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Land Grabbers and Women's Rights in Kenya

AKINYI NZIOKI

"Land grabbing" – a term commonly used by Kenyans to describe the irregular allocation or sale of public land to individuals to reward political patronage – has escalated in the recent years. On July, 15th, 2010 Daily Nation Newspaper headlines read, "The high and mighty stole public property, now they are threatened with prosecution" – referring to grabbed land worth 6 billion in Kenya Shilling (approximately Euro 10 Million) which had been stolen and returned to Forestry ministry and Kenya Wild Life Services by the Kenya Anti-Corruption Commission. This is only one indication of the outrageous culture of stealing public property by people in authority, including sitting Members of Parliament, councillors, army officers, business people and heads of public corporations. "It is a shame we must bring to an end", the "media watch" watchdog told the Daily Nation. The Kenyan press has been full of warnings and condemnations by public officers of all ranks against land grabbing. The problem was once declared to be "a land mania of epidemic proportions (which the government) cannot afford to do nothing about" (Daily Nation, March 2010).
Land remains a focal point in the history of the country, and the main reason behind the struggle for Kenyan independence. Land dictates the pulse of nationhood and command a pivotal position in the country's social, economic, political and legal relations. Gross historical injustices were committed in the colonial period and after independence in which communities were forcibly removed and deprived of

their territories. In addition, foreign investors buy-up land for large-scale agriculture while local elites profit from the resale. For example, a study carried out by FIAN International on land grabbing in Kenya (2010) revealed the following: In 2008 the government leased 40,000 hectares of high potential land in the Tana River delta to the government of Qatar to produce horticultural products for Qatar. In a planned public and private joint venture, Mumias Sugar Company Ltd., the largest sugar company in Kenya, and the state-run Tana-Athi River Development Authority (TARDA) proposed to turn 16,000 hectares into a sugar cane plantation for agrofuels, with possibilities of displacing tens of thousands of peasant farmers, currently using this land for food crops. The Yala Swamp wetlands located on the shoreline of Lake Victoria covering approximately 17,500 hectares were taken by Dominion Farms Ltd, a subsidiary of Dominion Group of Companies. This company was based in the USA in 2003 through an agreement made with Siaya and Bondo County Councils for a period of 25 years with a possibility of extension. In all the above cases, no proper consultation of local communities took place; no comprehensive impact assessments were made prior to the initiation of the projects; it is most likely that the displaced population will be severely impacted in terms of their livelihoods. The FIAN study further states that the official Kenyan development "Vision 2030 Strategy" is based on a simplistic and misleading ideology that foreign money coming into the country is seen as a solution, an idea promoted by the international financial institutions. At the same time this strategy ignores the development of peasant farming and even encourages government bodies to dismantle the existing elements of pro-peasant policies and institutions. The FIAN study also observed that the EU's policy on agrofuels promotes land grabbing.

This land situation has been further aggravated by corruption, population growth and desertification. Given these clashes of interest, one of the main causes of the explosive post-election conflict (2008) in Kenya was as a result of land rights. Land grabbing is a long term activity destroying ecosystems and foreclosing rights-based rural policy options such as agrarian reform. States and the international community are under human rights obligation not to promote or permit land grabbing which in essence is a violation of the UN-Covenant on Economic, Social and Cultural Rights.

Agriculture remains the base of Kenya's economy, where women play a crucial role, providing 70 to 80 percent of their labour in both food and cash crop production. Despite land tenure laws that allow anybody to own land regardless of sex, only 5% of women in Kenya own land registered in their names. In the informal settlements where the total urban population lives, 75% of households are female headed, 25% of this population being widows who were disinherited of their land and property upon the death of their husbands. These female headed households are either poor or very poor partly because they have limited ownership and access to land.

Myriad grievances over land have forced successive regimes to make adjustments to the policy and appoint a Commission of Inquiry. In 2003, a Commission was appointed to inquire into irregular allocation of public land. Out of the 20 members of

the Commission, only three were women. The appointment of this commission was an indication that the law and practice of allocating public land in the country had led to a crisis which needed state intervention.

The land grabbing phenomenon leans on the Government Land Act which confers power upon the president of Kenya to make grants of Freehold and Leasehold of unalienated government land to individuals or corporations. However, these powers are not absolute, but are supposed to be exercised strictly in the public interest: That is, the president "administers" the land in trust of the people of Kenya and is not supposed to dish away land to people at his own personal whim. According to the Commission of Inquiry's report, these procedures have been blatantly disregarded and public land has been allocated in total disregard of the public interest. The practice of illegal and irregular allocations, commonly known as "land grabbing" intensified in the late 1980's and 1990's. The audit (Republic of Kenya 2004) found that 752 pieces of public land had been irregularly allocated around the country, included cemeteries, fire stations, schools and even hospitals. However, these findings cannot reflect the true level of land-grabbing that has been taking place in the country. Small male elite groups own the best plots and use bribery and outright theft to expand their land holdings. In extreme situations, public land has been subject of outright plunder through speculation, resulting in unjust enrichment of a few people at the great expense of general welfare of the public. This expanding patriarchal empire has had a devastating effect on women and children with higher incidence of poverty, disease, violence, evictions and homelessness.

