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Women and African Land Tenure

ABSTRACT. In most societies of the world just like Africa, women constitute about 50% of the population. Therefore, any action that ignores their contribution to development or alienates them in the development process cannot be valid or reliable. The omission and alienation of women from the African land tenure distorts the perception of historical records of past events. This article interrogates the persecution and violations of their human rights in African land tenure system which has largely been responsible for their suffering and poverty over the years. The article examines the marginalization of women in African land Tenure and how this impacts on the women and the society at large. By asking the how and why questions like the historians do in historical research and interpretation through the multidisciplinary approach, this article will reiterate the fact that any development plan that excludes the women is an exercise in futility.

KEYWORDS: Africa, land tenure, women

Introduction

Land as one of the factors or agents of production is simply a free gift of nature and it is not just limited to the hard earth surface we walk on but also comprises of forests, mountains, and rivers, and it plays a vital role in the development of the society.

The essence of this work is to examine the alienation of women in land tenure in Africa. The significant question this paper tries to address is how women have been relegated to the background when it comes to land ownership or access to land in Africa, in comparison with their male counterparts and how it has constituted hindrances to women's efforts in respect to the development of the African continent.

This to a large extent is as a result of the existing social structures embedded or put in place in the African society. So, even when the African

women are educated and civilized, they still abide and remain surreptitiously tied to this existing social structure.

Against this backdrop, the point of emphasis here is that we need to be conscious of the ultimate relevance of these social structures to the practical concerns of our reality in the twenty-first century. Maintaining the status-quo is a clear indication of our lack of critical mindset. It is imperative to pay equal or adequate attention to the issues that concern both male and female in the society.

Thus, seen from this perspective, this article is a contribution to the unending development debate which is still relevant to historical analysis. It is not exhaustive, but it is a contribution nonetheless.

1. Definition and Clarification of Concepts

1.1. Gender

Gender is simply the identification as a man, a woman or something else, and association with a (social) role or set of behavioral and cultural traits, clothing, and a category to which a person belongs on this basis (English Dictionary). Apart from promoting the understanding of our history, gender-based research also has the potential of enhancing national unity (Okorobia, in: Ejituwu and Gabriel, 2003). Gender discrimination is therefore the unequal treatment between men and women in the society. In other words, it is a situation whereby there is bias in the relationship between men and women in the society. According to Jev, Owei and Oruwari cited in: Alagoa and Derefaka (2002) gender is the social relationship between men and women in which women have been systematically subordinated. In other words, this relationship is lopsided and seems to be more favourable or advantageous to the men in the society. This became very pronounced during the colonial period. It should at this point be noted that, before the coming of the Europeans, gender division of labour was limited or restricted to farm and household activities. Colonialism led to the rise of urban centers, new pattern of work, as well as new gender divisions of labour.

At the initial stage of the colonial work system, two major factors helped to absorb more of men in the colonial work-force. Firstly, the uncertainty in the new urban system necessitated the cautious migrations in which the men, as the accredited family breadwinners had to go in first into the urban work camps. In this case, the women and children remained

in the villages to look after the homes and farms. This opportunity of being absorbed into the new colonial work system put the men in an advantageous position to acquire all the necessary skills before the women.

Secondly, there were existing cultural beliefs that the responsibilities of the woman do not extend beyond the house, farm and market. Women who looked forward to or made efforts to go beyond these sectors were suspected to have easy virtue tendencies and were therefore despised in the communities. The effect of these factors was that, the skills necessary to function in the colonial urban system and probably in subsequent era were acquired initially only by men.

1.2. Land Tenure

Land tenure is a concept that looks at how people gain access to land and how they make use of it. It has to do with the relationship of men in the occupancy and use of land. It defines the conditions under which land can be occupied, held or managed, by whom and for how long. It could also be described as the various ways by which individuals gain access to, and acquire rights of use over land either on temporary or permanent basis. According to Girigiri, cited in: Anikpo and Atemie (1999), land tenure differs from one society to the other and this is simply because, land tenure practices are dependent on the existing social structures and these existing social structures had led to the alienation of women in owning and as well as having access to land in the African society. In the world today, there are four general categories of land tenure institutions in operation. They are customary land tenure, private ownership, tenancy, and state ownership. These categories exist in at least four general contexts: feudal, traditional communal, market economy, and socialist economy.

