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Women and Communal Land: Issues to Consider **Dianne Hubbard, Legal Assistance Centre**

With land being the hot topic of the moment, it may be useful to offer some ideas for strengthening women's access to communal land.

How does the Communal Land Reform Act currently help women? There are two main provisions aimed at women.

Firstly, the Communal Land Boards in each region are all composed of at least 11 persons, four of whom must be women (giving women only a little more than one-third representation, or even less on the larger boards).

Secondly, when the holder of a communal land right dies, the right goes back to the Chief or Traditional Authority for reallocation – but a widow (or widower) has the right to reallocation of this communal land right if she (or he) wishes. If the land right is not taken up by the surviving spouse, it goes to a child of the deceased determined by the traditional leader to be entitled to the land.

We were unable to access national statistics on the sex of communal land rights holders – which is the first problem to be addressed. Any new law on land should mandate gender-disaggregated statistics which also record the age and marital status of all communal land rights holders, to enable meaningful gender analysis.

There have been a few studies of women's position in practice, which indicate that most women who apply for communal land rights are single, widowed or divorced – and likely to be older women. Land allocated to married couples is almost always in the name of the husband, on his own. (The forms issued under the Act provide for joint application for land rights by a married couple, but this option is not mentioned in the law.)

Some traditional authorities have applied affirmative action by encouraging women to apply, but there are reports from other areas that female applications receive lower-quality land than male applicants, or that women are discouraged from applying because of the view that female-headed households undermine social stability.

One study published in 2017 found that 15% of women interviewed did *not* receive the land they applied for, often because the village headman believed that the land in question was too large for a woman. Respondents also believed that a woman cannot register land in her own name if her spouse is alive – even though this is not the case.

Some research has found harassment and eviction of widows by deceased husbands' families despite the legal protections, and there are reports that fees not authorised by the law are being charged to widows for land reallocation. In some cases, widows do not report illegal actions by the family of the deceased husband for fear that the family will withdraw financial support for the children, and there are also reports of subtle family coercion to discourage widow's claims (such as refusal to help with tasks such as child care or crops, even in emergencies). Sometimes the family of the deceased takes movable assets such as livestock, millet containers and farming equipment, thus undermining the ability of a widow to utilise the land she has retained.

There have also been reports that traditional authorities still tend to favour sons over daughters for inheritance of customary land rights when these are not taken up by the surviving spouse.

Another concern is that the law currently provides no specific protection for women who are in polygamous marriages or informal relationships, nor does it give any direction about what should happen to jointly-occupied communal land when there is a separation or divorce.

So what could be done to improve women's situation in respect of communal land? We examined the laws of other countries in Africa for ideas.

A good starting point would be to explicitly prohibit discrimination on the basis of sex or marital status with respect to the quality or quantity of communal land allocated, to mandate affirmative action for women in the allocation process and to encourage women to use the Act's procedures for appeal if they believe that they are being treated unfairly.

Another basic step forward would be to adhere to our 50/50 commitment under the SADC Protocol on Gender and Development by requiring equal numbers of women and men on all Land Boards and other decision-making bodies which deal with land.

Another idea is to place more emphasis on joint or group registration. Options could include automatic joint registration for married persons unless they request otherwise or joint registration for other family members (such as parents registering together with adult children, or allocation to groups of siblings). The law could also allow joint registration by everyone who contributes to the household which resides on the land by means of money or labour. Joint registration for married couples would remove the need to reallocate land when one spouse dies, as the land right would automatically be in the sole name of the surviving spouse in that eventuality.

For instance, in Tanzania, the law presumes spouses to be co-occupants of family land and requires a wife to consent before her husband can transfer any matrimonial land. In Kenya, if co-tenants occupy land jointly, dispositions of the land may be made only by all of the co-tenants acting together. Joint registration could also give greater security to polygamous spouses and informal cohabitants.

Another approach is to consider the rights of beneficiaries, such as by requiring that any family members occupying or deriving benefit from the land must give consent for major changes such as transfers or change in the size of the land right allocation. Uganda employs such an approach.

No one should be afraid to leave a violent relationship for fear of losing land – meaning that the law should be explicit about what happens to land rights when a relationship breaks down. In Eritrea (in northeast Africa), a wife who resides in the village of her husband has a right to residential land in her home village (with a corresponding right for the husband if he needs it); if there is a divorce, either spouse can move to his or her own land in the home village, and utilise a corresponding right to land for farming nearby.

Any new law needs to provide protections against property-grabbing, to safeguard the assets needed to utilise land productively.

Lastly, any law on women and land should be buttressed by improved family laws – including * provision for a national registration system for customary marriages; * improved options for marital property regimes; * extension of the provisions in the Married Persons Equality Act which require joint decision-making in respect of joint property to customary marriage; * an improved law on divorce with protections for the rights of both spouses; * basic protections for the rights of long-term cohabiting couples; and * the possibility of maintenance from deceased estates for all dependents, including spouses.

Women must have access to land and other property in their own right, and not through husbands or male relatives, if we are to obey the Constitutional directive to enable women “to play a full, equal and effective role in the political, social, economic and cultural life of the nation”.

Dianne Hubbard is the Co-ordinator of the Gender Research & Advocacy Project of the Legal Assistance Centre. The studies of women and communal land in Namibia consulted were as follows:

- Martin K Shapi et al, *Baseline Study: Women’s Land Use, Ownership, and Land Rights in Ohangwena, Omusati, Oshana and Oshikoto Regions of Namibia*, Konrad-Adenauer-Stiftung and University of Namibia, 2017
- Hirut Girma, *Namibia: Good Practices and Lessons Learned for Gender and Communal Land*, Landesa Centre for Women’s Land Rights, August 2016.
- “Women’s Access to Land: A case study of the area under the jurisdiction of the Ondonga Traditional Authority”, GTZ Namibia, 2008
- Wolfgang Werner, *Protection For Women in Namibia’s Communal Land Reform Act: Is it Working?*, Legal Assistance Centre, 2008.