

Learning Workshop on Women, Land and Housing Rights: Assessing the impacts of dispossession

30 September—2 October 2020

Lusaka, Zambia



Housing and Land
Rights Network •

Habitat
International
Coalition



African Human Rights System



Organs and Institutions

Organization of African Unity (OAU), 1963

- Decolonization and self-determination
- State sovereignty and non-interference
- Eliminate colonization, neo-colonialism, apartheid and Zionism
- Struggle for human rights, dignity and identity
- Various human rights adopted (Banjul Charter; Protocol of African Court; Grand Bay (Mauritius) Declaration and Plan of Action, 1999)

African Union (AU), 2000

- Promote and protect human rights
- Democracy
- Governance
- Development



Organs and Institutions

Organization of African Unity (OAU), 1963/African Union (AU), 2000

- Peace and Security Council (PSC), 2003
- Economic, Social and Cultural Council (ECOSOCC), 2004
- Pan-African Parliament (PAP), 2004

African Commission on Human and People's Rights (ACHPR), 1986

New Partnership for Africa's Development (NEPAD), 2001

- African Peer Review Mechanism (APRM), 2002

African Court on Human and Peoples' Rights, 1998–2004/ African Court of Justice and Human Rights, 2008

African Committee of Experts on the Rights and Welfare of the Child (ACERWC), 1999–2001



Core Instruments

- OAU Refugee Convention, 1969
- African Charter on Human and Peoples' Rights (ACHPR, Banjul Charter), 1981–1986
- African Charter on the Rights and Welfare of the Child, 1990
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998
- African Union Convention on Preventing and Combating Corruption, 2003
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003–2005
- African Youth Charter, 2006
- African Charter on Democracy, Elections and Governance (ACDEG), 2007–2012



Right to Land in Core Instruments of African Human Rights System

African Charter on Human and Peoples' Rights (ACHPR), 1981 (Zambia ratified 1984)

- “Freedom of conscience, the profession and free practice of religion shall be guaranteed” (Article 8): spiritual, cultural links to land
- “All peoples shall freely dispose of their wealth and natural resources” “individually or collectively” (Article 21)
- “All peoples shall have the right to their economic, social and cultural development” (Articles 21-22): land is an economic, social and cultural resource



Right to Land in Core Instruments of African Human Rights System

No specific supervisory body

**African Commission may
receive State reports and
African Court will be able to
apply Protocol**

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 2003-2005 (Zambia ratified 2006)

- Separation, Divorce and Annulment of Marriage: “equitable sharing of the joint property” (Article 7)
- Right to Food Security: “adequate systems of supply... to ensure food security” (Article 15)
- Right to Adequate Housing: “equal access... whatever their marital status” (Article 16)
- Right to Sustainable Development: “access to and control over productive resources such as land and guarantee their right to property” (Article 19)
- Right to Inheritance: “A widow shall have... equitable share in the inheritance of the property of her husband”, “equitable shares [of] parents’ properties” (Article 21)



Right to Land in Core Instruments of African Human Rights System

Zambia ratified 2013

Southern Africa Development Community (SADC) Protocol on Gender and Development, 2008

- “equal legal status and capacity in civil and customary law, including... the right to acquire and hold rights in property, the equal right to inheritance and the right to secure credit” (Article 7)
- “where spouse separate, divorce, or have their marriage annulled... they shall, subject to the choice of any marriage regime or marriage contract, have equitable share of property acquired during their relationship” (Article 8)
- “a widow shall have the right to continue to live in the matrimonial house after her husband’s death” (Article 10)
- “a widow shall have the right to an equitable share in the inheritance of the property of her husband” (Article 10)



Right to Land in Core Instruments of African Human Rights System

- Southern Africa Gender Protocol Alliance?
- Southern Africa Gender Protocol Barometer?

(SADC Gender Protocol con'd)

- “end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof” (Article 18)
- “ensure that women have equal access and rights to credit, capital, mortgages” (Article 18)
- “State parties shall provide appropriate remedies in their legislation” (Article 32)
- provisions for implementation, monitoring and evaluation (Article 35)

Amendment to the Protocol on Gender and Development, 2016

- Article 10 became “their husband/wife” “their spouses”



Right to Land in Core Instruments of African Human Rights System

African Youth Charter, 2006 (Zambia ratified 2009)

- “young women [shall] enjoy equal rights to own and to inherit property” (Article 9)
- “Every young person shall have the right to social, economic, political and cultural development” (Article 10)
- Poverty Eradication and Socio-economic Integration of Youth: “Provide grants of land to youth” (Article 14)

African Charter on Democracy, Elections and Governance, 2007-2012

(Zambia ratified 2011)

- ✓ “State Parties shall institutionalize good economic and corporate governance,” including through “Equitable allocation of the nation’s wealth and natural resources” (Article 33)



Land in Other Instruments (soft law, initiatives)

Framework and Guidelines on Land Policy in Africa, 2009:

- ✓ joint effort between the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB)
- ✓ strengthens women's land rights and enhances tenure security

Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the ACHPR, 2010

- ✓ “equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women” (para.55)
- ✓ “ensure that women (whatever their marital status)... are guaranteed equal access to land, adequate housing or shelter and to acceptable living conditions in a healthy environment...” (para.79)
- ✓ equal right to protection from forced eviction and compensation, security of tenure, and compensation for violation of housing rights (para.79)



Land in Other Instruments (soft law, initiatives)

African Union Declaration on Land Issues and Challenges in Africa, 2010

- ✓ *“strengthen security of land tenure for women which require special attention.”*
Assembly/AU/Decl.1(XIII) Rev.1

African Land Policy Centre (ALPC, formerly Land Policy Initiative), 2006

- ✓ established by the African Union Commission (AUC), the Economic Commission for Africa (ECA) and the African Development Bank (AfDB)
- ✓ aims to enhance women's secure access to land



Land in Other Instruments (soft law, initiatives)

Nairobi Action Plan on Large Scale Land-Based Investments in Africa, 2011

“maximize opportunities for Africa’s farmers, with special attention to smallholders and minimize the potential negative impacts of large-scale land acquisitions, such as land dispossession and environmental degradation, in order to achieve an equitable and sustainable agricultural and economic transformation that will ensure food security and development.”

Guidelines on Business, Land Acquisition, and Land Use: A Human Rights Approach, 2012

- ✓ Includes three main principles: Transparency, Nondiscrimination, Accountability

Agenda 2063: The Africa We Want

“The African woman will be fully empowered in all spheres, with equal social, political and economic rights, including the rights to own and inherit property... Rural women will have access to productive assets: land...” (para.50)

Land and housing: *“access to affordable and decent housing... effective and territorial planning and land tenure, use and management systems.” (para.72)*

Agriculture Development: *“Develop and implement affirmative policies and advocacy to ensure women’s increased access to land and inputs, and ensure that at least 30% of agricultural financing are accessed by women.” (para.72)*

African Human Rights Mechanisms



African Commission on Human and Peoples' Rights

Functions:

- ✓ Determines if alleged human rights abuses violate the African Charter
- ✓ Makes recommendations to governments on promoting and protecting human rights and addressing past violations
- ✓ Organizes seminars and conferences
- ✓ Conducts country promotional visits
- ✓ Disseminates reports on various human rights issues
- ✓ Interprets the African Charter
- ✓ Investigates human rights violations through fact-finding missions

African Commission on Human and Peoples' Rights

Civil society plays a pivotal role in the activities of the Commission:

- ✓ Alerts to violations of the African Charter
- ✓ Submits communications and complaints on behalf of victims
- ✓ Monitors governments' obligations under the AC and other human rights treaties
- ✓ Attends the Commission's public sessions
- ✓ Submits parallel reports
- ✓ Engages in advocacy to shape concluding observations
- ✓ Increases awareness of the commission's activities



African Commission on Human and Peoples' Rights

Zambia ratified the ACHPR in 1984

- States should submit a Periodic Report to the Commission every two years
- Zambia has **eight** overdue reports
- only one report has been submitted, for the combined period 1986-2004
- concluding observations (2007) – unavailable ?

Special Mechanisms of the African Commission

Special Rapporteurs:

- ✓ Human Rights Defenders
- ✓ Freedom of Expression and Access to Information
- ✓ **Rights of Women**
- ✓ Prisons and Conditions of Detention
- ✓ Refugees, Asylum Seekers, Migrants, and Internally Displaced Persons

Working Groups and Committees:

- **Economic, Social and Cultural Rights**
- Death Penalty and Extra-judicial, Summary, or Arbitrary Killings in Africa
- **Indigenous Populations / Communities in Africa**
- Rights of Older Persons and People with Disabilities
- **Extractive Industries, Environment, and Human Rights Violations**
- Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to, and Affected by HIV
- Prevention of Torture in Africa

African Court of Justice and Human Rights, 2004-2008

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998

Function: *"complement the protective mandate of the African Commission on Human and Peoples' Rights"*

Zambia signed the protocol of the Court in 2010 but has yet to ratify

Who can submit cases before the court?

- ✓ The African Commission on Human and Peoples' Rights
- ✓ Governments of countries that are complainants or respondents to a communication before the African Commission
- ✓ Governments that have an interest in a case
- ✓ African inter-governmental organizations
- ✓ Non-governmental organizations with observer status at the African Commission and ordinary individuals, if the government against which the case is brought has made a declaration giving the court jurisdiction over cases brought by individuals and non-governmental organizations. (**8 countries:** Burkina Faso, Malawi, Mali, Tanzania, Ghana, Cote d'Ivoire, Benin, Tunisia)



Future of the African Human Rights System

- **African Commission?**
- **African Court?**
- **SADC??**
- **Role of local NGOs?**