2. Land Tenure in Africa

This segment of the work is aimed at considering land tenure in Africa. Land in this context could be described as a natural resource and one of the factors or agents of production. It is simply a free gift of nature and not just limited to the hard surface of the earth we walk on but also include: forest, mountains, and rivers. Land could be explained ecologically. In other words, it is an ecological entity that is having mathematical dimension. That is to say, land is measurable. Land tenure in most of Africa is either customary/traditional, or state/statutory. Customary land

tenure is characterized by its unwritten nature, is based on local practices and norms, and is flexible, negotiable and location specific. Furthermore, it could be seen as an economic resource which man uses for his survival. Economic resource here simply refers to natural resources such as fishes and crops. In many African regions, land ownership by women is complicated because of the gender ideology which forbids women from owning landed property. Also, land could be seen as a socio-political entity, associated with a particular group of people. For example, when you talk about Yoruba land, Kalabari land, you are trying to identify land with a group of people.

So, land tenure has to do with a body of rights and relationships between men that govern their behaviour in the use and control of land and its resources in a given society. In other words, it defines how people have land or get access to land. Put differently, it is the right to own or have access to land. This right could be property or usufructuary right. Property rights could also be called property tenure. It is a system whereby land is owned privately by individuals while usufructuary right is the right of the members of a given society to use land temporarily after which land reverts to its original status as a common property. Basically, land here is communally owned and this was the type of land ownership that dominated the pre-colonial era in Africa, although western scholars like F.J. Pelder condemned it on the basis that it worked against economic development (Hopkins, 1973). To some of these western scholars, African land laws and customs to a very large extent had prevented land, which is one of the factors of production to be influenced by economic forces, which are the forces of demand and supply. It is pertinent to state here that, this is not the case in all African societies. African land laws vary and this is based on the existing social structure of the society (Girigiri, in: Anikpo and Atemie, 1999).

In some African societies, land laws varied from communally owned land to individual freehold while in some societies the two forms of land ownership co-existed simultaneously. For instance, communal land ownership predominated among the people of Bemba of Zambia, Tonga of South Africa, Igbo and Ogoni in Nigeria. Among the Ogoni in Nigeria, all members of the male line of the original grantee of land have perpetual and exclusive usufructuary rights of hunting and gathering. The community here acts corporately in defense of its rights to its land in the event of challenge from another community. Property right or individual freehold predominated among the people of Talense of Ghana. The extent to

which, any of these forms of land ownership is practised in the African society depends on the availability of land in comparison to the population density and vice versa. In pre-colonial Africa, the major factors of production were mobilized from within the family sources. Similarly, capital and land were communally mobilized, leading sometimes to the socialization of both production and appropriation (Muojama, in: Ogbogbo and Okpeh, 2021). In the pre-colonial era, the position of women in Africa differed among the various ethnic groups and regions. A woman's position varied in two major ways, first, kinship structure of the group and secondly, the role of women within the economic structure of the society (Aboki, in: Mangut and Wuam, 2012). Common factors among women of different ethnic groups, however, included the domestically oriented jobs and the range of economic activities that the societies reserved for them (Gabriel, 2010; Azikiwe, 2010). However, the fact remains that some societies of pre-colonial Africa believed that men were superior to women and, to some extent, in control of women (Aboki, in: Mangut and Wuam, 2012). The system of land tenure institutionalized the economic subordination of women. Women could not own land. They were also precluded from inheriting land (Unumen, in: Mangut and Wuam, 2012) The pre-colonial patriarchal arrangement in most parts of Africa reduced women to second class citizens. Male supremacy was not only acknowledged but accepted as a 'fiat accompli' by the women. This clearly explains the alienation of women in African land tenure system. During colonialism, women were recruited as cheap wage labour in some parts of Africa on tea, sugar, tobacco and rubber plantations and in processing factories. At the village level, colonial regimes strengthened the male position as head of the household and 'reformed' customary laws that had given women considerable autonomy in some parts of Africa (Mgbako, 2010; Powers, 2002). The creation of the colonial economy thus tended to marginalize the position of the majority of women (Rojas, 1994). It must be noted that the changes colonialism brought to African societies as it concerns women differed from society to society and negative or positive in some cases. This is because African societies in the pre-colonial period differed very significantly in organizations, role structures, socio-political systems, customs and traditions (Unumen, in: Mangut and Wuam, 2012).

