

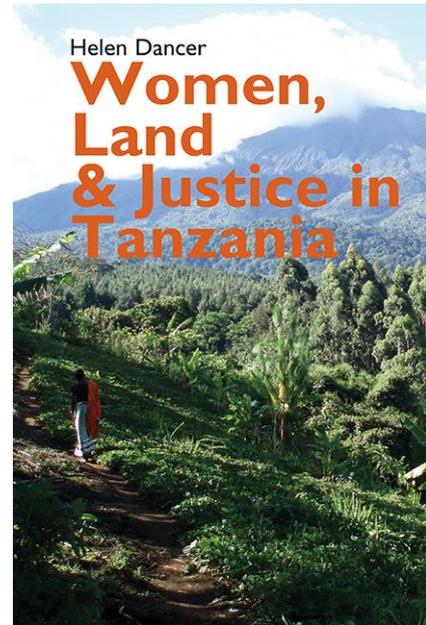
Women, Land and Justice in Tanzania

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Tanzania is a country blessed with significant mineral resources and fertile volcanic soils that are extremely valuable for agriculture. It is also a country experiencing rapid urbanisation, with pressure on land and infrastructure in urban and peri-urban areas. In many African countries, including Tanzania, the land law reforms of the 1990s promoted marketisation and formalisation of land tenure.¹ These legal changes, combined with the high demand for land from population increases, land-based investment and agricultural commercialisation, have provoked sharp increases in the commercial value of land in many areas. This has exacerbated pre-existing land conflicts and generated legal disputes on various scales. In some instances village populations have been displaced for large-scale land deals.² Where population pressure on land exists, at the individual household level, widowhood or divorce can lead to a woman being dispossessed of her land by other family members. Poverty and the local economic climate also provide a great incentive for individuals to sell their land. Sale of family land by a husband without his wife’s knowledge or consent is a particular problem. Those who are in a vulnerable social position face the greatest risk of losing their land, or having a legal claim to land brought against them. Many such legal claims are brought by or against women.

Aim of the research

My study³ orientates the debates on women, land and justice in Africa towards understanding interactions between law and practice and the implications for securing women’s interests in land through legal systems. Between 2009 and 2010 I conducted a year’s ethnographic fieldwork researching women’s claims to land in the land tribunals of Arusha, Tanzania. This was followed by further short visits in 2010, 2011 and 2014. The region has experienced pressure on land and land-based conflicts for over a century,⁴ owing to its location on trade routes within East Africa, political and social tensions, mineral resources, fertile soils and more recently, tourism. Currently, there is a burgeoning market for land and land-based investment and a high number of land-related disputes passing through all levels of court. The research was conducted both inside and outside the walls of the courtroom. Taking a grounded approach to the issues that give rise to women’s legal claims, I traced the progression of claims from their social origins, through legal processes

of dispute resolution to judgment. I analysed the role of social, legal and political actors in processes of justice, including advocates and legal aid clinics, and considered the extent to which women are realising their interests in land through the statutory legal system in practice.

The law

In 2012 Tanzania embarked on a process of constitutional review. The draft Constitution⁵ was approved by Tanzania's Constituent Assembly on 2 October 2014 to be submitted for a national referendum, which has yet to take place. The final proposed version includes a new article enshrining the right of every woman to 'acquire, own, use, develop and manage land on the same conditions as for a man'.⁶ This essentially repeats but would constitutionally entrench the equal land rights provisions of the Land Act and Village Land Act of 1999. The 1999 Land Acts provide that all Tanzanian women (regardless of marital status) have a legal right to 'acquire, hold, use and deal with land' equal to any man.⁷ Married women have in fact held this right since the Law of Marriage Act of 1971 recognised their rights to 'acquire, hold and dispose of property, whether moveable or immovable ...'.⁸ However, despite a series of reforms in land and marriage laws, there have been no recent equivalent legislative developments in the area of inheritance law. The proposed Constitution is silent as to whether women have an equal right to inherit land. Furthermore, codified versions of customary law,⁹ which discriminate against women's inheritance of land, remain in force and unchanged since their enactment in 1963.

