

“Securing Women’s Land Rights in Southern and Eastern Africa”-

Report on a CPA-UK Lecture, 8th February 2012

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On Wednesday 8th February, the Commonwealth Parliamentary Association of the UK hosted a lunchtime lecture on “Securing Women’s Land Rights in Southern and Eastern Africa”. This event took place at the Houses of Parliament and was chaired by Heidi Alexander MP, with guest speakers Elizabeth Daley of Mokoro Ltd, Ruchi Tripathi of ActionAid International, and Simon Levine of ODI. The lecture was well-attended, with approximately 40 participants, including a delegation of MPs from Uganda and the Labour Party’s Baroness Kinnock.

Heidi Alexander MP welcomed everyone to the lecture and invited **Elizabeth Daley from Mokoro Ltd** to start the debate by providing some background information on women’s land rights and why they are of critical importance. She outlined two key reasons - first, and most important, a human rights discourse, that women’s land rights should be part of the fight for gender equity, and second, to help ensure food security, as women make up the majority of farmers across Africa.

Elizabeth described how over the last 100 years or so, there has been an increase in competition for land, and a growth of land markets and “commoditisation” of land rights. This growth has weakened women’s rights to land, especially among the poor who find it difficult to engage in land markets. However, it is not all pessimistic, Elizabeth said, as some women have been able to get involved in markets and land rentals have become an increasingly important source of land access for many women in Africa, especially women heading their own households.

Another issue that she described was the influence of HIV-AIDS and conflict in further increasing the numbers of women left without land, including widows and orphans chased from their land. This is made worse when they do not appear in land titles and leases, and have no legal proof of ownership if a male household head named on a land title dies.

Nevertheless, she pointed out that things have started to change. The 1990s saw tenure reforms increasingly focus on securing and formalising rights to land as they already exist, whether that be individual rights, joint rights or collective rights. For example, much legislation in the region now allows for a greater number of names to appear on a lease or title document to reflect different forms of ownership and interests in land. Elizabeth noted the African Union’s efforts on land rights, including the development of the Framework and Guidelines on Land Policy in Africa, now adopted by the AU Heads of States and being implemented through a new Land Policy Initiative Secretariat. Much has been achieved in the past decade on paper, she continued, and there is now more scope for women to be more involved in the process of change. But positive and pragmatic approaches to securing women’s land rights are still needed to generate greater achievements.

Elizabeth outlined three key policy areas that could contribute to securing women’s land rights. First, she drew attention to the importance of customary institutions in securing the rights of women. Although these institutions have often tended to exclude women from local decision-making processes and are usually male-dominated, their role is not clear-cut. These institutions can be positive agents of change which should be used to help secure women’s land rights where that is

possible. Where it is not possible, creating new, gender-balanced institutions is a necessary alternative.

Second, she highlighted the role of the state and the importance of legislation in supporting gender equality and battling discrimination. She explained that although the law alone is not enough, it is a crucial starting point, since a constitution in favour of gender equality is “the foundation on which the details of statutory land policies and laws are built”. She drew from her experience in Rwanda in explaining the importance of this. There, the 2003 constitution established the principle of 30% representation of women on all statutory decision-making bodies at all level of government. When land administration was decentralised to five-people committees at the grassroots level, this meant that 2 out of these 5 representatives had to be women. Considering the thousands of local land committees around the country, this meant a dramatic increase in women’s participation in land administration and management. However, Elizabeth highlighted that change must be sustainable and not affect men negatively in the long run, and therefore laws need to be developed in a participatory manner. This was achieved in Rwanda through holding extensive public consultations in the run-up to the roll-out of national land registration. The consultations revealed that people wanted space for the rights and interests of all members of the family to be recorded on land titles, including joint registration of ownership for legally married husbands and wives. Laws and procedures were designed, tested in field trials and adopted accordingly, and Rwanda has since made tremendous progress with registering its land in a gender-equitable way.

Third and finally, Elizabeth emphasized the importance of acknowledging the challenges of implementing reforms. “Yes”, she explained, “there can be transformative laws in place, but if the bureaucratic actors involved are not interested in them, they won’t succeed in securing women’s land rights”. She highlighted the need for extensive public awareness and legal education campaigns as well as the involvement of civil society at grassroots levels to support women in claiming and securing the land rights they have by law.

Heidi Alexander MP then passed the baton to **Ruchi Tripathi from ActionAid**, for some further practical examples of the theory that Elizabeth had outlined. Ruchi started by explaining ActionAid’s role and its work with local communities in support of their struggles, providing long-term funding and partner support. She particularly emphasized the long-term aspect of ActionAid’s work. For example, in Mozambique ActionAid was involved with a local farmers’ organisation fighting against a company who was taking over their land, and they failed twice before they hired a lawyer and succeeded. This demonstrates why continuity is so important, as things are not always achieved the first time round. It is also important, she explained, for local actors to be there on the ground and provide support to local people.

Ruchi then proceeded to describe ActionAid’s campaigning work on land which includes the fight for a HungerFree world (with an emphasis on women smallholders and practical support for women’s land rights), the fight against bio-fuels, and participation in the FAO-led process of developing Voluntary Guidelines on responsible governance of tenure of land, fisheries and forests, which has a focus on human rights. Moreover, she explained, ActionAid has attempted to get civil society in different countries involved in solidarity campaigns, for instance the “peuples solidaires” group in France is fighting an Italian bio-fuel company in Kenya which is depriving people of their land.