Nevertheless, Ruth Meena (1992, p. 15) has argued that "women's oppression has been located in the traditional African society, in the colonial system, in the neo-colonial nature of the African states, and in the patriar-

chal ideologies of post-colonial African states.” Many African women, she continued, “do not enjoy equal rights to access and control over resources, including land.” The “Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW) adopted at the United Nations (UN) in 1979 was a landmark in the campaign for the elimination of all forms of discrimination against women. It stated that all practices that harm women, no matter how deeply they are embedded in culture, must be eradicated. Although 51 out of 53 African Union (AU) member countries had ratified CEDAW by 2004, in practice, the constitutional rights of women are violated still in the name of cultural, traditional and religious practices (Okoh, in: Ejituwu and Gabriel, 2003).

Furthermore, (Girigiri, in: Anikpo and Atemie, 1999), stated that, three types of land tenure are found in traditional Nigerian societies. These include; family land tenure, lineage and public land tenure.

2.1. Family Land Tenure

This simply refers to the land tenure practice whereby typically, a man, his brothers and children own a particular piece of land allocated them as a family. Here the family has the unilateral right to put the land to whatever use they deem necessary. Right over such land is permanent as soon as the head of the family has allocated land to members of the family in accordance with their needs. The man, to whom the land has been allocated to under this system of land tenure, has to put it under cultivation and can return to it after a fallow period. That is to say, a piece of land allocated under this system is not taken back, whether it is in use or not, as long as they can indicate its occupation.

It should at this point be noted that, land under the family land tenure is inherited from previous ancestors and any person who is not a family member cannot make use of a family’s land or alienate it without the permission of the head of the family.

2.2. Lineage Land Tenure

This refers to a group that has a common ancestor and common property ownership. Here the lineage land is a territory unit distinctly marked from those of other lineages. This land was originally allocated to an immigrant ancestor by the head chiefs of a community. Again, the ancestor of a lineage could have originally cultivated such land as its first cultivator and therefore, laid claim of ownership to it.

2.3. Public Land Tenure

This may be reserved forest where animals are conserved and where members of the community may cut trees for building purposes, the staking of yam vines and other uses. It could as well be used for public utilities like markets, schools, village play grounds and so on. Also, some public lands were previously owned by lineage or families just as it could be reserved forests as stated earlier. In a situation where such lands previously belonged to a lineage before its conversion to public use, it could have been acquired compulsorily or through amicable discussion with the group that formerly owned it. In whichever way or method the land is acquired the original owners are compensated in one way or the other for their loss and deprivation. So, once compensated, a group that previously own public land can no longer claim right of ownership to it. The land and whatever durable crops and trees on it become public property. Control over public land is vested in the community head and his advisers who alone can grant permission for the cultivation of public lands. But they are not allowed to grow durable crops or trees, since the land can be recalled at short notice for community use.

However, despite the listed categories, customary laws in Nigeria and other parts of Africa, help in the process of marginalizing women. In some parts of Nigeria like the Igbo and the Niger Delta region, women generally have no customary rights to land, just for simply being female. The statutory 'Married Women's Property Act' allows a woman rights to own and dispose of land and property and to a share of her husband's property after his death or upon divorce. However, she is expected to produce documentary evidence of her contribution throughout the marriage before she can seek redress in court. Furthermore, the Land Use Decree of 1978 which guarantees all access to land use, management and disposal is another major constraint because in practice, women are still denied the rights of possession of, and decision making on family land. Women are only allowed to use land with the permission of the men of course, and nothing more. They cannot even use the land as collateral to acquire a bank loan like the men do. All these reduce women's access to economic opportunities and deepen their poverty, thereby widening the gender gap. Maybe that is the plan.

3. The Alienation of Women in African Land Tenure

This section examined the alienation of women in land tenure in Africa. In other words, it considered how women have been sidelined in the al-

location of land in the African society. According to Ake (1981), land is the essential means of production during the peasant mode of production and it tends to be communally owned but usually privately “exploited” subject to certain obligations.

This to a large extent was corroborated by (Orugbani, 2005) who stated that “Everyone was his brother’s keeper as individualism was practically unknown in the Nigerian territory and that land, the major means of production for farming communities, was still communally owned.”

So, the social structure of the African society should be in a way that laws put in place, would not alienate, rather accommodate women in the ownership as well as access to land, just like their male counterparts, so that they will also contribute their own quota to continental development in general and national development in particular. But in a situation where this is said to be the contrary, then it could simply be described or called the alienation of women in land tenure and it is a notable feature in the social structure of the African society.

