

Men's Property

Why East African Women have No Land Rights

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The ink is not quite dry on the pronouncements of this years' International Women's Day, touching on a broad range of issues such as violence against women and discrimination in law against women as regards to acquiring and securing land, property and housing as well as finance.

A recently published study by the United Nations Settlements Programme – UN Habitat titled ***Rights and Reality*** investigates the three East African countries' record on women's rights to land, housing and property. To a large extent, the results prove that these rights are unrecognised.

The East African counties of Kenya, Uganda and Tanzania share a similar pre-colonial and colonial history, which has had an enormous impact on land tenure systems, gender relations and women's rights to land, housing and property.

According to Marjolein Benshop of UN-Habitat, who authored the research, married women whose unions have not been legalised under marriage laws of the land (customary, Hindu, Muslim, Christian and civil) are even more vulnerable when they are separated from their spouses either by divorce or death. Often customary marriages are not registered.

The research findings show that the commercialisation of dowry contributes to the treatment of women as *men's property*, who cannot therefore own property in their own right.

Currently Uganda, Tanzania and Kenya are parties to the relevant international human-rights instruments, and are thus bound to their obligations under international law.

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

Even though the women's lobby in Uganda and Tanzania has been pushing for new land legislation that recognises women's equal rights and to land the adoption of affirmative action, Kenya's land law reform is still in its initial phase.

Looking at the existing legislation in the three East African countries, the research addressed the gaps through a detailed analysis. For instance among the three

countries, Tanzania's new land laws are the most elaborate and also contain most provisions on women's equal land rights. See Table below for details.

Tanzania is the only East African country to have included a presumption of co-occupancy in its legislation. In Uganda, only a few provisions related to women's land rights were included and a clause on spousal co-ownership is still lacking in the recently passed Land Act. In Kenya, although a growing number of women have acquired land through co-operatives or land buying companies, in general most women do not have the means to buy land or houses.

The UN-Habitat report says: *"This is why the 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."*

Status of East Africa's Legislation on Women's Rights to Land, Housing and Property

Women's Rights	Uganda	Kenya	Tanzania
Gender-based discrimination prohibited	YES	YES	Partly (discrimination still allowed in application of personal law 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	YES (implicitly recognised in Art.26 of the Constitution)	YES (implicitly in the Married Women's Property Act and Registered Land Act)	YES (explicitly in Section 3(2) of the Land Act and the Village Land Act)
Spousal co-ownership presumed	NO	NO	YES (Section 161 of the Land Act)
Women's equal inheritance rights:			
• For Widows	NO	NO	NO
• For Daughters	Partly	Partly (only for Christians)	YES

Source: UN-Habitat, 2003

Under the statutory laws in Kenya and Uganda, inheritance rights have been given recognition, 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 owning landed property. Uganda has made an effort through its 1995 Constitution, which prohibits discrimination on grounds of sex, while the 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 the next step.

The situation in Kenya allows for discrimination in personal law matters but the on-going constitutional review is expected to address this issue.