Other examples of practical work by ActionAid outlined by Ruchi included work done in Tanzania, where the organisation has helped to create a toolbox for the implementation and enforcement of the 1999 Village Land Act, and where civil society is coming together to support the popularisation of land issues. In Malawi, there has also been a realisation on the part of local male community leaders about the importance of women's participation in land matters and of giving them access to land rights, due to the work done by ActionAid's partners to get the community and its leaders on board. In addition to this, ActionAid, has just completed a two-year project with the European Commission on Women's Land Rights in 5 African countries, carrying out a baseline survey before reviewing land laws, and now a similar project is being carried out in Guatemala, India and Sierra Leone to find out what women think about land rights in those countries.

Ruchi finished her presentation by drawing attention to the fact that although women's land rights are of course crucially relevant in terms of food security - and policy-makers often think about them only in this perspective - we need to consider that women have basic human rights and claims on land/land rights by virtue of them merely being human beings.

Heidi Alexander MP then introduced **Simon Levine from ODI** to draw on his extensive experience in Uganda in giving the final presentation. Simon began by provocatively stating that "the best way to protect women's land rights is by not going around trying to protect women's land rights". Leaving the audience wondering what he meant, he then proceeded to explain from his experience of working with the Land and Equity Movement in Uganda (LEMU). In Uganda, he explained, unlike many other African countries, the constitution recognises "customary ownership". However, the government did not understand the specific mechanisms behind customary law, which are very diverse in different areas, and judges working in the formal legal system continued to apply the concepts of statutory law and English customary law - or as we know it, common law - which they are trained in instead of being trained in Ugandan customary law.

In this tangled system, as Simon described it, there were two main problems relating to women's land rights. The first one was that nobody knew what the problem actually was - there were numerous protective measures for women's land rights in the formal law, so where did the problem lie? And the second was that everyone thought they knew where the problem lay, and that the problem was with customary law. Yet research carried out by LEMU found that within customary law, women's land rights were guaranteed and that the common belief that this was not the case had been conveniently conveyed by men. What's more, what the Ugandan government called "land disputes" were wrongly-named and rather were cases of land grabbing which hinged on issues of power. Moreover, Simon outlined, illegal land grabbing carried out by international corporations barely even existed, since the law protects Ugandan people against this. Instead, the problem was land grabbing by elites or (most frequently) by the community itself, in other words, powerful family members and neighbours grabbing land from each other. Fifty percent of widows LEMU interviewed, he continued, had land rights problems, and this figure was higher for divorcees (80-90%) and even greater for separated women (almost 100%).

People know their rights, Simon continued, but not how to defend them, making it a psychological, cultural, legal and overall a power problem. This mostly affects the weak, including the poor, the old and the women, who, he emphasized, have added vulnerabilities. Therefore there is a need to put in place systems to protect the weak and by extension most of the beneficiaries will be women. Simon

argued for prevention, since land grabbing is hard to stop once it has started. Moreover, he explained, grabbers work around “fogs”, which is why there is a need to clarify the laws and systems in place. For instance, people in some areas in Uganda have started to write down their customary laws with the signature and approval of clan heads (the highest authorities in the local culture), so whenever there is an issue, the books are there to be consulted. There is also a need for the drawing of maps, using specific species of marker trees to mark boundaries and creating documents that can be used in a court of law. Simon explained that LEMU had found it was critical to involve the elders, usually men, since it is actually integral to custom to provide protection for their women. Further, from his experience with the IDLO-led community land titling project in Uganda, that LEMU was involved in, he highlighted that the fear of women’s exclusion when writing-up customary law is unfounded; it was actually the other way round under the IDLO process, very much inclusive of women.

Simon finished with some lessons for the future from his experience in Uganda. First, he urged us to focus on what works and what doesn’t work in the field, rather than depend on generalisations. Second, he argued that customary systems are key and necessary, and that working with clans and elders to secure women’s land rights shouldn’t be ruled out just because they are often men. Third, Simon emphasised the need for the government to put in place district land registrars to implement the law, because “parliaments are powerless if governments aren’t interested”. Fourth, reiterating points made by the previous two speakers, he emphasised that any work on land needs to be carried out slowly, since land work takes time and rushing can do potential harm. And finally, to clarify his original statement, that we shouldn’t aim to help women, Simon argued for the need to treat the system as a whole to ensure human rights are provided to the weak, and that through this process it will be possible to generate a positive change for women.

Heidi Alexander MP then chaired a very lively discussion, including several points raised by the Ugandan MPs in addressing some of the issues that Simon Levine had raised. Other issues that came up in the discussion were the importance of land rights education for young people, issues around children’s and orphans’ land rights, and the problem of cost and resources for implementing laws that help to secure women’s rights. The consensus at the end of the meeting, as emphasised by **Baroness Kinnock** during the discussion, was that securing land rights for women is a really important human rights issue, and that this must not be lost sight of in debates about food security, because improving land rights for women will contribute to development far more widely than just in terms of food production.