According to Owei and Oruwari, in: Alagoa and Derefaka (2002), “under the *Lekiriya* form of marriage, a woman and her issues remain status-less in the man’s life, they cannot own landed interest through him.” It should also be stated clearly here that, female members of a family are generally regarded as “temporary members” and so do not have permanent and inheritable rights, in family land; since being females they are expected to get married. Although, the Okrika customary land law allows women only the right to use family land while physically in the family.

In fact, it is an established fact that among the *Esan* of modern day Nigeria, a woman could not own landed property in classical customary law in her personal capacity except the purchase of household utensil and other domestic appliances (Okougbo, 2001).

Among the Ogoni, succession to land is patrilineal and a man’s married daughters cannot inherit their father’s land. However, this does not come into full practice in a polygamous family where one of the wives had only a female child, that daughter gets her share of land on the condition that, she will not marry. If she decided to marry, she will marry a female to replace her and to bear children who will sustain her father’s name (Owei and Oruwari, in: Alagoa and Derefaka, 2002).

Similarly, (Wordu, in: Wika and Ifeanacho, 1998), stated that “among the Yoruba people, a female offspring who happens to be the only child of her father is entitled to his personal properties.” In this society, women are alienated in land tenure except on rare occasion where these women

happen to be the only child of their father, which will now create room or avenue for them to be accommodated in the land tenure system of that society.

For the people of the Ikwerre ethnic nationality in Nigeria, women did not own land originally but this is changing as certain women have come to own land by personal purchases (Owei and Oruwari, in: Alagoa and Derefaka, 2002). It is clear from the above analysis that even when a woman is culturally allowed to own land, she is given near impossible conditions, but a man is not given any condition except just being a male. Such double standards will only create confusion and it is a contributory factor to underdevelopment in Africa.

Furthermore, the Tiv in Nigeria have a system of land ownership and allocation where women do not inherit land but are allocated farm plots by their husbands or brothers in case of divorce or separation (Wordu, in: Wika and Ifeanacho, 1998).

The colonial state in Kenya alienated a lot of women due to the policies that were put in place. These policies further legitimized racial boundaries on land by appropriating a place for the white settlers called white Highlands while the area inhabited by the indigenous people was called the native reserves. These obnoxious policies over land, resulted to bitterness among the indigenes of Kenya, especially the Kikuyu and Luo who were mostly affected. And this led to the formation of unions like the Kenya African Union (KAU) and the "MauMau" which the indigenous people refer to as the Land Freedom Army (LFA).

Recently, a top Muslim cleric in Nigeria called on Law makers to reject a bill under debate in the National Assembly that would allow women the right to inherit family land and property, claiming it goes against the teachings of the Quran. Alhaji Sa'ad Abubakar 111, said the bill before the Senate seeking equality in inheritance was against Islamic religion and therefore unacceptable to Muslims. Islam and Christianity do not disregard women in terms of property rights. The prevailing discrimination against women has no religious backing, but a misguided exploitation of the low educational status and ignorance of women in Nigeria.

Despite the growing global concerns for the plight of women and the efforts to protect the rights of women to land and assets, various studies reveal that women still encounter challenges with respect to these rights (Adekunle, 2010; Aluko, 2015; Anyogu and Okpalobi, 2016; Akinola, 2018; Chaves, 2018). Globally, land and other forms of real property are essential for the economic empowerment of women across different cultural contexts (Got-

tlieb et al., 2018). Land in particular serves as a crucial element for cultural identity especially in decision making, political power and protection against domestic violence. The experiences of women in regards to acquiring or inheriting land and other property in Nigeria and by extension Africa are filled with narratives of denial and marginalization (Ajayi and Olotuah, 2005). Thus, even today, in the third decade of the twenty-first century, women still constitute the majority of the poor and illiterate in both urban and rural areas. Many women still lack access to land, credit, and do not own property due to discriminatory institutions that overtly or covertly deny their rights (Bawa, in: Fwatshak, 2019). These factors interact to unfavourably influence economic, social and political opportunities for women and girls.

Among the 70% of the population living below the poverty line, over 65% are projected to be women (Bawa, in: Fwatshak, 2019). African women perform complex multiple roles as mothers, workers, and managers of their households, while also caring for their extended families. They perform the majority of the work in food processing and dominate the informal sector in the rural and urban areas. Yet, less than 20% of women own their own farm lands, fewer than 10% have access to agricultural inputs and less than 5% have access to agricultural credits to enhance their productivity and incomes (Bawa, in: Fwatshak, 2019).