The research:

- *assesses the impact of the law in practice through detailed empirical case studies*
- *draws attention to the gaps between rights-based perspectives and the lived experiences of women and the nature of their legal claims*
- *analyses how women fare in different courts and highlights the limitations of the modern legal system in the adjudication of women's claims to land*
- *makes recommendations for change to help ensure women's access to justice*

What happens in practice?

The book opens with a case study concerning a small family farm plot on the slopes of Mount Meru that was sold by a husband without his wife's consent. Court brokers were eventually appointed to demolish her home, which stood on the plot she cultivated. Nothing remained of the house that once stood there. The woman took her claim from the family to her local village leader, to ward, to district to High Court. She lost at every stage, until the High Court granted a temporary injunction which allowed her to plant annual crops on the land pending a full hearing. The legal case lasted for years.

This and other case studies in the book demonstrate the significance of gendered and intergenerational social relations as the foundation of customary land tenure relations for both women and men. These social relations often shape the ways in which women and

men frame their claims to land, and the adjudication of their interests by land courts. Family and village support networks, political influences, violence, financial constraints, literacy, language barriers, delay, the conduct of legal professionals, processes of evidence-gathering, and judicial knowledge and subjectivity may all constitute critical factors in the success or failure of a woman's legal claim to land in practice.

Wider debates: three key recommendations

- 1. Gender analyses must be fully integrated into law and policy formulation on land, marriage and inheritance matters.** If equal land rights for women and men are to be realised, an holistic approach to law reform is needed which addresses the gendered and intergenerational nature of land tenure relations in families and communities.
- 2. Access to justice initiatives must address the social and institutional pathways that help and hinder litigants in making legal claims,** as well as ensure adequate legal aid provision. Political and gendered social power relations surrounding land tenure issues represent obstacles to justice for many women. Social and legal measures are needed to enable courts, legal professionals, paralegals and community leaders to address incidents of violence that can often coincide with women's legal claims to land and impede access to justice.
- 3. Ensuring equal access to justice for all requires training and consciousness-raising for lawyers, adjudicators and community leaders** on the existence of implicit and explicit gender biases and social power relations within the litigation process itself.

A special offer discount of 25% is available on the hardback edition of *Women, Land and Justice in Tanzania* until 31st December 2015 (offer price £33.75/\$60 + p&p). Visit the publisher's website www.jamescurrey.com and quote 15828 when ordering.

Notes

¹ Manji A (2006) *The Politics of Land Reform in Africa* (London and New York: Zed).

² Askew K, Maganga F and Odgaard R (2013) 'Of Land and Legitimacy: A Tale of Two Lawsuits', *Africa: The Journal of the International African Institute* 83(1): 120-141; Rwegasira A (2012) *Land as a Human Right: A History of Land Law and Practice in Tanzania* (Dar es Salaam: Mkuki na Nyota).

³ Dancer H (2015) *Women, Land and Justice in Tanzania* (Woodbridge: James Currey).

⁴ Spear T (1997) *Mountain Farmers: Moral Economies of Land and Agricultural Development in Arusha and Meru* (Oxford: James Currey).

⁵ *Rasimu ya Katiba Inayopendekezwa* [Proposed Draft Constitution]. Tanzanian Constitutional Review Commission, September 2014, article 22.

⁶ International IDEA (2014) *The Proposed Draft Constitution of Tanzania* (September, 2014): An unofficial translation.

⁷ Land Act and Village Land Act 1999, section 3(2).

⁸ Law of Marriage Act 1971, section 56.

⁹ The Law of Persons, First Schedule Local Customary Law (Declaration) Order GN 279 of 1963 (Cap. 358 RE 2002); The Law of Inheritance, Second Schedule Local Customary Law (Declaration) (No. 4) Order GN 436 of 1963 (Cap. 358 RE 2002).