UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME



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by

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Published by United Nations Human Settlements Programme
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The findings, interpretations and conclusions in this publication are those of the author and do not necessarily represent the views of UN-HABITAT or any affiliated organization.

Cover photo: Dieter Telemans/Panos Pictures
Layout and cover: Marjolein Benschop and Amrik Kalsi
Printing: UNON Printshop

April 2002

ISBN: 92-1-131663-4
HS/667/02E

FOREWORD



After decades of struggle, most constitutions in the world now enshrine women's equal rights. Although the fundamental human rights of women are recognised, many women still suffer from the continued consequences of traditional prejudices and practices.

This is nowhere more evident than in the area of ownership and inheritance of land and other property. Women's equal rights to land, housing and property are firmly anchored in various international human rights instruments, including the *Habitat Agenda* and the *UN Declaration on Cities and Other Human Settlements in the New Millennium*. While these rights are recognised at the international level, their translation into domestic legislation and policies and their local implementation remain difficult in most parts of the world.

Concerned about the urgent need to redress this gap between rights and reality, UN-HABITAT is eager to draw attention to the problems confronted by women all over the world caused by their lack of equal access to economic resources, in particular land and property. The result of this can be seen in the increasing feminisation of poverty and the hardship suffered by women faced with exclusion and eviction.

The *Habitat Agenda*, adopted at the Habitat II conference in 1996, commits 171 governments to providing adequate shelter for all, and, in particular, to providing women with equal access to housing and economic resources. Equal access in this case includes the right to inheritance and ownership of land and other property. The *Habitat Agenda* also commits its signatories to gender equality. In support of these commitments, UN-HABITAT's Global Campaign for Secure Tenure emphasises women's security of tenure, while the Global Campaign on Urban Governance emphasises women's participation in governance and decision-making. This book is published in conjunction with these two campaigns.

In East Africa, women have been advocating for rights equal with those of men to own, co-own and control land, housing and property. They have achieved some measure of success on various fronts. However, there still are many factors that limit women's access to land and property, even when positive legislation exists. One constraint has been lack of information and data. This book, *Rights and Reality*, addresses this gap through detailed analysis of existing legislation in Uganda, Tanzania and Kenya. On the basis of this analysis, recommendations for legal reform and for further implementation of the laws are made. The study also partly describes the governance structures in these three countries and affirmative action policies for women's representation in legislative and government positions. Last but not least, it examines the role of women's organisations in effecting positive legal reform and in implementing women's equal rights at community level.

The issue of women's equal rights to land, housing and property in East Africa is still evolving. Therefore, the reader should keep in mind that the information contained in this report is neither exhaustive nor static. We trust that our partners will continue to keep us updated on new developments on the ground. In the meantime, we hope this publication will help all our partners in the ongoing struggle to ensure women's equal access to, rights in and control over land, housing and property.



Anna Kajumulo Tibaijuka
Executive Director
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Nairobi, April 2002

ACKNOWLEDGEMENTS

The current study has benefited from a diverse group of informants in the region.

The author would like to thank all non-governmental organisations, community based organisations, researchers, lawyers and government officials in Uganda, Tanzania and Kenya who took time out of their busy schedules to be interviewed or to reply to information requests by email. Particular thanks go to Georgina Kugonza Musisi (Legal Officer at the Legal Aid Project, Uganda Law Society), Harriet Busingye (Co-ordinator, Uganda Land Alliance), Everse Ruhindi (Information Officer, Uganda Gender Resource Center), Tabitha Siwale (Director, Women Advancement Trust, Tanzania), Lucy Tesha (Information Officer, Women Advancement Trust), Judy Thongori (Head of Litigation, FIDA-Kenya), Odenda Lumumba (Co-ordinator, Kenya Land Alliance), Isaac Lenaola (lawyer and currently member of Kenya Constitution Review Commission) and Christine Bodewes (former lawyer at Kituo Cha Sheria, Legal Aid Centre, Kenya).

With regard to Chapter Five, the author wishes to thank law graduates Susan Kagundu and Elin Junesjo, who, from January to May 2001, greatly assisted with the research on land and succession legislation in Kenya. Within UN-HABITAT, the staff members of the Gender Policy Unit have supported this research with ideas, inspiration and editorial comments, particularly Catalina Trujillo, Diana Lee-Smith and Wandia Seaforth.