So, the analysis in this section of the work shows that, women to a large extent are alienated from land tenure system in Africa unlike their male counterparts who in most cases own or have access to land freely in some of these African societies as stated in this work. Gender studies of this nature, like our understanding of the dynamics of class or race relations, simplify our understanding of the dynamics of women in society (Okorobia, in: Ejituwu and Gabriel, 2003).

4. The Impact of Women Alienation in African Land Tenure

Land is one of the factors of production and it tends to be communally owned but usually privately “exploited” subject to certain obligations (Ake, 1981). This was corroborated by Orugbani (2005, p. 3). Since, it is communally owned, and women also happen to be part of the said communities, women in Africa should not be alienated from land tenure if the plan is to fully utilize it for the society to experience the needed development.

The alienation of women in land tenure system in Africa could lead to under- utilization of land, which in turn would bring about shortage of

food supply, especially agricultural commodities. In some farming communities such as among the Ogoni and the Igbo, women are by custom, the cultivators of food crops grown for home consumption. In the case of the Yoruba people in the west, farm work is done by the men. The women assist in preparing cassava, pepper, maize and vegetables. Women also assist in the processes of harvesting and transporting farm products. Women in Africa are actively involved in agricultural activities, especially in the rural areas. The importance of land in such agricultural activities cannot be over emphasized. So if they are denied access to land, it would, to a large extent affect food supply, basically agricultural products or commodities.

Furthermore, it would affect development. Development is all inclusive, and so, if women are alienated from land, development would be hampered. Any development that excludes more than half of the population (women), is an exercise in futility. For many African women, despite the Beijing conference and the conferences before and after it, they remain at the bottom of the social hierarchy, with poor access to land, credit, health and education. The conferences include the first one in Mexico in 1975, Copenhagen in 1980, Nairobi, Kenya in 1985 and Beijing in 1995. Others are Bellagio in 1997, Abuja in 1999 and Helsinki in 2000 (Ejituwu and Gabriel, in: Ejituwu and Gabriel, 2003), just to name a few. They have been meeting at these conferences and discussing issues of common interest, yet, they are still at the same place they were-that is, trying to sensitize the world to the unwarranted and unacceptable marginalization of women, which deprives them of their fundamental human rights, while men, in this same period, have literally "gone to the moon and back" (Mgbako, 2010). At this stage, "we are no longer seeking promises, but demanding accountability" said Ms. Hassan (Mgbako, 2010) While some of the agreements that African governments have ratified enshrined property and inheritance rights, the women are still denied those very rights in most of these countries. As a result, poverty in Africa continues to wear a woman's face, as acknowledged by Ms. Gladys Mutukwa of the Zimbabwe-based non-governmental organization. A UN Food and Agricultural Organization Study on Benin, Burkina Faso, Congo, Mauritania, Morocco, Namibia, Sudan, Tanzania and Zimbabwe shows that women rarely own land. And when they do, their holdings tend to be smaller and less fertile than those of the men. Studies have also shown that if women farmers had the same access to inputs and training as the men, overall yields could be raised by between 10 and 20% and the society will be better for it. A lack of equal access under the law to land and property is detrimental to sustainable development.

Finally, the issue of women alienation in land tenure system would also affect economic growth. In other words, the GDP of African countries would be affected. It would also affect the infrastructural development of the continent. Actually, all these things are already happening.

Conclusion

In conclusion, this work had in its various segments highlighted and as well analyzed how women in the African society have been alienated in land tenure when compared with their male folk as a result of the social structure of the African society. This alienation of women in land tenure, which in most cases, is legalized by the customary land laws of the society has hindered women from optimally contributing their own quota to the development of the African society in all ramifications. Although, these laws and policies must have been put in place at the time they were enacted to probably achieve certain objectives they deemed necessary, they are now obsolete and outdated.

And so, it is high time these laws and policies are revisited or probably amended, to give African women the enabling environment to contribute their own quota to the growth and development of the African society based on the current realities in the continent where you see a lot of women playing the role of breadwinners in their various families. If this is done, the African society would be evenly developed as compared to the lopsided development we have today. Indeed, no one should shy away from discussing such matters because they constitute the foundation of our humanity. However, we need to move from just talking to purposeful actions and implementation.

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