Part of the problem is that the existing land institutions from national to local levels are mainly dominated by men. Women's representation in these structures are very limited and sometimes almost non-existent. A research study sponsored by World Bank[1] argues that women are more trustworthy and more publicly minded than men, are less involved in bribery and are less likely to condone bribe-taking; in addition, where women occupy decision-making positions, they tend to have less corrupt business and government. In Kenya, however, women have tended not to be incorporated in official or institutional anti-corruption initiatives.

As a result of corruption on land, there are many cases of double and even triple allocations, with many involving forgery, giving rise to intricate legal issues. The local authorities, who are charged with the custody of community land, have been disposing these lands as they wish and as if they own the territory. Community lands are being privatized and titles given to individual male owners. This has adverse effects especially on pastoral women, whose lands fall under Trust Land.[2] In the past, women accessed community lands for food, fodder, wood-fuel, building materials, medicine and herbs. Allocating community land to individual male owners has not only eroded the women's land rights but also their sources of livelihood for themselves and that of their families.

Settlement Schemes created by government for public interest are supposed to be used to stimulate agricultural production or to settle the landless. It was expected

that such land would be allocated only to the landless. The Commission of Inquiry however found that the manner in which settlement schemes have been established and allocated falls far below the public trust interest inherent in them. Settlement Schemes have repeatedly been used as conduits for land grabbing. Whatever the case, allocation of these schemes are often largely in favour of providing title deeds to male heads of households and thus discriminating against women headed households.

A title deed issued by the Commissioner of Lands in the government confers a legal document on the land owner which is not capable of being revoked. This is irrespective of whether the land was acquired illegally and in disregard of public interest or in disregard of claims of other members of the owner's family. Land title deeds in Kenyan are patriarchal in that usually they are given in the name of the head of the family. The problem is that titled land is being transferred almost exclusively to male individuals – husbands, grandfathers, fathers and sons, without provisions of how women's rights are to be defined and determined. Customary land tenure systems which provided some protection over community land and especially women's access rights to such land are ill-defined in the title deeds. Male family members take advantage of the title deeds and deny women their share of family land. A wife's inheritance right to a husband's land is not guaranteed. Widows are often disposed by their male in-laws and rendered homeless. Likewise, brothers often evict their unmarried sisters from homesteads and farms when parents die. When these cases are referred to the courts of justice, relatives of the deceased often bribe court officials. As a result, many women lose their rights to inherit land/properties of the diseased husband.

Although the Law of Succession Act (1981) provides for equal rights to inheritance of parent's property for both female and male sibling, in reality, patriarchal inheritance in which only sons gain still prevails. In the event of single-hood, marital separation or divorce and most of the time widowhood, women who depend solely on land for their livelihoods become thus become if their land is taken away. Currently, there is no legislation that governs property belonging to married couples. In most cases matrimonial property including land are registered in the name of the male spouse. Problems arise upon death or divorce. Widows become only custodians of their husband's land or property for their minor sons, and only on condition that they remain single and chaste. In some communities women get "inherited"[3] by one of the kin members of the deceased husband. A widow usually loses rights to family land, if she remarries outside her deceased husband's family, leaves his village on his death, if she only has daughters or is childless. Since wives generally have little control over income during marital discord, divorced women are often sent away empty-handed.

Land markets are based on the principle of "willing-buyer, willing-seller". This means that land is directly negotiated with male land owners. Trends show that land markets are creating landlessness among women. In land markets there is ready cash

and the entitled male individuals can sell land which was once, or ostensibly still is family land. The majority of poor women suffer when their spouses sell off family land, not only because the most likely lose their livelihood but also because they have little say in the way in which money from the sale is used. Most threatened in this situation are women with non-off-farm income who depend on land for their livelihood. Landlessness is a prime cause of poverty, as most of the Kenyan poor live in the countryside, and for them, land is the only way to improve their lot. This is why land rights of poor people are a key ingredient in fighting poverty, where more women than men are poor.

Women's movement in Kenya, defender of women's rights and like minded civil society organizations have worked tirelessly in addressing women's rights in land and also land grabbing. This can be seen in the gains they have made in the new Constitution which was passed in a referendum held on 4th, August, 2010. The draft Constitution eliminates gender discrimination in law, customs and practices related to land and property to be entrenched in the National Land Policy which is already passed in parliament (2009); it enhances protection of community land and includes the recognition of forests and parks/reserves lawfully held by communities; and reduces land leases from 999 years wherever they exist, to 90 years. Legal protection for the rights of wives, widows and orphans is articulated in the new Constitution. The Constitution equally determines legal requirements that land investments benefit local communities and it removes protection to illegitimately acquired land rights. Thus, closing the gender gap in Kenya will surely aid the fight against grabbing and corruption in the land

Anmerkungen

1 The anti-corruption resource center (www.u4.no) refers to these findings in its explanation on gender and corruption. See: http://www.u4.no/helpdesk/faq/faqs1.cfm

2 Trust Lands are community lands secured under the Trust Land Act with power vested on the County Councils to hold land in trust and for the benefit of people residing in such areas. Most of Trust Lands are found in Pastoralist areas.

3 Women are forced into marriage by relatives of the deceased husband in order to retain access to the family land.

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