

Climate change adaptation and women's property rights in East Africa: creating legal pathways for building the resilience of women

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Abstract

In Africa, women are more vulnerable to climate change effects compared with men. Women largely depend on natural resources for survival and constitute the majority of the poor and those working in agriculture. Women, however, have limited land rights to enhance their adaptive capacity. This research analyses the connection between women's land rights and climate change adaptation in East Africa, specifically in Kenya and Uganda. The research argues that while the law guarantees women's right to land, there is poor implementation due to socio-cultural dynamics such as deep rooted cultural beliefs and gender-based discriminatory practices that limit women's ownership of, and access to land for productive purposes. The paper concludes that safeguarding women's land rights is critical in enhancing their adaptive capacity to the impacts of climate change in the selected countries.

Keywords: *Women, Gender, Land rights, East Africa, Resilience, Agriculture*

Introduction

Developing countries, especially in Africa, are more affected by climate change because of their low adaptive capacity, defined as '*the ability to prepare for hazards and opportunities in advance and to respond or cope with the effects*' (IPCC, 2001). Climate change impacts include '*sea level rise, increasing temperatures, ocean acidification and glacial retreat, as well as related impacts such as salinization, forest degradation, drought, biodiversity loss and desertification*' (UNFCCC, 2012). These impacts affect basic needs like water, food, housing, energy, health and transportation, among other assets and resources. The high risk factors for East Africa include dependence on rain-fed agriculture, high levels of poverty, high reliance on natural resources like land, forests and water bodies, as well as poor infrastructure, which create a low adaptive capacity. Adaptive capacity influences vulnerability to climate change. The poor, especially those who depend on land and weather patterns for subsistence survival, are more

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affected by climate change. Women largely depend on natural resources for survival, make up the majority of the world's poor, and are therefore more vulnerable to climate change effects (Kameri-Mbote, 2013; Atapattu, 2015). The majority of people working in agriculture are women (Atapattu, 2015), yet they lack effective access to land because of poor enforcement of their right to property. This research explores the connection between women's property rights (the power to own, possess, use and enjoy a determinate entity, such as land or cattle) (Garner, 2009) and their adaptive capacity to and resilience² in the face of climate change in East Africa.

Methodology

The research employs the doctrinal research method. Legal instruments, laws, policies and credible reports at the international, regional, sub-regional and national levels was analysed. Secondary literature on climate change adaptation and women's access to land resources was reviewed. For the purposes of this research, the focus is on Kenya and Uganda due to the constitutional reforms to address gender inequality undertaken in 2010 and 1995 respectively. Both countries apply legal pluralism whereby customary law is applied alongside statutory law and both countries are dominantly patriarchal societies in which women still face discrimination in terms of property ownership.

Findings

Legal pathways for enhancing resilience

International and regional efforts to safeguard women's right to land have culminated in the adoption of human rights instruments such as the Universal Declaration on Human Rights (UDHR), which provides for every person's right to own property (Article 17), and the International Covenant on Economic, Social and Cultural Rights (ICESR) which, in Article 3, provides for equal enjoyment of economic rights for both men and women. Article 14 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (1979) provides the condition that states are obliged to ensure equal treatment of men and women in land and agrarian reform. Article 16 states that land tenure reform must ensure women's property rights during marriage, at divorce and in the event of her husband's death. The African Charter on Human and Peoples' Rights (ACHPR) (1981) has no direct provision on land rights, but provides for non-discrimination against women on any grounds (Article 2 and 3). The Optional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol 2003) recognises women's right to land and

² IPCC (ibid) defines resilience as, 'degree to which a system rebounds, recoups, or recovers from a stimulus.'

environmental resources (Article 15). Although these provisions are progressive, many state parties in Africa are still facing challenges in enforcing them. Atapattu (2015) emphasises that *‘despite efforts to improve gender equality the world over, gender discrimination still persists’*, noting that such inequality worsens women’s vulnerability in the face of climate change. As states are mandated to protect human rights without discrimination on any grounds, they are required to address the vulnerabilities of those who are more affected by the climate in order for them to be able to easily adapt to climate change impacts (Lewis, 2016). This is especially so in the face of climate change where some groups of people, such as women, are more vulnerable to its impacts due to the fact they rely on climate-sensitive natural resources. This implies that states are to ensure the protection of land rights of women, being more vulnerable to the effects of climate change than men, in order for them to be able to adapt to the impacts of climate change. Hall and Weiss (2012) argue that human rights are an avenue through which groups vulnerable to climate change can hold state actors accountable, because human rights instruments place enforceable legal obligations upon states. They, however, note that the challenge with most international human rights instruments is a lack of thorough enforcement mechanisms, creating a hurdle for victims of human rights violations.