Special thanks to the women and men working as paralegals in Kabale district, Uganda, who shared their time, inspiration, ideas, frustrations and hopes with the author. The author would like to express her deep appreciation to Jamson Karemani who, during the author's visit to Kabale, was the principal lawyer at Kabale's Legal Aid Centre, and greatly assisted in reaching the paralegal networks, translating, and explaining all relevant legislation. Last but not least, many thanks to all the women who courageously continue their battle against gender bias and discrimination, and work tirelessly for women's empowerment, equal rights and social justice.

This research report is published in support of the Global Campaign for Secure Tenure. Special appreciation and thanks are expressed to the Government of Belgium for their financial support.

EXECUTIVE SUMMARY

“Stressing that the impact of gender-based discrimination and violence against women on women’s equal ownership of, access to, and control over land and the equal rights to own property and to adequate housing is acute (...)

- 1. Affirms that discrimination in law against women with respect to having access to, acquiring and securing land, property and housing, as well as financing for land, property and housing, constitutes a violation of women’s human right to protection against discrimination***
- 2. Reaffirms women’s right to an adequate standard of living, including adequate housing ...***
- 5. Urges States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, and the right to adequate housing, including through the right to inheritance ...”***

From: Commission for Human Rights, Resolutions 2000/13 and 2001/34

While traditionally, women in East Africa merely had access to land through male relatives, social rules guarded against exclusion of women from land. Colonial influences such as individualisation of land tenure and changing gender relations contributed to an erosion of the traditional protection mechanisms. Women’s position became more vulnerable. Arbitrary eviction of women from land, especially women in polygamous marriages, divorced women and widows, has increased in the past decades. As the feminisation of poverty grows, women also face increasing constraints in obtaining access to affordable and adequate housing.

Up to 1979, women’s equal rights to land, housing and property were implicitly recognised as human rights. In 1979, the landmark Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted. This Convention has formed the basis for an increasing focus on the continuing violations of women’s human rights and on the need to adopt specific provisions that explicitly recognise and enforce women’s human rights as equal with those of men. Women’s equal rights to security of tenure (whether through purchase, co-ownership, lease, rent, occupancy right or inheritance) regarding land, housing and property are now firmly anchored in human rights law. This includes women’s right to control such land or other property on equal terms with men. A full overview of the international human rights instruments relating to women’s equal land, housing and property rights is provided in Chapter One.

“*Land*” in this book is used to refer to all land, including communally owned or unoccupied land. “*Property*” is used to refer to immovable property, while “*housing*” is used to refer to “adequate housing”, as defined in international human rights law.

Uganda, Tanzania and Kenya are parties to the most relevant international human rights instruments. Their governments have thus bound themselves to implement the obligations under international law in their national legislation.

While Uganda has translated a number of these obligations into its relatively new Constitution, comprehensive constitutional review is yet to take place in Tanzania and Kenya.

In Uganda and Tanzania, new land legislation has been adopted and in both countries an impressive women's lobby has pushed for inclusion of provisions recognising women's equal land rights and the adoption of affirmative action policies.

Tanzania's new land laws are the most elaborate and also contain most provisions on women's equal land rights, protection of and information to safeguard women's interests and prevent their exclusion from access to land. In addition, Tanzania is the only country that has included a presumption of co-occupancy in its legislation. In Uganda, only a few provisions related to women's equal land rights were included, and a clause on spousal co-ownership is still lacking in the Land Act. Kenya's much needed land law reform is still in its initial phase. In Kenya, a number of women have been able to buy land through women's co-operatives or 'land buying companies'. In general, however, most women do not have the means to buy land or housing. This is why allocation, inheritance and/or spousal co-ownership of land, housing and property are such important alternative avenues for achieving women's substantive equal rights to land, housing and property.

Inheritance rights have been recognised in statutory laws in Kenya and Uganda, but these laws still do not include equal inheritance rights for widows and their application is still quite limited. In Tanzania, a statutory, uniform law on inheritance is urgently needed. In all three countries, customary laws and traditions still play an important role and often block women from realising their equal rights, unless specific measures are taken to counter discrimination in any form. In Uganda such efforts have taken place: Uganda's Constitution of 1995 prohibits discrimination on the ground of sex, and prohibits the application of customary law to the extent that it discriminates against women. Tanzania's Constitution also prohibits discrimination on the ground of sex, and its Village Land Act of 1999 prohibits the application of customary law if it denies women lawful access to ownership, occupancy or use of land. Implementation of such provisions is now a crucial next step. Kenya is still allowing for discrimination in "personal law matters", but is going through constitutional review, which is expected to address this issue.

Women's representation in government and Parliament is highest in Uganda, where an affirmative action policy guarantees at least 30% representation, as enshrined in the Constitution. Out of 304 Members of Parliament, currently 75 are women. In Tanzania, the Constitution provides for 20% representation in Parliament, while the Local Government Act provides for 25% to 30% representation in local government positions. Out of 274 Members of Parliament, 61 are women. Kenya lags far behind in this respect, and the fact that affirmative action is necessary as a temporary measure in order to reach gender equality, is widely misunderstood and opposed by government officials. Kenya's National Assembly counts only 8 women out of 224 members (3.6%). Illustrative is Kenya's appointment of only two women delegates to the East African Assembly, while Uganda and Tanzania have appointed the required three women delegates each.

Uganda, Tanzania and Kenya share a similar pre-colonial and colonial history, which in all three countries has had an enormous impact on land tenure systems, gender relations and women's rights to land, housing and property. Chapter Two describes this historical background. The current legislation and policies with regard to land, housing and property in the three countries, and the extent that they recognise women's equal rights, are examined in Chapters Three, Four and Five.

Table i:
Status in East Africa’s legislation of women’s rights to land, housing and property

| WOMEN’S RIGHTS | UGANDA | TANZANIA | KENYA |
|--|---|---|---|
| Gender-based discrimination prohibited | YES | YES | PARTLY (discrimination still allowed in application of personal laws and customs) |
| Application of customary laws prohibited if discriminating against women | YES | PARTLY (only if it denies women lawful access to ownership, occupancy or use of land) | NO |
| Women’s equal right to acquire land/housing recognised | YES, implicitly (Art. 26 of the Constitution) | YES, explicitly (Section 3(2) of the Land Act and the Village Land Act) | YES, implicitly (Married Women’s Property Act and Registered Land Act) |
| Spousal co-ownership presumed | NO | YES (Section 161 of the Land Act) | NO |
| Women’s equal inheritance rights | for widows: NO for daughters: PARTLY | PARTLY (only for Christians) | for widows: NO for daughters: YES |
| Women’s equal rights as to, during and upon dissolution of marriage | NO | NO | NO |

Other findings from this study include:

- ◆ the tradition of dowry has been commercialised and contributes to the view of women as “property” who cannot own property in their own right;
- ◆ without marriage registration women are more vulnerable upon divorce from or death of their husband;
- ◆ customary marriages are often not registered;
- ◆ Alliances/Task Forces of NGOs play an important role in lobbying for law reform;
- ◆ NGOs and CBOs play an important complementary role in the implementation of laws on the ground (providing legal aid, and raising awareness through dissemination of booklets, and organisation of workshops, training sessions and radio programmes);
- ◆ paralegals play an important role in awareness raising on women’s rights, and can challenge discriminating customs through open discussions with elders and other community members.

The recommendations made in this report touch on law reform and implementation, financial support for legal aid, legal education and awareness raising. In addition to legislative reform, open discussions with elders and other enforcers of customs and traditions are necessary to raise awareness and find ways to respect customary rules, while at the same time respecting women's equal rights. Paralegal networks have shown that such an approach works and need to be fully supported.

UGANDA — RECOMMENDATIONS

- ◆ adjust the Bill of Rights in the Constitution to reflect the international conventions that Uganda is party to;
- ◆ include clause presuming spousal co-ownership in the Land Act of 1998;
- ◆ include provision explicitly spelling out women's equal rights to land and additional provisions protecting women's interests (comparable to Tanzanian Land Acts) in the Land Act;
- ◆ ensure participation of women in the making of the National Land Policy;
- ◆ ensure that at least 30% of members of District Land Tribunals and other judicial bodies are women;
- ◆ establish Equal Opportunities Commission;
- ◆ amend Succession Act to ensure equal inheritance rights for girls and boys, as well as for widows and widowers;
- ◆ simplify procedures in inheritance cases;
- ◆ publish Domestic Relations Draft Bill and open for debate;
- ◆ adopt by-laws at district level declaring customary laws void if they discriminate against women (parallel to Constitutional Clause);
- ◆ provide logistical, moral and financial support for paralegal networks and the NGOs training them; co-ordinate between NGOs training paralegals, and develop uniform reporting format which will facilitate monitoring of the activities of the paralegals;
- ◆ paralegals: discuss tradition of dowry or bride price as a human rights issue, and research alternatives;
- ◆ NGOs/paralegals: discuss tradition of polygamy as a human rights issue, and at least ensure that conditions such as the consent of the first wife and the ability of the husband to provide for more than one wife are met.