Until 2001, international climate change law (specifically, the United Nations Framework Convention on Climate Change (UNFCCC)) (1992) and the Kyoto Protocol (1997)) did not recognise gender and its relevance to the climate change discourse; however, various Conferences of Parties (COPs) under the UNFCCC and the Paris Agreement (2015) now recognise gender equality and women participation as a key factor in all climate change action. The Paris Agreement provision is, however, pre-ambular and hence non-binding. Atapattu (2015) points out that the efficacy of the COPs is yet to be witnessed, as many policies still lack gender provisions. Atapattu further states that gender issues have not attracted much attention in the climate change discourse, noting that this is not surprising as gender equality is a human rights issue and the recognition of the intersection between human rights and climate change is, itself, a hurdle. Likewise, the CEDAW committee³ noted that women are the world’s biggest producers of food crops and are more affected by climate change, yet they have limited access to productive resources, like land, due to discrimination. The committee recommended the recognition of gender equality in UNFCCC agreements. Prescott (2014) argues that the *‘lack of the recognition of gender equality and climate change is not an oversight, but rather an issue of women marginalisation by societies and governments’*. It is thus not surprising that gender equality has not been reflected in the international climate regime, especially because the

³ Statement of the CEDAW committee on Gender and Climate Change, CEDAW 44th session, New York, 20th July-7th August 2009. Available at unfccc.int/resource/docs/2009/smsn/igo/064.pdf. Accessed on 2nd August, 2018.

marginalisation of women is historical, and often a human rights issue. In addition, since climate change has become a contentious issue, there is need of deliberate effort in reconciling climate change and human rights. Unless this is done, women's property rights will continue to be downtrodden, making it difficult for women to cope with climate change effects.

Women's property rights and adapting to climate change in East Africa

In Kenya, women constitute 70% of the agricultural workers and contribute 80% of food production labour (Ellis, et al., 2007). In Uganda, over 70% of the agricultural labour force is constituted by women (Acidri, 2014). Despite the fact that women in East Africa are widely involved in agriculture, they culturally have limited land rights and do not make decisions concerning land in most households. Limited land rights, which includes limited access, control and ownership due to cultural restrictions, exacerbates the vulnerability of women in the face of climate change and lowers their adaptive capacity (Demetriades and Esplen, 2010; Atapattu, 2015). Prescott (2014) emphasises that one of the reasons why women are more vulnerable to the effects of climate change is because they lack access to economic resources, unlike their male counterparts. Women are consequently often unable to obtain credit to invest in lasting solutions to climate change, such as drought resistant crops, agricultural machinery, tree planting and/or soil conservation techniques. As a result, women are unable to invest in adaptation actions, and their resilience to climatic impacts is lower. Women farmers also fear to make investments on land available for use, for fear of losing their investments to the land owners.

In Kenya, the 2010 Constitution in article 40 (1) provides that, '*every person has a right, either individually or in association with others, to acquire and own property of any description*'. Kenya has a Climate Change Act (2016) which establishes a Climate Change Council and requires women representation on the Council. In article 8 (2) (c), the cabinet minister is also required to promote gender and climate change-related education and awareness. Although progressive, these provisions are not being implemented because women in Kenya are still discriminated against due to deep rooted culture and customs (Kameri-Mbote, 2005).

In Uganda, the 1995 Constitution in article 26 (1) provides that every person has a right to own property, individually or in association with others. The Uganda National Climate Change Policy (2015) recognises women as one of the vulnerable populations and provides for mainstreaming of gender issues in climate change adaptation and mitigation approaches to reduce the vulnerability of women and recognise their key role in tackling climate change issues. Abebe (2014) and Kanika (2005) emphasise that even if women in East Africa have statutory rights to own land, the region is still marred with gender gaps which continue to place

women in a subordinate position, due to the predominant patriarchal society where women are still viewed as subordinate to men and are denied access to productive resources like land. In the absence of strong human rights, vulnerability to climate change cannot be reduced, and adaptation and resilience might remain a far cry (Barnett, 2009). Whereas the law guarantees gender equality and women's right to own property, implementation of these laws is a challenge due to the widely spread concept of patriarchy across the globe and in East Africa, which promotes wide-spread gender inequalities (Kameri-Mbote 2005; Atapattu, 2015).

Conclusion

Gender discrimination in the area of land rights affects women's adaptation and resilience in the face of climate change. Strengthening women's land rights in East Africa is therefore pivotal to enhancing their adaptive capacity. As a result, there is the need for effective implementation of the relevant laws and to reconcile climate change with human rights issues, such as gender discrimination, at both an international and national level. Governments need to put in place law enforcement mechanisms that will dismantle historical inequalities between women and men, as well as customary beliefs and practices which discriminate against women. This will make it easier for laws and policies on women's land rights to be implemented, hence enabling women to own land. This way, women will be able to use their land to invest adaptation measures. This will enhance their adaptive capacity and resilience.

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