TANZANIA — RECOMMENDATIONS

- ◆ amend Constitution to: * include a provision that declares customary laws discriminating against women void; * include widow's equal inheritance rights; * use gender-sensitive language; * increase affirmative action for women in government positions to at least 30%; * ensure that at least 30% of members of judicial bodies are women; * adjust the Bill of Rights to reflect the international conventions that Tanzania is party to;
- ◆ publish the uniform Succession Bill as drafted by the Law Reform Commission and open it for debate;
- ◆ repeal Law of Persons, 1944 Rules and Customary Law (Declaration) Order of 1963, at least to the extent that they discriminate against women. Non-discriminatory provisions could be incorporated in the Law on Marriage Act and a uniform succession law;
- ◆ amend Law on Marriage Act to reflect women's equal property rights as to, during and upon dissolution of marriage; marriage registration to be made a condition for marriage validity;
- ◆ adopt by-laws at district level declaring customary laws and practices discriminating against women unlawful;
- ◆ grant more organisations a certificate to provide legal aid; provide financial support to those organisations that could open Legal Aid Clinics and train paralegal networks throughout the country;
- ◆ raise awareness throughout the country on women's equal land, housing and property rights under international and national law; open discussions that challenge discriminatory traditions could be initiated by paralegals;
- ◆ NGOs/paralegals: discuss traditions such as polygamy and dowry as human rights issues - research alternatives for dowry and ensure that conditions such as consent of the first wife and the ability of the husband to provide for more than one wife are met before polygamy is allowed.

KENYA — RECOMMENDATIONS

- ◆ amend Constitution to: * repeal or amend Article 82(4), (6) and (9), which allows for discrimination against women in personal law matters; * include a provision that declares customary laws void if discriminating against women; * adjust the Bill of Rights to reflect the international conventions that Kenya is party to; * introduce affirmative action policy/law for at least 30% women's representation in (local) government and Parliament;
- ◆ ensure gender balance in composition of land and judicial bodies;
- ◆ draft National Land Policy and carry out comprehensive land law reform, and ensure participation of women in the policy formulation and reform process; simplify land registration procedures;
- ◆ include clause presuming spousal co-ownership and provisions protecting women's interests (comparable to Tanzania's Land Acts, including consent clauses) in new land legislation;
- ◆ open debate on uniform law on marriage, incorporating all marriage regimes, and consolidating laws and jurisprudence regarding property rights as to, during and upon dissolution of marriage, which reflect women's equal rights, and should outlaw polygamy if at least conditions such as consent of first wife and ability of husband to provide for more than one wife are not met;
- ◆ amend the Law of Succession to: * incorporate equal rights of widows and widowers; * cease exemption of application of this law in the nine areas mentioned in the Law; * allow Muslims to invoke this statutory law if they so wish; * simplify procedures;
- ◆ raise awareness on the need to register a marriage and on the harmful effects of the commercialised tradition of dowry, and on women's equal rights to land, housing and property under international and national law in general;
- ◆ establish country-wide national legal aid scheme and provide support to legal aid and paralegal initiatives;
- ◆ NGOs/paralegals: discuss traditions such as polygamy and dowry as human rights issues, research alternatives and ensure that conditions that would improve the position of women are taken into account.

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Women's equal rights to land, housing and property are recognised in international law and are translated into national legislation by an increasing number of states. This book provides an overview of international human rights instruments relating to women's land, housing and property rights. It then examines whether Kenya, Tanzania and Uganda have translated their international treaty obligations into national legislation and provides a detailed analysis of the national laws and policies on land, housing, inheritance and marriage in these three countries. The role that women's organisations and alliances have played in recent law reform in this region is described in detail.

Even if national laws and policies related to women's equal rights to land, housing and property are in place, the implementation of these laws and policies into the reality on the ground remains an enormous challenge, and requires a joint effort by national and local governments, in close collaboration with civil society organisations and paralegal networks. This book therefore also looks into the mechanisms used by governments, NGOs and paralegal networks in implementing women's rights at community level.

The study concludes with a set of specific recommendations per country, which seek to help translate women's equal rights into national and local laws and to bridge the gap between rights and reality.



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